



# Civil Resolution Tribunal

Date Issued: January 18, 2021

File: SC-2020-005526

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Dlab v. Dykeman*, 2021 BCCRT 64

**BETWEEN:**

NATALIA DLAB

**APPLICANT**

**AND:**

SHANE DYKEMAN and TERRILEE BYAM

**RESPONDENTS**

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## **REASONS FOR DECISION**

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Tribunal Member:

Sherelle Goodwin

### **INTRODUCTION**

1. This dispute is about a used car sale.
2. The applicant, Natalia Dlab, says she bought a 1998 manual Suzuki Sidekick (car) from the respondents, Shane Dykeman and Terrilee Byam, in July 2019. Ms. Dlab says the respondents failed to disclose that the car was unsafe to drive,

misrepresented the number and nature of repairs needed for the car to pass inspection in B.C., and failed to do welding work on the car as agreed. Ms. Dlab claims reimbursement of \$2,200 that she paid for the car, plus \$225 she paid for car parts.

3. Mr. Dykeman agrees he sold the car to Ms. Dlab but denies making any misrepresentations about it. He says he pointed out all the areas of the car that needed repairs, took Ms. Dlab and her boyfriend (S) for a test drive, and gave Ms. Dlab an opportunity to inspect the car. Mr. Dykeman also says he had the agreed upon welding work done. He says he sold the car to Ms. Dlab “as is” and that she could have had the car inspected, if she had wanted to. Mr. Dykeman asks that the claim be dismissed.
4. Ms. Byam says she is a bystander and was not involved in the car sale. She repeats Mr. Dykeman’s arguments.
5. Ms. Dlab represents herself. Mr. Dykeman represents himself and Ms. Byam.

## **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). 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.
7. 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. 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.

8. Most of the argument in this dispute amounts to a “she said, he said” scenario, with each party calling into question the credibility of the other. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required in all cases where credibility is in issue. I have considered the CRT’s mandate of proportionality and a speedy resolution of disputes. I am satisfied that I can assess and weigh the evidence and submissions before me without holding an oral hearing.
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. Dykeman misrepresent the car’s condition,
  - b. Did Mr. Dykeman breach the parties’ agreement by failing to have the car welded, and
  - c. If the answer to either a) or b) is “yes”, what is an appropriate remedy?

## **EVIDENCE AND ANALYSIS**

11. In a civil claim such as this one, the burden is on Ms. Dlab, as the applicant, to prove her claim on a balance of probabilities. I note that Ms. Dlab chose not to provide any reply submissions, in answer to Mr. Dykeman’s arguments. I have reviewed all submissions and evidence provided but only refer to that needed to explain my decision.

12. As noted below, Ms. Dlab provided no evidence that Ms. Byam was a prior owner of the car, made any representations to Ms. Dlab about the car, or was involved in this transaction at all. The texts provided by Ms. Dlab are between herself and Mr. Dykeman only. I find Ms. Dlab has failed to prove that Ms. Byam played any role in the sale of the car and so I dismiss Ms. Dlab's claim against Ms. Byam.
13. I turn to consider Ms. Dlab's claims against Mr. Dykeman.
14. Ms. Dlab viewed the car in early June 2019. Sometime after that, Mr. Dykeman took Ms. Dlab and her boyfriend (S) on a test drive with the car. Mr. Dykeman had insurance on the car from Alberta. Mr. Dykeman drove the car during the test drive. Neither Ms. Dlab nor S drove the car. Mr. Dykeman told Ms. Dlab that the car had some defects, including a hole in the fender over the front passenger side strut. Ms. Dlab paid Mr. Dykeman \$2,200 for the car. Mr. Dykeman agreed to take the car to the welding shop, as part of the sale agreement. Ms. Dlab picked up the car on July 5, 2019. On July 9, 2019, Ms. Dlab took the car for a B.C vehicle inspection but it did not pass inspection. None of this is disputed.
15. Ms. Dlab says Mr. Dykeman told her about the fender hole, and that the emergency brake cables needed to be repaired. Ms. Dlab says Mr. Dykeman told her those were the only 2 things that required fixing so that the car would pass a B.C. vehicle inspection. She claims that Mr. Dykeman misrepresented the car's condition as safe to drive, when it was not.
16. The principle of "buyer beware" generally applies to private purchases of used vehicles (see *Cheema v. Mario Motors Ltd.*, 2003 BCPC 416). This means the buyer must assess the vehicle's condition before buying it. However, if a seller misrepresents a vehicle prior to sale, the buyer may be entitled to compensation.
17. A misrepresentation is a false statement of fact that would induce a reasonable person to enter into a contract. Fraudulent misrepresentation occurs when a seller makes a false representation of fact and the seller knew it was false or recklessly made it without knowing it was true or false (see *Queen v. Cognos Inc.*, [1993] 1 SCR

