



# Civil Resolution Tribunal

Date Issued: July 9, 2020

File: SC-2019-007571

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Elezam v. Kennett*, 2020 BCCRT 770

BETWEEN:

JOSHUA ELEZAM

**APPLICANT**

AND:

KIMBERLY KENNETT

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Trisha Apland

## INTRODUCTION

1. This dispute is about the purchase of a used car through a private sale.
2. The applicant, Joshua Elezam, purchased a 2003 Honda CR-V from the respondent, Kimberly Kennett, on February 12, 2019. Mr. Elezam says that Ms. Kennett was not “forthright with the truth about the condition of the car”. He says

“the car itself was in such poor level of disrepair that Ms. Kennett could not have failed to know just how bad it was”. Mr. Elezam seeks a reimbursement of \$2,000 for repairs, plus an additional \$2,000 for a new engine.

3. Ms. Kennett says that she did not misrepresent the car’s condition. She says she regularly maintained the car, but “with age, cars start to have issues”. She denies that she is responsible for the claimed repair costs and a new engine.
4. The parties are each 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, or a combination of these. Though I found that some aspects of the parties’ submissions called each other’s credibility into question, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the CRT’s mandate of proportional and speedy dispute resolution, I decided I can fairly hear this dispute through written submissions.
7. 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.

8. 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.

## **ISSUES**

9. The issue in this dispute are:
  - a. Did Ms. Kennett misrepresent the car's condition?
  - b. Did Ms. Kennett breach the implied warranty of durability under the *Sale of Goods Act (SGA)*?
  - c. To what extent, if any, is Mr. Elezam entitled to his claimed damages for car repairs?

## **EVIDENCE AND ANALYSIS**

10. In a civil dispute such as this, Mr. Elezam as the applicant must prove his claim on a balance of probabilities. I have reviewed all the parties' evidence and argument. However, I refer only to what is relevant to my determination and to the extent necessary to give context to my reasons.
11. As noted above, Mr. Elezam purchased the 2003 CR-V from Ms. Kennett on February 12, 2019 in a private sale. The Craigslist advertisement in evidence says "Selling my 2003 Honda CR-V. Lady driven, good condition but buying something newer, automatic, AWD, clean status no accidents". The listed selling price was \$4,600.
12. The parties agree that Mr. Elezam inspected the car himself and took it for a test drive. Mr. Elezam did not have the car professionally inspected. It is undisputed that

the engine had 216,000 km on it and its engine warning light was on at time of purchase. Mr. Elezam said Ms. Kennett was in a “hurry, so I gave her the courtesy of being expedient on my own inspection and trusting her word about the condition of the car”. He says he bought the car knowing it needed some repairs and negotiated the price down to \$3,000.

13. Mr. Elezam says after driving the car 50 km he took the car for a service where “all the damage was discovered”. However, the February 19, 2019 “Fraserview Service” invoice in evidence does not show that it discovered all the claimed damage and it did not discover the cause of the engine light issue. The invoice noted that there were multiple defective cam lobes and the timing chain was badly stretched. Mr. Elezam did not repair the cam lobes or timing chain at this service.
14. Mr. Elezam says that within 800 km of driving the car, the car was no longer drivable. His mechanic, Bradley Clayton Walters, a “Red Seal Certified Mechanic” from Steve Starr Automotive Ltd., stated that he performed a full car inspection in March 2019. He stated that the car needed a lot of work but its overall condition “seemed decent, though did show signs of neglect”. However, Mr. Walters said that after spending some time working on the car, he found more serious issues with the engine, consistent with “failing to keep up with regular oil changes”. He stated that when the oil ran low, the car would go into “limp-mode”, which meant that the car would limit the engine speed to 3000 rpm. He had “no doubt” the previous driver would have experienced the limp-mode. I note that Mr. Walters did not state that the car was undrivable.
15. Mr. Elezam says that Ms. Kennett misrepresented the car’s condition and it was not reasonably durable. He seeks \$2,000 for his repair expenses and \$2,000 for a new or rebuilt engine. The invoices, receipts and engine quote are in evidence.

***Did Ms. Kennett misrepresent the car’s condition?***

16. If a seller misrepresents the condition of a vehicle, the buyer may be entitled to compensation for losses arising from that misrepresentation. A “misrepresentation”

is a false statement of fact made during negotiations or in an advertisement that has the effect of inducing a reasonable person to enter into the contract. The seller must have acted negligently or fraudulently in making the misrepresentation, the buyer must have reasonably relied on the misrepresentation to enter into the contract, and the reliance “must have been detrimental in the sense that damages resulted” (see *Queen v. Cognos Inc.*, [1993] 1 SCR 87 at paragraph 110).

