



Civil Resolution Tribunal

Date Issued: June 16, 2020

File: SC-2020-001876

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hockin v. Matheson*, 2020 BCCRT 664

BETWEEN:

SHEILA HOCKIN

APPLICANT

AND:

ROBYN MATHESON

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about a private used car sale.
2. The applicant, Sheila Hockin, bought a 2012 Honda Civic (car) from the respondent, Robyn Matheson. Ms. Hockin says that that Ms. Matheson lied about the extent of damage to the car and did not advise her that there was a lien against the car in

Alberta. The applicant seeks total of \$2,175.77 in damages, for the car's \$1,800 purchase price, \$267.02 for cost of repairs, \$50.00 for gas, and a \$58.75 Carfax report.

3. Ms. Matheson denies Ms. Hockin's claims. Ms. Matheson says she did not misrepresent the car's condition and did not know there was a lien against the car. She says Ms. Hockin knew the car was sold "as is" and that it required inspection.
4. The parties are both self-represented.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
6. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, this dispute amounts to a "she said, she said" scenario with both sides calling into question the credibility of the other. Credibility of witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me.
7. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. In *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the court recognized that oral

hearings are not necessarily required where credibility is in issue. I decided to hear this dispute through written submissions.

8. The CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
9. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

ISSUE

10. The issue in this dispute is whether Ms. Matheson misrepresented the car to Ms. Hockin, and if so, whether Ms. Hockin is entitled to \$2,175.77 in damages arising from car's purchase.

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, Ms. Hockin bears the burden of proof, on a balance of probabilities. Ms. Hockin provided evidence and submissions in support of her position. Ms. Matheson filed a Dispute Response but did not file any evidence or submissions in response to Ms. Hockin's submissions, despite having the opportunity to do so. While I have considered all the information provided by the parties, I will refer to only what is necessary to provide context to my decision.
12. The parties agree that Ms. Hockin responded to Ms. Matheson's Facebook Marketplace ad for the car, which was listed for \$2,500. It is undisputed that Ms. Matheson's ad said the car needed an out-of-province inspection, the seatbelt and muffler needed replacement, and there were no registration papers for the vehicle. Ms. Hockin test drove the car but did not have it inspected by a mechanic before she purchased it on January 29, 2020 for \$1,800.

13. Neither party provided the Facebook Marketplace advertisement.
14. Ms. Hockin says that before finalizing the car's purchase, Ms. Matheson pressured her by text message to complete the sale, claiming someone else was interested and that she needed to sell the car quickly. Ms. Hockin had not had the chance to find out about how to register the car in British Columbia without registration papers. Ms. Hockin says she agreed to purchase the car in cash when Ms. Matheson lowered the \$2,500 advertised price to \$1,800.
15. After the purchase, Ms. Hockin says she took the car to a repair shop to replace the seatbelt and get a preliminary inspection before getting the required out-of-province inspection. This is when Ms. Hockin says she learned of damage to the car's frame, which would require repair. Ms. Hockin says she also had to buy a new battery because the car's battery would not hold a charge for more than one day. However, Ms. Hockin says at that point she still thought the car purchase was "worth it" because of the low purchase price.
16. Ms. Hockin says a friend recommended she get a Carfax report on the car for more information about the frame damage, which Ms. Hockin did on February 7, 2020. While there was no information about the cause of the frame damage, the report showed that the car had a lien on it, meaning that it could not be registered or insured until the lien was discharged. When Ms. Hockin contacted Ms. Matheson about this, Ms. Matheson confirmed that the sale was "as-is" and she did not know about the extent of the frame damage or that there was a lien on the car.
17. In this dispute, the applicant claims a total of \$2,175.77, for the following:
 - a. \$1,800 for the purchase price,
 - b. \$147.22 for a driver's seatbelt buckle and initial inspection,
 - c. \$119.80 for a battery,
 - d. \$50.00 for gas, and

