



# Civil Resolution Tribunal

Date Issued: June 19, 2020

File: SC-2019-009897

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Leamont v. Marsh*, 2020 BCCRT 684

BETWEEN:

JOSEPH PAUL LEAMONT

**APPLICANT**

AND:

AUSTIN MARSH

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

David Jiang

### INTRODUCTION

1. This dispute is about the purchase of a used dirt bike through a private sale. The applicant, Joseph Paul Leamont, says he purchased the dirt bike from the respondent, Austin Marsh. Mr. Leamont says the day after he purchased the bike, he started it and heard it rattle. He says he disassembled it and discovered

mechanical issues. He claims \$4,000 in compensation for repairs and mental distress.

2. Mr. Marsh disagrees with these claims. He says the bike was in good running condition when he sold it and he was unaware of any problems.
3. The parties are self-represented.

## **JURISDICTION AND PROCEDURE**

4. 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.
5. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
6. 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.
7. 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**

8. The issue in this dispute is whether Mr. Marsh sold a dirt bike that was durable for a reasonable for a period of time, and if not, what remedy is appropriate.

## **EVIDENCE AND ANALYSIS**

9. In a civil claim such as this, Mr. Leamont bears the burden of proof, on a balance of probabilities. While I have reviewed all the evidence and submissions, I only refer to them to the extent necessary to explain my decision.
10. As I will explain below, the parties' agreement contained an implied warranty that the dirt bike would be durable for a reasonable period of time. I find that the dirt bike was safely operational at the time it was sold. I am not satisfied that it developed any issues that prevented its safe operation after the sale. I therefore dismiss Mr. Leamont's claims. My reasons follow.
11. The background facts are largely undisputed. Mr. Marsh advertised a used, yellow 2006-model dirt bike for sale on a website. On the evening of November 6, 2019, Mr. Leamont visited Mr. Marsh and personally inspected the dirt bike. He also kickstarted it without issue. Mr. Leamont then purchased the dirt bike for \$2,000 and took it home that evening on his truck.
12. Mr. Leamont says the next evening he started the dirt bike and heard it rattle. He says he discovered mechanical issues with the dirt bike, which I discuss below. Mr. Leamont texted Mr. Marsh, who denied there were any issues with the dirt bike when he sold it.

### ***Warranties under the Sale of Goods Act (SGA)***

13. In a private used vehicle sale, the principle of "buyer beware" largely applies. Mr. Leamont also did not argue misrepresentation or that Mr. Marsh provided any guarantees.

14. However, SGA section 18(c) applies to private sales of used vehicles. Under that provision, the dirt bike must be durable for a reasonable period of time having regard to the use to which they would normally be put and considering all the surrounding circumstances of the sale. See, for example, *Caviglia v. Jonathan*, 2020 BCCRT 426, which is about the private sale of a used motorcycle. In *Caviglia*, the CRT member found SGA section 18(c) applied to create an implied warranty of durability. Although not binding, I find the reasoning in that decision applicable and persuasive.
15. In *Sugiyama v. Pilsen*, 2006 BCPC 265, the BC Provincial Court outlined factors to consider in determining whether a vehicle is durable for a reasonable period of time under the SGA. These include age, mileage, price, the prior and intended use of the vehicle, and the reason for the breakdown.
16. Mr. Leamont identified 3 issues with the dirt bike: a rattling sound, a broken starter, and a cracked “case”. He says that when he started the dirt bike on November 7, 2019, he heard the dirt bike rattle. He called a mechanic and the mechanic suggested it might be an issue with the clutch. He says he then tried starting the dirt bike again and found the kick starter did not work and started spinning freely. He disassembled part of the bike and saw that the starter gear wheel was missing teeth. Mr. Leamont also says he observed 3 cracks in the “case”. He did not say whether he meant the engine case or some other component.
17. Having considered the evidence, I am not satisfied that the dirt bike rattled or that its starter broke after Mr. Leamont purchased it. Mr. Leamont did not report any problems the previous night when he started the dirt bike in front of witnesses. He provided no explanation for why the dirt bike would develop these issues overnight without being driven any distance. Consistent with my finding, Mr. Marsh’s father, who was present at the sale, wrote a letter stating that he tested the bike for a short distance on the day of the sale without issue.

18. As for to the cracked case, Mr. Leamont did not explain whether this prevented the dirt bike from being safely operated. I am not persuaded that the cracks, if any, affected the dirt bike's durability.
19. As evidence, Mr. Leamont provided photos showing a photo of a gear wheel missing teeth. He also provided several photos that show a metal component with visible cracks. However, the photos are closeups and lack any context. There is no evidence, such as from a mechanic, to show that the photographed parts came from the dirt bike and would prevent it from safely being used. Mr. Marsh's father writes that the photographed components do not come from the dirt bike. Mr. Leamont did not dispute or otherwise address this point in his submissions. I find it plausible these components are not from the dirt bike, given that it started the previous night, and there is nothing in the photographs to indicate they are from the purchased dirt bike.
20. In summary, I find the dirt bike worked on the day of the sale. I am not satisfied by the evidence that it broke down after Mr. Leamont purchased it. I am therefore not persuaded that that the dirt bike failed to be durable for a reasonable period of time. I dismiss Mr. Leamont's claims for this reason. I would also dismiss them because Mr. Leamont did not provide any evidence to support his claimed damages.
21. Mr. Leamont says it would cost about \$1,500 to repair the dirt bike before accounting for labour. He did not explain how he arrived at this number and there are no receipts to justify the claim. Mr. Leamont also says some portion of his claim is for mental distress, though he did not say how much. He provided no evidence of his loss, such as receipts for medical expenses. I find the non-binding decision of *Eggberry v. Horn et al*, 2018 BCCRT 224 persuasive and applicable. It states that claims for mental distress must be supported by evidence, and here there is none.
22. In summary, I am not satisfied Mr. Marsh breached the implied warranty of SGA section 18(c). I am also not satisfied that Mr. Leamont suffered any loss.

23. 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.

24. Mr. Marsh is the successful party. As he did not pay any CRT fees or claim for dispute-related expenses, I do not award them for any party.

## **ORDER**

25. I dismiss Mr. Leamont's claims and this dispute.

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David Jiang, Tribunal Member