



Civil Resolution Tribunal

Date Issued: August 7, 2020

File: SC-2020-003390

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Krotz v. Willis*, 2020 BCCRT 877

BETWEEN:

JEREMY KROTZ

APPLICANT

AND:

JAMES WILLIS

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This is a dispute over a private dirt bike sale.
2. The applicant, Jeremy Krotz, purchased a dirt bike from the respondent, James Willis, on April 17, 2020. Mr. Krotz says that the dirt bike had a cracked engine casing and Mr. Willis led him to believe the dirt bike was mechanically sound when

it was not. Mr. Krotz seeks reimbursement of \$2,600, the dirt bike's purchased price.

3. Mr. Willis denies that he misrepresented the dirt bike. Mr. Willis says he did not know about the cracked engine casing. He says Mr. Krotz inspected the dirt bike himself and accepted it as it was. Mr. Willis says under the principle of *caveat emptor* (buyer beware) he has no legal obligation to reimburse Mr. Krotz anything for the dirt bike.
4. The parties are each self-represented. However, Mr. Willis's father also provided arguments on his son's behalf.
5. I dismiss Mr. Krotz's claims for the reasons that follow.

JURISDICTION AND PROCEDURE

6. 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.
7. 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.
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.

ISSUES

10. The issues in this dispute are:
 - a. Did Mr. Willis misrepresent the dirt bike's condition?
 - b. Did Mr. Willis breach an implied warranty of durability?
 - c. To what extent, if any, is Mr. Krotz entitled to reimbursement of the \$2,600 he paid for the dirt bike?

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, Mr. Krotz as the applicant bears the burden of proving his claims on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
12. The parties agree that on April 17, 2020, Mr. Krotz purchased a 2000 Honda CR250 dirt bike from Mr. Willis for \$2,600 through Craigslist. I find this was a private sale, as there is no evidence Mr. Willis was in the business of selling dirt bikes. Mr. Willis's Craigslist advertisement in evidence states "2000 cr250, full engine rebuild, weiseco crank and piston, new oem cylinder, new linkage and swing arm bearings, new fork seals, new clutch plates and springs, pro circuit header, new rear brake pads, pro taper bars, I have the owners manual to go with it." Mr. Krotz says that Mr. Willis told him prior to the sale that the dirt bike's levers were bent and it needed new tires.
13. It is undisputed that Mr. Krotz test drove and self-inspected the dirt bike with his father at the time of purchase. He says that on his own inspection he discovered an exhaust leak. Mr. Krotz does not say that he or his father were professionally

qualified to inspect the dirt bike, so I find they were not. Mr. Krotz did not have the dirt bike inspected by a qualified mechanic although he could have done so. It is undisputed that the dirt bike was loaded on a truck and Mr. Krotz did not drive it home.

14. Mr. Krotz says he noticed a crack in the engine's casing when he was cleaning the dirt bike at home after purchase. On about April 20, 2020, Mr. Krotz texted Mr. Willis to tell him the dirt bike's engine casing was cracked. He asked to return the dirt bike for a refund. Mr. Willis refused.
15. On April 24, 2020, Mr. Krotz brought the dirt bike to "Daytona Motorsports" for an inspection. The Daytona Motorsports inspection report in evidence states the engine was recently rebuilt and the rear brake pads were 100%. However, the inspection report states that the mechanic did not start the bike because of fuel leaking from the carburetor due to incorrectly routed vent tubes. The inspection report lists several other issues with the dirt bike, including a "stator BUNG" crack, front brakes worn to 20%, worn tires to 40%, missing chassis fasteners, old and stretched cylinder head and springs, dirty gas tank, missing chassis fasteners, a crankcase leak, plus other issues. The inspection report says the total repairs would cost more than the dirt bike's purchase price. However, the report does not break down the repair costs and there is no repair estimate in evidence.
16. Mr. Krotz provided a June 11, 2020 statement from Kentucky Harding, a Red Seal Motorcycle Technician with Daytona Motorsports. Based on the certificate in evidence, I accept that Mr. Harding is qualified as a motorcycle mechanic to provide an expert opinion under CRT rule 8.3 on the dirt bike's mechanical condition. Mr. Harding stated that the dirt bike was "not in good mechanical condition". He stated that the dirt bike was leaking fuel and he found "many things wrong with it due to the lack of maintenance and crashes. In its current state the bike should not be ridden". I find on the inspection report and Mr. Harding's opinion that the dirt bike could not be ridden because of the carburetor gas leak. I also find the dirt bike was likely in

poor mechanical condition at the time of purchase. I note that there is no evidence that Mr. Krotz did anything to cause issues after purchase.

Did Mr. Willis misrepresent the dirt bike's condition?