17. Mr. Elezam says that Ms. Kennett misrepresented the car’s condition because she told him that the air conditioning was working. He says this was not true because it was removed from the car. Mr. Elezam says when he tested it, it seemed to be working but it was just cold winter air that was blowing in from outside. Mr. Elezam says “just to be clear, I am not suing Ms. Kennett for a new aircon pump”. Mr. Elezam says the representation about the air conditioning is to show that Ms. Kennett was not truthful about the car’s condition when she sold it.
18. Mr. Elezam says that Ms. Kennett’s advertisement “in good condition” makes no mention that the car needed repairs and she should have known something was wrong with the car. He alleges that she concealed the car’s defects by not giving him service records. He also says that the car’s oil was freshly changed and this “hid the true condition of the engine and made it seem as though the engine was in good shape”. He says Ms. Kennett must have known the engine was worn out due to how much oil it burns.
19. Ms. Kennett says that she owned the car for 2 years and 4 months and drove it until the day she sold it to Mr. Elezam. She says she had brought the car in for regular maintenance, she knows little about cars, and her mechanic never told her there was something wrong with her car. Ms. Kennett also says she did not know the air conditioning was removed because it had worked for her.
20. I find on the service record invoices in evidence that Ms. Kennett did regular oil changes and other maintenance to the car. The invoices show no serious unrepaired car problems that were concealed from Mr. Elezam. I find that Ms. Kennett did not conceal any known car damage or issues.

21. I find the car was not likely in “good condition” at time of sale considering all its problems. However, I am not satisfied that Ms. Kennett’s representation induced Mr. Elezam to purchase the car for the following reasons.
22. Mr. Elezam was alerted that the car had several problems. The engine light was undisputedly on at time of purchase. He also stated on the Insurance Corporation of British Columbia (ICBC) Transfer/Tax Form that the car needed tires, had “unknown electrical issues” and an “evap issue”. Further, Mr. Elezam stated that on his test drive he was “quickly able to determine that the sway-bar bushing and end-links were completely blown as well as the front shocks”. I find this does not describe a car in good condition. I also find the air conditioning was likely irrelevant to the sale or it would have been part of his claim.
23. I find in the circumstances of this sale that Mr. Elezam did not rely on Ms. Kennett’s word that the car was in good condition when he decided to purchase it. Instead, I find that Mr. Elezam bought the car on based on his own informal inspection, test drive and after negotiating a satisfactory reduced price knowing the car had several problems.
24. I find that Mr. Elezam has not proven on a balance of probabilities that he is entitled to damages based on misrepresentation.

***Did Ms. Kennett breach the implied warranty of durability under the SGA?***

25. Where there has been no misrepresentation, the principle of ‘buyer beware’ largely applies to a private used vehicle sale. It means that the purchaser assumes the risk that the purchased vehicle might be either defective or unsuitable to their needs (*Rusak v. Henneken* [1986] B.C.J. No. 3072 (S.C.) at paragraphs 17-18).
26. In British Columbia, the ‘buyer beware’ principle is limited by the warranties set out in section 18 of the SGA. Section 18(c) applies to private sales and requires that the goods sold be durable for a reasonable period with normal use and considering the surrounding circumstances of the sale. Whether or not the car was reasonably durable as required by the SGA involves an assessment of the facts in context to

determine what is reasonably durable in the circumstances (*Drover v. West Country Auto Sales Inc.*, 2004 BCPC 454).

27. In *Sugiyama v. Pilsen*, 2006 BCPC 265, the court set out a number of factors to consider when assessing reasonable durability, including, age, mileage, nature of use, price paid, reasons for defects, and the expectations of the parties as shown by any express warranties. In *Sugiyama*, the claimant purchased a car that broke down after driving it 616 kilometers. The court determined that the car was still durable for a reasonable time because one had to consider its age (8 years old), mileage (over 140,000 km), and price of about \$5,000.
28. Applying the factors in *Sugiyama*, I find that Mr. Elezam has not proven that Ms. Kennett breached the implied warranty of durability. Even if I accept the car required a new engine, he drove the car over 800 km and bought the car for only \$3,000, which was \$1,600 below the asking price. On the purchase date, the car was 16 years old, with 216,000 km on the engine, its warning light was on, and Mr. Elezam admittedly discovered several defects on a test drive.
29. As the court held in *Wanless v. Graham*, 2009 BCSC 578, people who buy old used vehicles must expect defects in such vehicles will come to light at any time. I find this applies to Mr. Elezam's used car purchase. Within the context of this sale, I find the car was reasonable durable and there was no breach of warranty under the SGA.

***To what extent, if any, is Mr. Elezam entitled to his claimed damages for car repairs?***

30. Mr. Elezam has not proven a misrepresentation or breach of an implied warranty. Therefore, I find he is not entitled to reimbursement of the repair costs or the cost of a new or rebuilt engine. I dismiss Mr. Elezam's claims.
31. 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. Mr. Elezam was unsuccessful in this dispute and so, I dismiss his claims for dispute-related expenses and CRT fees.

32. Ms. Kennett did not pay any CRT fees. She claims \$41.95 for a CARFAX report that she says shows that Mr. Elezam was driving the car and it had no significant repairs or damages. I find the CARFAX report does not show whether Mr. Elezam was still driving the car and it does not necessarily show repairs that were not done. For these reasons, I did not rely on the CARFAX document in reaching my decision here. I dismiss Ms. Kennett's claim for the CARFAX expense.

## **ORDER**

33. I dismiss Mr. Elezam's claims and this dispute.

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Trisha Apland, Tribunal Member