Civil Resolution Tribunal

Date Issued: October 6, 2020

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Schadt v. Maqbool*, 2020 BCCRT 1126

B E T W E E N :

LEE SCHADT

**APPLICANT**

A N D :

MUHAMMAD MAQBOOL

**RESPONDENT**

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**REASONS FOR DECISION**

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Tribunal Member: Shannon Salter, Chair

## INTRODUCTION

1. This dispute is about a used van sale. On July 9, 2019, the applicant, Lee Schadt, bought a 1998 Toyota Sienna van (van) from the respondent, Muhammad Maqbool. The applicant says the respondent lied about the van's condition and accident history. The applicant seeks reimbursement of the $1,500 purchase price, plus general and punitive damages.

2. The respondent denies the applicant's claims. He says the applicant bought the van "as is" and continued to use it for months without complaint. The respondent says he sold the van at a reasonable price based on the vehicle's make and year and that the applicant had an opportunity to have it inspected before the purchase, but chose not to.

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. In some respects, both parties to this dispute call into question the credibility, or truthfulness, of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision in *Yas v. Pope*, 2018 BCSC 282, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate, which includes proportionality and the speedy resolution of disputes, I decided to hear this dispute through written submissions.

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.

8. During the exchange of evidence and submissions, the applicant provided various excerpts of legislation after the deadline. The respondent had the opportunity to review and respond to this evidence, but did not object. I find it is admissible.

9. In their submissions, the applicant made several allegations that the respondent breached disclosure and other obligations under the *Motor Vehicle Act* and related regulations, and is therefore subject to various fines and other penalties. The CRT has no jurisdiction to enforce the provisions cited by the applicant, and I make no findings about them.

## ISSUE

10. The issue in this dispute is whether the respondent misrepresented the van, and if so, whether the applicant is entitled to damages.

## EVIDENCE AND ANALYSIS

11. In a civil proceeding like this, the applicant must prove their claims on a balance of probabilities. I have read all the evidence but refer only to evidence I find relevant to provide context for my decision.

12. It is undisputed that the parties are coworkers, and that the respondent sold the applicant the van on July 9, 2019 for $1,500. It is also undisputed that the applicant chose not to have the van inspected before they bought it, but did have an inspection at a Toyota dealership several months later, on November 27, 2019. The resulting inspection report found several issues, including that the side mirrors were taped on, all 4 tire rims and lug nuts were damaged or bent, the right front corner headlamp was improperly mounted, and the engine brace/mount was broken on the passenger side. The applicant says they have not driven the van since this

inspection. On December 17, 2019, the dealership provided a more detailed report, which stated the van also needed repairs involving the timing belt, water pump and oil leaks. It notes that repairing the tire rims is a safety issue, and that the taped side mirrors "would not pass provincial safety inspection." The total repair estimate is $4,756.81. While the respondent argues that he was unaware of some of these issues, he does not argue that the inspection report is inaccurate. I accept the inspection report with respect to the scope and cost of the required van repairs.

13. On November 29, 2019, the applicant ordered a Carfax report, which among other things, showed the odometer reading at 219,918 kilometers on June 26, 2019. I note that over a year later, the transfer tax form listed the odometer reading as 210,770, while the inspection report from November 2019 lists it as 223,906. I agree with the applicant that the odometer reading on the transfer tax form is likely an error, and the correct odometer reading at the time of purchase was 220,770. I make this finding given the consistency between the reading in the Carfax report and the inspection report. I therefore find that the van was driven for 3,136 kilometers between the July 2019 purchase and the November 2019 inspection.

### *Fraudulent misrepresentation claim*

14. If a seller misrepresents a vehicle's condition, the buyer may be entitled to set aside the agreement, or get 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.