17. Mr. Krotz says Mr. Willis misrepresented the dirt bike's condition. He argues that Mr. Willis left the "impression" or "led him to believe" that the dirt bike was mechanically sound.
18. A "misrepresentation" is a false statement of fact made during negotiations or in an advertisement. If a seller misrepresents the condition of a good, the buyer may be entitled to compensation for losses arising from that misrepresentation. However, 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).
19. Mr. Krotz does not say that Mr. Willis used the specific words "mechanically sound" or something similar to describe the bike. The Craigslist advertisement does not describe the dirt bike's overall condition. I find on the Daytona Motorsports inspection report that Mr. Willis's advertisement was likely accurate in its description of the repair work done. Mr. Krotz does not say that he requested or obtained the dirt bike's maintenance records prior to sale or asked about prior accidents, so I infer he did not. I find that Mr. Krotz likely assumed the bike was mechanically sound because it had some recent work, including an engine rebuild. However, I find that it was not reasonable to assume based on the work described in the advertisement that the dirt bike was mechanically sound overall. This is especially so because Mr. Krotz had noticed some issues on his own inspection prior to purchase.
20. Mr. Krotz says that Mr. Willis withheld information about the dirt bike's condition. For example, he says that Mr. Willis must have known about the cracked engine casing

having recently rebuilt the engine and failed to tell him. Mr. Willis denies having such knowledge.

21. A seller has no duty to disclose patent defects to buyers, although they must not actively conceal them (see *Rogalinski v. Scorey*, 2011 BCSC 1050, at paragraph 25). A “patent” defect is one that can be discovered by conducting a reasonable inspection and making reasonable enquiries about the property. A defect can also be patent if it would have been discovered on a reasonable inspection by a qualified person. In *Cardwell v. Perthen*, 2006 BCSC 333 at paragraph 122, the BC Supreme Court held that generally there is a significant onus on a buyer to inspect and discover patent defects.
22. Mr. Krotz does not state whether he looked at the engine casing at time of purchase and does not describe the steps he took to inspect the motorcycle. I find the engine crack must have been a patent defect since Mr. Krotz found it himself when cleaning. I find the list of other issues identified in Daytona Motorsports’ inspection report were also patent defects as they were discoverable on reasonable inspection. I find no evidence that Mr. Willis actively concealed the dirt bike’s issues.
23. While I find the dirt bike was in poor mechanical condition at the time of sale, I find that Mr. Willis did not negligently or fraudulently misrepresent the dirt bike’s condition. Again, I find the defects were there to be seen on a reasonable inspection, which Mr. Krotz failed to do prior to purchase.

Did Mr. Willis breach the implied warranty of durability?

24. Where there has been no misrepresentation, the principle of ‘buyer beware’ largely applies to a private sale. This means that the purchaser assumes the risk that the purchased good, here the dirt bike, might be either defective or unsuitable to their needs (*Rusak v. Henneken* [1986] B.C.J. No. 3072 (S.C.) at paragraphs 17-18).
25. However, in British Columbia, the ‘buyer beware’ principle is limited by the warranties set out in section 18 of the *Sale of Goods Act* (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. The SGA does not define “durable”. I find a normal definition such as in Collinsdictionary.com is helpful. It defines durable as “strong and lasts a long time without breaking or becoming weaker”. Under section 18(c), I find that the goods sold must last without breaking or becoming weaker for a reasonable period with normal use and considering the surrounding circumstances of the sale.

26. In *Sugiyama v. Pilsen*, 2006 BCPC 265, the BC Provincial 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. The claimant in *Sugiyama* had purchased a car and its engine broke down after driving it for a fairly short time due to an undetectable defect. 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.
27. Here Mr. Krotz purchased a 20-year old dirt bike without its service history. Yet, Mr. Krotz chose not to have a mechanical inspection done. Neither party provided evidence on whether \$2,800 was the market price for such a dirt bike in its sold condition. While the dirt bike had some recent work done, Mr. Krotz knew from his own inspection that it needed some more repairs. Without its service history, I find Mr. Krotz should have reasonably expected that mechanical parts could wear down and need repair at any time. As for the cracked engine casing, it was there to be seen at time of purchase. The Daytona Motorsports inspection report does not say the cracked engine casing impacted its safety and there is no evidence that the crack impacted the dirt bike’s rideability. It is likely that the dirt bike was not rideable due to improperly routed vent tubes and not because the parts became weaker or failed to last without breaking. In other words, it was not because they lacked durability.
28. In the context of an older dirt bike that lacks information about its condition, I find the implied warranty of durability was extremely limited. I find that Mr. Krotz has not

proven on a balance of probabilities that the used dirt bike was not reasonably durable in the circumstances. I find that Mr. Willis did not breach the implied warranty of durability in SGA section 18(c).

29. I find that Mr. Krotz took the risk by purchasing the dirt bike without a professional inspection. I find the buyer's beware principle applied to this sale. I find that Mr. Krotz is not entitled to any reimbursement for the dirt bike's purchase price.

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. Since Mr. Krotz was the unsuccessful party, I find he is not entitled to reimbursement of his CRT fees. Mr. Willis did not pay CRT fees and neither party claimed dispute-related expenses.

ORDER

31. I dismiss Mr. Krotz's claims and this dispute.

Trisha Apland, Tribunal Member