- e. \$58.75 for the Carfax report.
18. In a private used car sale, a purchaser is expected to reasonably assess the vehicle's condition before purchasing it. While a seller is not under any duty to disclose known defects, the seller must not actively conceal them. Unless the seller commits fraud or conceals defects, the purchaser assumes the risk for any defects in the condition or quality of the vehicle. This principle is referred to as the doctrine of *caveat emptor* or "buyer beware": see *Rusak v. Henneken*, [1986] B.C.J. No. 3072 (S.C.) and *Smith v. Wild Grizzly Transport Ltd.*, 2018 BCCRT 203.
19. If a vehicle is simply more worn out than the buyer originally thought, or it has problems that could have been discovered through an inspection, the buyer is likely not entitled to a remedy: see for example, *Laubscher v. Mansoor et al.*, 2018 BCCRT 59, a non-binding CRT decision I find persuasive, and *Smith v. Wild Grizzly Transport Ltd.* I find that the worn battery and the car's frame damage amount to problems that are subject to the "buyer beware" principle because they were not defects that Ms. Matheson actively concealed and they could have been discovered through an inspection. If Ms. Hockin's claim was based solely on these two issues discovered after she purchased the car, I would likely have dismissed her claim.
20. However, the "buyer beware" principle does not permit a party to misrepresent a used vehicle's condition. I find that this includes representations about whether the vehicle has any liens against it. The evidence shows that Ms. Matheson signed a bill of sale form when she sold the car to Ms. Hockin. The form includes pre-printed statements requiring Ms. Matheson to confirm she is the legal owner of the car, attaching the car's registration, and there is "clear title" with "no liens or encumbrances" against the vehicle.
21. A "misrepresentation" is a false statement of fact, made in the course of negotiations that has the effect of inducing a reasonable person to enter into the contract. If a seller misrepresents the vehicle, the buyer may be entitled to compensation for losses arising from that misrepresentation. There are 2 types of misrepresentation: fraudulent and negligent misrepresentation.

22. Fraudulent misrepresentation occurs when a seller makes a representation of fact, the representation is false, the seller knew it was false or recklessly made it without knowing it was true or false, and the buyer is induced by the false representation to buy the item.
23. Negligent misrepresentation occurs when a seller fails to exercise reasonable care to ensure representations are accurate and not misleading to the buyer.
24. In her Dispute Response, Ms. Matheson explained that she bought the car from someone in Alberta who did not have the car's registration at the time of sale but said he would mail it to her. She says the previous owner never mailed her the registration and then told her he could not get a copy because the Alberta registry told him that he owed money. She says she was not sure how to register the car without registration papers, so she decided to sell the car instead. Based on these admissions in the Dispute Response, I find that it is more likely than not that Ms. Matheson knew or ought to have known that the Alberta registry refused to provide the car's previous owner with a copy of the car's registration papers because there was a lien or encumbrance against the car. Therefore, I find Ms. Matheson, at a minimum, negligently misrepresented that the car had no liens or encumbrances when she signed the January 29, 2020 bill of sale.
25. I further find that the misrepresentation induced Ms. Hockin to buy the car. She already knew there were no registration papers for the car and that it would require an out-of-province inspection, which could create their own hurdles for registering the car in British Columbia. If Ms. Hockin had known that there was a lien on the car, I find she would not have gone through with the purchase.
26. Having found Ms. Matheson negligently misrepresented that the car had no liens or encumbrances against it, I must now determine the appropriate remedy. A party seeking damages for negligent misrepresentation is entitled to be put in the position they would have been in had the misrepresentation not been made: see *O'Shaughnessy v. Sidhu*, 2016 BCPC 308. The party must establish on the balance of probabilities what that position would have been.

27. Ms. Hockin seeks a full refund for the car's purchase price, but I find there is still some residual value in the car, at least for its parts. I also find Ms. Hockin would be unjustly enriched if she were awarded a full refund and kept the car. Therefore, I reduce the car's purchase price by the amount of its residual value, which on a judgment basis I find to be 30% or \$540, and I order Ms. Matheson to refund Ms. Hockin \$1,260 of the car's purchase price.
28. Further, I find that Ms. Hockin would not have incurred the \$147.22 for the seatbelt buckle and initial inspection, the \$119.80 for the battery and \$58.75 for the Carfax report, had the misrepresentation not been made. However, the seatbelt buckle and battery are brand new and have a relatively high residual value. Therefore, on a judgment basis, I order Ms. Matheson to pay Ms. Hockin \$175 for these expenses. I decline to award the \$50.00 claimed for gas because Ms. Hockin did not provide any gas receipts.
29. The *Court Order Interest Act* applies to the CRT. Ms. Hockin is entitled to pre-judgment interest on the \$1,435 from February 7, 2020, the date of the Carfax report, to the date of this decision. This equals \$10.04.
30. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. I find the Ms. Hockin is entitled to reimbursement of \$125 in CRT fees. Ms. Hockin did not claim any dispute-related expenses.

ORDERS

31. Within 21 days of the date of this order, I order the respondent to pay the applicant a total of \$1,570.04, broken down as follows:
 - a. \$1,435 in damages,
 - b. \$10.04 in pre-judgment interest under the *Court Order Interest Act*, and

c. \$125 for CRT fees.

32. The applicant is entitled to post-judgment interest, as applicable.
33. Under section 48 of the CRTA, the CRT will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the CRT's final decision.
34. The Minister of Public Safety and Solicitor General has issued a Ministerial Order under the *Emergency Program Act*, which says that tribunals may waive, extend or suspend a mandatory time period. The CRT can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the state of emergency ends, the CRT will not have this ability. A party should contact the CRT as soon as possible if they want to ask the CRT to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.
35. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Kristin Gardner, Tribunal Member