15. There are 2 main types of misrepresentation, "fraudulent misrepresentation" and "negligent misrepresentation". Fraudulent misrepresentation is when a seller makes a false representation of fact and the seller either knew it was false, or recklessly made it without knowing whether it was true or false. Negligent misrepresentation is when a seller does not exercise reasonable care to ensure representations are accurate and not misleading. The misrepresentation must reasonably induce the purchaser to buy the item (see *O'Shaughnessy v. Sidhu*, 2016 BCPC 308).

16. While the applicant alleges the respondent fraudulently misrepresented the van's condition and history, I find they have not proved this. The case law is clear that due to the associated stigma, an allegation of fraud requires "clear and convincing proof" (see *Anderson v. British Columba Securities Commission*, 2004 BCCA 7).

17. Despite the applicant's allegations, there is little evidence the respondent misrepresented the van's condition or history. The van's bumper damage, taped side mirrors, misaligned headlight, and scratches were all clearly visible at the time of purchase, as demonstrated in 10 photographs provided by the applicant. The applicant does not dispute that they visually inspected the van at the time of purchase. There is no evidence the respondent attempted to conceal this obvious exterior damage.

18. The applicant also says the respondent misrepresented the van's accident history, which they discovered when the Carfax report showed the van had been in two accidents. The first was on February 26, 2000, before the respondent owned the vehicle, with $266.56 of damage. The second was on May 8, 2018, with $0 of damage.

19. The respondent provided an Insurance Corporation of British Columbia (ICBC) report detailing his conversations with an ICBC representative. In the report, the respondent appears to acknowledge that he did not disclose the May 2018 accident to the applicant, because it was only minor bumper damage and no money was paid out on the claim. The report also contains an accident record showing that the only damage from the May 2018 accident was "rear bumper dented."

20. The applicant says the respondent concealed the May 2018 accident, while the respondent says he mentioned it during the van's visual inspection. Given the admission in the ICBC report, I find the respondent did not disclose the accident to the respondent. However, a lack of disclosure does not amount to a misrepresentation, as defined above, because there was no false "statement of fact." Further, I find that the damage to the rear bumper was a patent defect. A patent defect is one that can be discovered by conducting a reasonable inspection

and making reasonable inquiries. A seller is not obligated to disclose patent defects to a buyer, but they must not actively conceal them (*Cardwell v. Perthen*, 2007 BCCA 313). On the other hand, a latent defect is one that cannot be discovered through a reasonable inspection, including a defect that renders the property dangerous or unfit.

21. If the respondent negligently or fraudulently denied the van's accident history, as the applicant alleges, this would be a misrepresentation. However, I find the applicant has not provided "clear and convincing proof" of this, given that there is no supporting evidence that the respondent made this statement and he denies doing so.

22. I also find that even if the respondent did misrepresent the van's accident history, this did not induce the applicant to buy the van. In other words, I find the applicant would still have bought the van had they known about the May 2018 accident. I make this finding because the accident only caused readily visible damage to the rear bumper, which along with the other exterior damage to the van, did not deter the applicant from buying it.

23. There is also little evidence that the respondent misrepresented the van's interior issues identified in the inspection report. While the applicant states that the respondent said the van needed no major repairs before the sale, there is little evidence that the respondent made this representation fraudulently or negligently. I note that the applicant also provided photographs of what appears to be a damaged tire, a timing belt and other car parts the applicant says the respondent provided immediately after the transfer tax form was signed by the parties. However, there is no evidence the applicant objected to this at that time, or sought to undo the purchase. For this reason, I do not find this supports a conclusion the respondent misrepresented the van's condition.

24. Both parties provided coworker statements. I find that the mechanical condition of a vehicle is beyond the scope of a lay person's knowledge, and requires expert evidence (see *Bergen v. Guliker*, 2015 BCCA 283). As none of the statements are

from such experts, I put no weight on the portions of these statements that address the van's mechanical condition, beyond general observations that laypeople are qualified to make.

25. A coworker, BJ, states that the respondent owned the van for at least 4 years and used it daily to commute between municipalities. BJ says they were unaware of any issues with the van. Another coworker, BD, also confirmed the respondent used the van to commute to work for at least 5 years, and he was never late for work due to mechanical issues.

