



Civil Resolution Tribunal

Date Issued: December 30, 2020

File: SC-2020-005539

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hardman v. Zvonik*, 2020 BCCRT 1469

B E T W E E N :

ADAM HARDMAN

APPLICANT

A N D :

MICHAEL ZVONIK

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This dispute is about a private used trailer sale. The applicant, Adam Hardman, bought a used 2002 Jayco recreation vehicle trailer (trailer) from the respondent, Michael Zvonik. After he purchased the trailer, Mr. Hardman says he discovered undisclosed water damage. Mr. Hardman claims damages totaling \$4,800 for loss of durable use of the trailer and for misrepresentation.

2. Mr. Zvonik says he was not aware of any damage when he sold the trailer and he denies responsibility for Mr. Hardman's alleged losses.
3. The parties are both 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). 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.
5. 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.
6. 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.
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.

ISSUES

8. The issues in this dispute are:
 - a. Did Mr. Zvonik breach an implied warranty of durability in selling the trailer? If so, what is the appropriate remedy?
 - b. Did Mr. Zvonik misrepresent the condition of the trailer? If so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicant, Mr. Hardman, must prove his claims on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and argument that I find relevant to provide context for my decision.
10. I note that although CRT staff reminded Mr. Zvonik of his opportunity to provide submissions, he did not do so.
11. I also note that Mr. Hardman submitted a document as evidence that I was unable to view. Mr. Hardman was given an opportunity to resubmit the document which he did. CRT staff told Mr. Zvonik that he had an opportunity to respond to the resubmitted document but he did not do so. Since Mr. Zvonik had an opportunity to respond to the resubmitted document, I have considered this resubmitted document as evidence in my decision.
12. I find that Mr. Zvonik posted an online classified advertisement selling his 2002 trailer saying it was in "good working order." Mr. Hardman says he asked Mr. Zvonik about water damage and Mr. Zvonik said there was a small leak on the door-side that had been repaired. Since Mr. Zvonik does not dispute saying this, I find that he did.
13. Mr. Hardman says he agreed to purchase the trailer for \$8,000 on May 28, 2020 and he sent Mr. Zvonik a \$500 deposit. Mr. Hardman travelled to Mr. Zvonik's residence on May 29, 2020 to view the trailer and complete the purchase.

14. Mr. Hardman purchased the trailer on May 29. However, he says he did not have time to thoroughly inspect the trailer before completing the transaction because Mr. Zvonik rushed him. Mr. Zvonik denies this and says he let Mr. Hardman view the trailer. I find that Mr. Hardman was free to not purchase the trailer if he thought that he did not have time to thoroughly inspect it and that Mr. Hardman chose to purchase the trailer anyway.
15. Mr. Hardman says that water leaked through the roof the first time he used the trailer. Mr. Hardman emailed Mr. Zvonik on June 16, 2020 and said water was leaking through the rooftop air conditioner. On July 8, 2020, Mr. Hardman sent Mr. Zvonik a letter saying the trailer has extensive water damage to the side, flooring and roof.
16. Mr. Hardman provided multiple video files showing the condition of the trailer. Mr. Hardman says the videos show delamination from water damage on the trailer's siding. I disagree. I find that the videos show that the siding is loose in places. However, I cannot determine from the videos whether this was caused by water damage. There is no evidence before me showing that this delamination is unusual on an 18 year old trailer. So, I find that Mr. Hardman has not proved that the trailer sides were water damaged.
17. Mr. Hardman also says the videos show rot in an exterior compartment. I find that the floor of the compartment does appear soft to pressure. However, the floor of the compartment is carpeted, and without seeing the surface beneath the carpet, I am unable to conclude that the compartment is rotted or make findings about the cause of the alleged rot.
18. Mr. Hardman also provided some videos and photographs showing rot and water damage on the roof. The videos showed discoloration and wood damage around the location of the rooftop air conditioner. Based on this evidence, I am satisfied that the roof leaked and had water damage.
19. Mr. Hardman says that he incurred losses of \$700 for repairs and \$4,100 for reduction in value when he sold the trailer.

Sale of Goods Act

20. Apart from the alleged misrepresentations that I discuss below, the principle of 'buyer beware' largely applies to this private used trailer sale. This means that Mr. Hardman assumes the risk that the purchased trailer might be either defective or unsuitable to his needs (*Rusak v. Henneken* [1986] B.C.J. No. 3072 (S.C.) at paragraphs 17-18).
21. 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. Determining whether or not the trailer 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).
22. 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. Although *Sugiyama* referred to a car sale, I find that the same considerations also generally apply to the sale of a used trailer. In *Sugiyama*, the claimant purchased a car that broke down after driving it for only 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 kilometers), and price.
23. In applying the factors from *Sugiyama*, I note that the trailer was used and it was significantly old. However, I find that the water leaking through the roof is a significant defect. I note that recreation vehicle trailers are normally used as temporary accommodations where people perform daily activities, such as sleeping and eating. I find that the water leak would more likely than not interfere with this normal use. Based on this deficiency, I find that the trailer was not durable for normal use when the leak was discovered. However, section 18(c) of the SGA only requires that the trailer be durable for a reasonable time after the purchase. In this dispute, Mr.

