



Civil Resolution Tribunal

Date Issued: November 23, 2020

File: SC-2020-004807

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Rosenbloom v. Alcos*, 2020 BCCRT 1323

BETWEEN:

SOPHIA ROSENBLOOM

APPLICANT

AND:

CARRI LYNN ALCOS and MICHAEL ALCOS

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This dispute is about a private used car sale.

2. The applicant, Sophia Rosenbloom, says the respondents, Carrie Lynn and Michael Alcos, sold her a 2008 Mazda CX-7 (car) that broke down less than 48 hours later. Ms. Rosenbloom says Mr. and Mrs. Alcos should refund her the \$5,000 purchase price because they misrepresented the car's condition.
3. Mr. and Mrs. Alcos deny owing Ms. Rosenbloom a refund. They say the car was running in "excellent condition" when they sold it "as is" to Ms. Rosenbloom. Mr. and Mrs. Alcos ask me to dismiss the dispute.
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). Section 2 of the CRTA states that 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 the dispute's parties that will likely continue after the CRT process has ended.
6. Section 39 of the CRTA says 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 credibility dispute between the parties. 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 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. Section 42 of the CRTA says 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 Mr. and Mrs. Alcos either misrepresented the car or breached an implied warranty of durability in selling it, and if so, what remedy is appropriate.

EVIDENCE AND ANALYSIS

11. In this civil claim Ms. Rosenbloom, as applicant, bears the burden of proof on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.
12. It is uncontested that Mr. and Mrs. Alcos bought the car in late 2018, second-hand.
13. The parties agree to the following additional facts:
 - a. On May 8, 2020, Ms. Rosenbloom bought the car from Mr. and Mrs. Alcos for \$5,000.
 - b. The car's odometer reading was about 180,000 kilometres at the time of the purchase.
 - c. Ms. Rosenbloom took the car for a brief test drive before buying it.

- d. Ms. Rosenbloom did not have the car inspected by a mechanic before buying it.
14. On May 10, 2020, Ms. Rosenbloom contacted Mr. and Mrs. Alcos to inform them that the car had stopped working.
 15. The parties disagree about whether Ms. Rosenbloom is entitled to any refund.
 16. The ICBC Transfer/Tax form signed by Ms. Rosenbloom bears the note “as is”. I discuss the significance of this note below.
 17. A Mazda dealership examined the car on May 10, 2020, after it broke down. The service invoice records that the engine had seized and observes “heavy oil leaks from front cover area, turbo appears to be leaking and assumed requires replacement...oil consumption issue reported in 2016 at another dealer.” I find this invoice provides observations about the car’s state after the break down. I find it is not an expert opinion that the car was defective prior to the sale, or that Mr. and Mrs. Alcos were or should have been aware of any defects.
 18. A Carfax report obtained after the car broke down records the car’s service history. It reveals that in April 2016, before Mr. and Mrs. Alcos bought the car, it was serviced and an “engine oil/fluid leak” was “checked”. The service record shows that the car continued running thereafter, with five more service appointments for brakes, oil changes and detailing, but no further note of any fluid leak, before Mr. and Mrs. Alcos bought it.

Buyer Beware and the Sale of Goods Act

19. Apart from misrepresentation that I discuss below, the ‘buyer beware’ principle largely applies to a private used vehicle sale. This means that the buyer 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.
20. 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 like this one and requires that the goods sold be durable for a reasonable period with normal use, considering the sale's surrounding circumstances. 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.

21. In *Sugiyama v. Pilsen*, 2006 BCPC 265, the BC Provincial Court applied section 18(c), and said there were a number of 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. In *Sugiyama*, 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.
22. Further, as the court held in *Wanless v. Graham*, 2009 BCSC 578, a case involving a 10-year old car sold for \$2,000, people who buy old used vehicles must expect defects in such vehicles will come to light at any time.
23. I find that the facts before me are similar to *Sugiyama* and *Wanless*. The car was over 12 years old, had a high odometer reading, and a relatively low cash value. Given the buyer beware principle, Ms. Rosenbloom was obliged to take the car for mechanical inspection if she wished.
24. Mr. and Ms. Alcos say Ms. Rosenbloom bought the car "as is". Ms. Rosenbloom disagrees. Because the only copy of the ICBC Transfer/Tax Form filed in evidence is signed by Ms. Rosenbloom and bears the note "as is", I find she purchased the car on this basis. I find that this means Ms. Rosenbloom bought the car accepting that it may have latent or hidden defects that could not be revealed by her test drive.
25. Within the context of the sale of this older, high mileage car, I find the car was reasonably durable and there was no breach of warranty under the SGA.

Misrepresentation

26. If a seller misrepresents a vehicle's condition, 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.
27. Ms. Rosenbloom says Mr. and Mrs. Alcos misled her about the car's condition. I infer that she means that they told her the car was running well. She also submits that the car's defect was either known to them or should have been known to them. I find that Ms. Rosenbloom has not met the burden of proving that Mr. and Mrs. Alcos misrepresented the car to her.
28. I find that Mr. and Mrs. Alcos did not mislead Ms. Rosenbloom about the car's service history or condition. The car only had oil changes in the 1.5 years that they owned it, and that is undisputedly what they told Ms. Rosenbloom. I find that Ms. Rosenbloom has not proven that Mr. and Mrs. Alcos were aware of the 2016 engine oil/fluid leak check or any engine problems.
29. The service records show that the car was reliable while they owned it, consistent with their advice to Ms. Rosenbloom. There is also no expert evidence before me that the Alcoses would likely have known of the defect from driving the car.
30. Ms. Rosenbloom also submits that Mr. and Mrs. Alcos advertised the car as including as subwoofer, but that it did not have one. Mr. Alcos says the subwoofer was in the spare tire area, which he showed to Ms. Rosenbloom. Ms. Rosenbloom did not provide a photograph to show an empty space where the subwoofer should have been, or any other proof that it was missing. I find she has not proven any misrepresentation about the subwoofer.

31. For these reasons, I dismiss Ms. Rosenbloom's claim for a refund of the car's purchase price.

CRT Fees and Dispute-Related Expenses

32. 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 to depart from that general rule. The successful respondents did not pay CRT fees or claim dispute-related expenses, so I make no order for them.

ORDER

33. I dismiss Ms. Rosenbloom's claims and this dispute.

Julie K. Gibson, Tribunal Member