26. The applicant provided a statement from an anonymous coworker who did not want to be identified due to alleged concerns about retribution. I find that this anonymous statement is unreliable, as I cannot determine its source, and therefore I put no weight on it. The applicant's second statement is from another coworker, MM, who agrees that the respondent drove the van to work every day. MM listed exterior damage to the van, and stated that the respondent told him there were a lot of oil leaks and that the timing belt needed to be fixed. MM did not state when, in the course of the respondent's van ownership, these issues arose or whether they were still issues at the time of the purchase. MM also opined that the respondent deliberately misled the applicant about the van's condition or history, but did not provide any examples of alleged misrepresentations. Given the overall vagueness of MM's statements, I put little weight on their evidence.

27. Overall, I find the statements from BJ, BD, and MM support the respondent's submission that he used the van to drive to work daily. It is undisputed that he also used the van to drive his wife and children. He says, and I accept, that he would not have done so if he knew the van was unsafe. I find this supports the conclusion that the respondent was unaware of significant mechanical issues with the van.

28. I also find that nothing turns of the respondent's decision not to list the van as "salvage" or indicate damage more than $2,000 on the transfer tax form, given that he was driving the van daily and there is little evidence that the respondent knew the extent of the required repairs, or that he misrepresented these to the applicant.

On balance, I find the applicant has not proved the respondent misrepresented the van's condition, fraudulently or otherwise.

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

29. In a private used car sale, where there has been no misrepresentation, the principle of "buyer beware" largely applies. This means that the implied warranties of fitness for purpose and saleability under section 18 of the SGA do not apply.

30. However, the implied warranty for durability in section 18(c) does apply to private car sales. In particular, the van must be durable for a reasonable period of time having regard to the use to which it would normally be put and considering all the surrounding circumstances of the sale (see *Sugiyama v. Pilsen*, 2006 BCPC 265).

31. There are several factors to consider when determining whether a vehicle is durable for a reasonable period of time, including the age, mileage, price, the use of the vehicle, and the reason for the breakdown.

32. The facts in *Sugiyama* are somewhat similar to the facts of this dispute. In that case, the claimant bought an 8 year old car with over 140,000 kilometers on the odometer. After driving it for only 616 kilometers, the car broke down. The court determined that the car was roadworthy and could be safely driven when it was purchased. There were no apparent defects in the car. Therefore, even though the car broke down after very little driving, the court found that it was durable for a reasonable time.

33. I find that the same reasoning applies to this dispute. The van was purchased for a modest price, $1,500. At the time of purchase, the van was about 23 years old, had very high mileage at 220,773 kilometers, and no significant functional issues. The applicant chose not to have a professional inspection done, which would likely have disclosed the problems in the inspection report. As in *Sugiyama*, the van was roadworthy and could be safely driven when the applicant purchased it, as demonstrated by the van's accumulation of 3,136 kilometers between the July 2019 purchase and the November 2019 inspection. In making this finding, I acknowledge

that the taped side mirrors may breach provincial safety requirements. However, given that the taped mirrors were plainly obvious prior to purchase, I find in all the circumstances that the respondent did not breach the implied warranty of durability.

34. This conclusion is consistent with the court's decision in *Wanless v. Graham*, 2009 BCSC 578, which concluded that people who buy old used cars with high mileage "must expect defects in such cars will come to light at any time". That quote came from a 2004 New Brunswick decision, *Dunham v. Lewis*, [2004] N.B.J. No. 310, where a 1996 car bought for $4,200 broke down within 2 days of purchase and would not start.

35. The applicant has failed to prove a misrepresentation or a breach of an implied warranty. I dismiss the applicant's claims.

36. 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. Here, the applicant was unsuccessful so I dismiss its claim for reimbursement of CRT fees. The respondent made no claim for CRT fees or expenses, and so I order none.

## ORDER

37. I dismiss the applicant's claims and this dispute.

Shannon Salter, Chair