Hardman discovered that water was leaking through the air conditioner approximately 2 weeks after he purchased the trailer. Based on the water damage and rot found around the air conditioner, I find that more likely than not that the trailer was already leaking when Mr. Hardman purchased it.

24. For the above reasons, I find that the trailer was not durable for normal use for any time after the purchase. So, I find that Mr. Zvonik breached the implied warranty of durability and I must now consider the appropriate remedy.
25. Mr. Hardman says that he repaired the trailer's roof by replacing the foam gasket that surrounded the air conditioner with a plexiglass cover and sealing tape. Mr. Hardman did not provide any receipts or estimates for these repairs.
26. Mr. Hardman claims \$700 for the roof repairs. He says this amount is calculated based on the average repair price per linear foot from an internet article he provided. However, I do not find this article persuasive because the author and their credentials are unknown. Further, I cannot determine whether Mr. Hardman's repair were comparable to the repairs discussed in the article. So, I have not considered this article in my decision.
27. I am satisfied that Mr. Hardman has incurred expenses to repair the roof but he has not provided any evidence supporting his claimed repaired costs. On a judgment basis, I find that \$500 is a reasonable amount for the expenses of repairing the trailer roof. So, I award Mr. Hardman damages of \$500.
28. Mr. Hardman also asks for compensation for a claimed reduction in the trailer's value. However, for the following reasons, I find that Mr. Hardman has not proved this claim.
29. Mr. Hardman says he listed the trailer for sale on July 29, 2020 for \$4,500, which he says was the trailer's value with water damage. However, Mr. Hardman did not provide sufficient comparative sales evidence supporting this valuation. Mr. Hardman provided a spreadsheet which he claims describes how much water damage reduces other trailer's value. However, I do not find this spreadsheet helpful because Mr. Hardman does not provide any evidence, other than one classified advertisement for

a different trailer model, supporting the values listed in his spreadsheet. Further, the spreadsheet only describes other trailers. Mr. Hardman does not provide any evidence relating to the reduction in his specific trailer's value from water damage. Also, although Mr. Hardman says he sold the trailer for \$3,900, he did not provide any documents proving this transaction.

30. I find that the only losses Mr. Hardman has proved is the roof water damage and leaks which Mr. Hardman has already been awarded \$500 for above. I find that Mr. Hardman has not proved that water damage reduced the trailer's value or that he sold the trailer for \$3,900. So, I find that Mr. Hardman has not proved his claim for a reduction in value of the trailer and I dismiss this claim.

Misrepresentation

31. Mr. Hardman also says Mr. Zvonik misrepresented the trailer's condition. If a seller misrepresents a good'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. Mr. Zvonik must have acted negligently or fraudulently in making the misrepresentation, Mr. Hardman 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).
32. As discussed above, Mr. Zvonik's online classified advertisement said the trailer was in good working order and Mr. Zvonik said the only water damage was a small leak that was repaired. Mr. Hardman says he relied Mr. Zvonik's knowledge of the trailer. However, this sale was governed by the principle of buyer beware except for the implied durability warranty discussed above.
33. Mr. Hardman argues that Mr. Zvonik must have known that the roof was leaking when he sold the trailer. However, Mr. Hardman's videos showing water damage to the roof were taken after the air conditioner was removed. There is no evidence before me

proving that Mr. Zvonik should have seen this damage without removing the air conditioner. I find there is no evidence that Mr. Zvonik knew or ought to have known about the water damage to the roof.

34. Further, I find that the water leak was either a patent defect, in which case Mr. Hardman could have discovered it through a professional inspection, or, it was a latent defect that Mr. Zvonik did not know about. Either way, based on the evidence before me, I find that Mr. Hardman has not proven that Mr. Zvonik misrepresented the trailer's condition. So, I dismiss this claim.
35. For the above reasons, I find that Mr. Zvonik owes Mr. Hardman damages of \$500.
36. The *Court Order Interest Act* applies to the CRT. Mr. Hardman is is entitled to pre-judgment interest on the \$500 damages from May 29, 2020, the date of the transaction, to the date of this decision. This equals \$2.
37. 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. I find Mr. Hardman is entitled to reimbursement of \$175 in CRT fees.

ORDERS

38. Within 30 days of the date of this order, I order Mr. Zvonik to pay Mr. Hardman a total of \$677, broken down as follows:
 - a. \$500 for damages,
 - b. \$2 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$175 for CRT fees.
39. Mr. Hardman is entitled to post-judgment interest, as applicable.

40. Under section 48 of the CRTA, the CRT will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the CRT's final decision. The Province of British Columbia has enacted a provision under the *COVID-19 Related Measures Act* which says that statutory decision makers, like the CRT, may waive, extend or suspend mandatory time periods. This provision is expected to be in effect until 90 days after the state of emergency declared on March 18, 2020 ends, but the Province may shorten or extend the 90-day timeline at any time. A party should contact the CRT as soon as possible if they want to ask the CRT to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.
41. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Richard McAndrew, Tribunal Member