



Civil Resolution Tribunal

Date Issued: January 26, 2021

File: SC-2020-006555

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Sekej V. Dyck*, 2021 BCCRT 94

BETWEEN:

JURAJ SEKEJ

APPLICANT

AND:

LESTER JOHN DYCK

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This dispute is about a private used car sale.
2. The applicant, Juraj Sekej, purchased a 2006 Ford Escape from the respondent, Lester John Dyck, on August 8, 2020 for \$3,100. The parties agree that the Ford's transmission failed about 1 week after purchase.

3. Mr. Sekej argues that Mr. Dyck breached the *Sale of Goods Act* (SGA) by allegedly selling a vehicle that was not reasonably durable. He also says Mr. Dyck misrepresented the Ford's transmission as newly rebuilt when it was allegedly not. Mr. Sekej seeks \$2,852.24 for a new transmission, \$340.84 for towing, \$200 in "lost profits" for time off work, and \$372 for the vehicle transfer tax.
4. Mr. Dyck denies misrepresenting anything about the Ford's condition or breaching the sales contract. Mr. Dyck asks that I dismiss Mr. Sekej's claims.
5. The parties are each self-represented.

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 that 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.
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.

ISSUES

10. The issues in this dispute are:

- a. Did Mr. Dyck breach the implied warranty of durability under the SGA?
- b. Did Mr. Dyck misrepresent the transmission's condition?
- c. If the answer is yes to either a) or b) above, to what extent, if any, must Mr. Dyck pay Mr. Sekej the claimed damages?

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, as the applicant Mr. Sekej must prove his claims on a balance of probabilities. I have read the parties' submissions, but only comment on the argument and evidence that I find relevant to provide context for my decision.
12. The Facebook Marketplace ad in evidence shows that Mr. Dyck advertised a 2006 Ford Escape with 240,000 kilometers for \$3,649 OBO (or best offer). The ad stated in part, that the Ford had a "new transmission" and was a "very reliable car".
13. On August 2, 2020, Mr. Sekej texted Mr. Dyck in response to the Facebook ad. He asked when the transmission was changed and its condition. Mr. Dyck wrote back that the transmission was replaced in 2017 at "Mr. Transmission" in Burnaby. Mr. Dyck also wrote that he had been driving the Ford ever since and it had been a "reliable" vehicle. Further, Mr. Dyck told Mr. Sekej the transmission warranty had expired.

14. Prior to purchase, Mr. Sekej undisputedly test drove the Ford twice. He also inspected the Ford himself but did not have the Ford inspected by a qualified mechanic.
15. As noted, Mr. Sekej purchased the Ford from Mr. Dyck for \$3,100 on August 8, 2020. Mr. Sekej says he negotiated the price down because the Ford had been sitting for 8 months without use and had a malfunctioning AC (air conditioner), cracked tires, engine oil leak, and “probable issue with the brake tubes”.
16. On August 16, 2020, Mr. Sekej says he went for an all-day road trip from Burnaby through Hope, Lillooet, and Whistler. He says on his way home and 9 km outside of Squamish, the Ford broke down. He says he had “the problem” diagnosed by a mechanic recommended by a friend. Mr. Sekej does not explain the mechanic’s diagnosis, or provide any statement or record that contains the mechanic’s diagnosis. So, I do not know the exact problem that this mechanic diagnosed.
17. However, as the parties agree the transmission failed, I accept that one of the Ford’s problems was related to the transmission.
18. Mr. Sekej says he took the next day off of work to deal with the Ford and had it towed to Mr. Transmission in Burnaby. Mr. Sekej says Mr. Transmission quoted \$2,858.24 to rebuild it. For reasons that are not explained, Mr. Sekej did not submit a copy of the quote or any statement from Mr. Transmission about the transmission.

Did Mr. Dyck breach the implied warranty of durability under the SGA?

19. There is a high onus on a buyer to inspect a used vehicle and discover patent defects, which are those that can be discovered by conducting a reasonable inspection. The applicable principle of “buyer beware” means the purchaser assumes the risk for any defects in the vehicle’s condition or quality, subject to any warranties.
20. The SGA governs the sale of goods to customers, including private used car sales. Section 18(c) of the SGA says that there is an implied condition the sold goods will be durable for a reasonable period of time having regard to their normal use. The other warranties in section 18 of the SGA do not apply to private car sales.