87). Negligent misrepresentation occurs when a seller fails to exercise reasonable care to ensure representations are accurate and not misleading (see *Van Beek v. Dodd*, 2010 BCSC 1639). In order to be entitled to compensation, the buyer must show they relied on the seller's misrepresentation in deciding to buy the car.

18. Ms. Dlab says the car did not pass inspection because the car had a hole under the hood Mr. Dykeman failed to disclose, that the brakes did not work, that the transmission did not work or there was "no neutral", and that there was something wrong with the clutch. However, Ms. Dlab did not provide supporting evidence, such as the inspection report, or a mechanic's report showing the alleged issues with the car. Nor did Ms. Dlab explain why she did not provide, or could not obtain, such evidence.
19. Mr. Dykeman says he knew there were issues with the car's body, because the car had previously been inspected by his friends, when they were interested in the car. Mr. Dykeman says he did not see the friends' copy of the inspection report, but that he saw yellow Xs on his car that he believes were the inspector's marks. Mr. Dykeman says he pointed out all the yellow Xs to Ms. Dlab and S when they inspected the car. Mr. Dykeman does not explain where the yellow Xs are or address whether there was a hole under the hood. However, I find that, if there was a hole under the hood of the car, it was a patent defect that Ms. Dlab could have discovered it in a reasonable inspection. A seller has no obligation to disclose a patent defect but cannot actively conceal or misrepresent it. On balance, I find Ms. Dlab failed to prove that Mr. Dykeman actively concealed or misrepresented any hole under the hood of the car.
20. Mr. Dykeman denies any issues with the clutch, transmission, or the brakes, other than the emergency brake cables. Based on an invoice Mr. Dykeman provided, I find he had the clutch replaced on November 22, 2017, which supports his belief that there were no issues with the clutch.
21. The parties agree that Mr. Dykeman drove the vehicle with Ms. Dlab and S in the car. Mr. Dykeman says that, during the drive, he drove fast, hit the brakes hard, changed gears, and put the car into "4x4 mode". He says the car went into neutral and that,

besides some “shimmy” at a high speed, the car performed fine during the test drive. Ms. Dlab does not dispute this and so I find it is likely accurate. I find, that if the brakes, clutch, or transmission did not work, Ms. Dlab could have discovered that during the ride, even if she did not drive the vehicle. If there were other issues with the brakes, clutch, or transmission, I find Ms. Dlab has failed to prove that Mr. Dykeman knew, or ought to have known of those issues.

22. Mr. Dykeman says he sold the car to Ms. Dlab “as is”. However, Mr. Dykeman also reproduced in his submissions the contents of the bill of sale, which notes that he will take the car to the welding shop no later than June 20, 2020. Neither party produced a copy of the actual bill of sale. On balance, I find Mr. Dykeman did not sell the car “as is” but, rather, sold the car as it would be, after the welding was done.
23. Ms. Dlab says Mr. Dykeman failed to have the fender hole welded. She says the fender hole was patched with rivets. Mr. Dykeman says he did have the hole welded, as agreed upon. Ms. Dlab provided no evidence, such as photos, to show that the welding job agreed to was not completed. On balance, I find Ms. Dlab has failed to prove that Mr. Dykeman did not have the welding done, as agreed.
24. I also find Ms. Dlab has failed to prove Mr. Dykeman misrepresented the condition of the car. I dismiss Ms. Dlab’s claim against Mr. Dykeman. I need not consider what remedy is appropriate, given my dismissal.
25. As Ms. Dlab was unsuccessful in her claim, I find she is not entitled to reimbursement of CRT fees or dispute-related expenses. Mr. Dykeman and Ms. Byam, as the successful respondents, have not claimed any dispute-related expenses.
26. As noted above, I also dismiss Ms. Dlab’s claim against Ms. Byam.

## **ORDER**

27. I dismiss Ms. Dlab's claim and this dispute.

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Sherelle Goodwin, Tribunal Member