21. In *Sugiyama v. Pilsen*, 2006 BCPC 265, the Provincial Court considered the implied warranties in section 18 of the SGA. The court held that there are 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.
22. The claimant in *Sugiyama* had bought an 8 year old car with over 140,000 kilometers on the odometer. There were no apparent defects in the car. 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. Therefore, even though the car broke down after very little driving, the court found that it was durable for a reasonable time.
23. In *Wanless v. Graham*, 2009 BCSC 579, the BC Supreme Court endorsed the statement that people who buy old used cars with high mileage “must expect defects in such cars will come to light at any time” (paragraph 20). That quote came from a 2004 New Brunswick decision *Dunham v. Lewis*, [2004] N.B.J. No. 310, where the 1996 car bought for \$4,200 broke down within 2 days of purchase and would not start.
24. I find the same reasoning applies to this dispute. The Ford was 14 years old with 240,000 kilometers on the odometer. Mr. Sekej had identified several mechanical issues on his own inspection and paid only \$3,100 for the Ford. Mr. Sekej did not have the Ford professionally inspected, which may or may not have identified the transmission issue. I note there is no evidence to conclude that Mr. Dyck knew or ought to have known of any transmission problems at the time of sale.
25. Normally, as here, where the subject matter is technical and outside an ordinary person’s knowledge and experience, it requires expert opinion evidence (see *Bergen v. Guliker*, 2015 BCCA 283). I find a diagnosis and opinion about the Ford’s transmission from a mechanic is necessary to draw any conclusions about its durability. Mr. Sekej provided no such diagnosis or opinion. I find Mr. Sekej has not proven the transmission had any issues when he purchased it. He has also not

proven exactly what went wrong with the transmission or that its failure was related to a durability issue.

26. As Mr. Sekej was able to safely drive the Ford for about 1000 kilometers, I find the Ford was reasonably roadworthy at the time of purchase. Considering its age, very high kilometers, and unknown condition, I find a mechanical problem could have happened at any time. I find Mr. Sekej has not proven that the Ford, or its transmission, were not reasonably durable, in all of the above circumstances. I find Mr. Sekej has failed to prove Mr. Dyck breached the implied warranty of durability under the SGA.

Did Mr. Dyck misrepresent the transmission's condition?

27. The “buyer beware” principle discussed above does not permit a seller to misrepresent the used vehicle’s condition. At the same time, the seller has no obligation to disclose patent defects, although the seller must not actively conceal them.
28. The law says that 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 (see for example, *Hangad v. Her*, 2019 BCCRT 951 and *Girodat v. Quackenbush*, 2018 BCCRT 361, which are not binding but I find useful).
29. 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 whether it was true or false. Negligent misrepresentation occurs when a seller fails to exercise reasonable care to ensure representations are accurate and not misleading. The misrepresentation must reasonably induce the buyer to purchase the item.
30. Mr. Dyck says he had purchased the Ford from Mr. Transmission in 2017 with a “newly rebuilt transmission”. He says to the best of his knowledge the transmission was rebuilt in 2017.

31. Mr. Sekej says that Mr. Dyck did not provide any evidence from Mr. Transmission proving it was rebuilt in 2017. He says he assumes therefore, that Mr. Deck intentionally or fraudulently misled him about the rebuild. Mr. Sekej also says that if he knew the transmission was “wrecked”, he would not have purchased the Ford.
32. As mentioned, Mr. Sekej carries the burden to prove his claims on a balance of probabilities. Mr. Sekej was dealing directly with Mr. Transmission after towing his Ford to its shop and says they discussed the transmission and its warranty on a rebuild. Considering it is a key issue, I find it likely Mr. Sekej would have asked Mr. Transmission whether it had rebuilt the transmission in 2017. However, Mr. Sekej does not say either way and there is no statement from Mr. Transmission about it. As noted, Mr. Sekej also submitted no opinion from a mechanic about the transmission’s age, condition at time of sale, or the reason it “failed”. I find Mr. Sekej has not established that Mr. Dyck misrepresented what he knew about the transmission rebuild or that the transmission was anything other than as Mr. Dyck represented it to be at the time of sale.
33. Next, Mr. Sekej alleges that Mr. Dyck was dishonest in the parties’ post-sale negotiations over the “failed” transmission. On my assessment of the parties’ post-sale text discussions, I find Mr. Dyck was negotiating in good faith. In any event, I find the parties’ post-sale negotiations of no consequence to Mr. Sekej’s misrepresentation claim. This is because they occurred after the sale and did not induce Mr. Sekej to purchase the Ford.
34. I find Mr. Sekej has not established on a balance of probabilities that Mr. Dyck negligently or fraudulently misrepresented the Ford or its transmission.
35. In summary, I find Mr. Sekej has failed to prove misrepresentation or a breach of an implied warranty. I find the principle of buyer beware applied to this sale. Mr. Sekej purchased an older used vehicle and chose not to have an inspection by a qualified mechanic. I find defects could have come up at any time. I find Mr. Dyck is not liable because the Ford broke down. I dismiss Mr. Sekej’s claims for damages.

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. Mr. Sekej was unsuccessful and so I dismiss his claim for CRT fees and dispute-related expenses. Mr. Dyck did not pay CRT fees and claimed no dispute-related expenses.

ORDER

37. I dismiss Mr. Sekej's claims and this dispute.

Trisha Apland, Tribunal Member