



Civil Resolution Tribunal

Date Issued: March 4, 2021

File: SC-2020-007667

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lukac v. Reid*, 2021 BCCRT 247

BETWEEN:

ROY LUKAC

APPLICANT

AND:

MICHAEL REID

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about a private sale of a used boat. The applicant, Roy Lukac, says the respondent, Michael Reid, misrepresented the boat as being in good operating condition. Mr. Lukac claims \$1,940.27 for boat repairs he had done.

2. Mr. Reid denies misrepresenting the boat and says it was running well at the time of sale. As discussed further below, Mr. Reid says his selling agent DF told Mr. Lukac to use sufficient water if running the engine on land, but that Mr. Lukac failed to do so. Mr. Reid says Mr. Lukac caused the boat to overheat and is responsible for the damage that resulted.
3. The parties are each 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. 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. Here, I find that I am able to assess and weigh the documentary evidence and submissions before me.
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.

ISSUE

8. The issue in this dispute is whether Mr. Reid misrepresented the boat's condition when he sold it to Mr. Lukac, and if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, as the applicant Mr. Lukac must prove his claims on a balance of probabilities. I have read all the evidence and submissions before me, but refer only to what I find relevant to provide context for my decision.
10. The parties agree:
 - a. On June 4, 2020, Mr. Reid's boat mechanic DF advertised Mr. Reid's used Larsen Lazer 180 boat for \$8,500 on "Used Victoria", on Mr. Reid's behalf.
 - b. The boat's ad said, "this is a great running boat. It has been well taken care of by a professional mechanic, stored indoors every winter, and serviced regularly". An ad was submitted in evidence and it is essentially the same language.
 - c. On June 12, 2020, Mr. Lukac contacted DF and arranged to go and see the boat. The same day, DF ran the boat's motor for Mr. Lukac who looked over the boat, and agreed to purchase it immediately.
 - d. After Mr. Lukac complained about the boat's condition, DF sent James Ball, a marine mechanic, to inspect the boat.
11. As discussed further below, the evidence shows Mr. Lukac had run the boat a few times on July 18, during which it overheated and repeatedly stalled. Mr. Lukac called DF. DF then called Mr. Ball who inspected the boat on July 19.
12. The issue in this dispute is whether problems that led to the overheating and engine damage were pre-existing at the time Mr. Reid sold the boat, or, whether Mr. Lukac's method of running the boat on land caused the problems. If the problems were pre-

existing, then the further question is whether Mr. Reid knew or ought to have known of them and misrepresented the boat as being in good condition.

13. In his submissions, Mr. Lukac says that he was anxious to try the boat out, but was waiting for the bill of sale so he could register the boat in his name. In the interim, he says that on July 18 his family members came over and he decided to show them how the boat worked. Mr. Lukac says,

I hooked up the flush boot to a hose, turned the water on and fired the motor up. It quickly overheated and stalled out. When I restarted it and tried to move the shift lever, it would not budge before the motor would stall out. I repeated this a couple of times [and then called DF].

14. Mr. Reid submitted a December 14, 2020 signed statement from DF. DF says he told Mr. Lukac that if he ran the boat he needed to use sufficient water, and that using “ears and a hose” could only be used to check that the boat starts. DF says this is normal procedure to prevent overheating, which could damage the boat’s engine. After Mr. Lukac called with complaints about the boat’s function about 3 weeks after he bought it, DF says he asked Mr. Lukac if he had run the boat out of water and that Mr. Lukac acknowledged he had done so “using ears and a water hose”. Mr. Lukac does not directly address DF’s description of their interaction. I note Mr. Lukac chose not to file any reply submissions, despite having the opportunity to do so.
15. Mr. Lukac does say in his submissions that before he bought the boat DF “provided instructions on how to operate the boat”. Mr. Lukac does not deny DF told him to be sure sufficient water was used.
16. Mr. Lukac submitted a December 13, 2020 statement from his relative SL who said that on July 18 they “hooked up the boot and hose and bucket of water to submerge the motor as instructed by [DF]” and that the engine started to overheat. On balance, I find it unlikely Mr. Lukac used a bucket of water as he did not say he did in his submission quoted above.

17. In any event, there is no suggestion the boat's engine overheated when DF briefly ran it during Mr. Lukac's June 12 inspection. I find DF told Mr. Lukac to use sufficient water when running the boat. However, even if DF had not given this instruction, I find it was Mr. Lukac's responsibility to run the boat properly to avoid overheating. I find there is insufficient evidence the boat had any pre-existing issue at the time of sale, and so Mr. Reid did not misrepresent it as being in great running condition. My further reasons follow.
18. I find the question of whether Mr. Reid's manner of running the boat on land caused the boat's problems is a matter outside ordinary knowledge and instead requires expert evidence (see *Bergen v. Guliker*, 2015 BCCA 283). Underlying Mr. Lukac's misrepresentation claim is his allegation the boat was defective when he bought it, which as noted Mr. Reid denies. A party asserting a defect has the burden of proving it (see *Lund v. Appleford Building Company Ltd. et al*, 2017 BCPC 91 at paragraph 124).
19. It is undisputed Mr. Ball, a marine mechanic, inspected the boat at DF's request and concluded the engine had been damaged by overheating. Mr. Ball ordered parts to repair the boat, but it is undisputed Mr. Lukac decided not to wait for them to arrive and picked up his boat before repairs were completed. DF says he wanted Mr. Lukac to stop calling him so he ended up paying Mr. Ball \$211.55 USD for the unused replacement parts, which DF says cannot be returned.
20. Mr. Reid submitted Mr. Ball's November 4, 2020 signed opinion, along with a copy of his qualifications showing he is a certified heavy duty mechanic since 1976 and a fourth class engineer of a "motor-driven ship" since 1987. I find Mr. Ball is qualified under the CRT's rules as an expert in boat mechanics and in particular on the issue of what caused the boat's damage. In his opinion, Mr. Ball wrote that upon initial inspection it was clear the boat's engine had overheated causing the shifter to fail. On further examination, he also found the pump was burned out due to overheating. Mr. Ball wrote, "this is caused by a lack of water to cool down the engine whilst it is running. The shifter cables were also ceased due to overheating".

21. Mr. Lukac says Mr. Ball telephoned him shortly after he inspected the boat and said that in addition to broken shift cables, the water pump was seized and that there was a missing plug in the housing that “would have caused overheating”. However, Mr. Ball’s signed opinion in evidence does not mention a missing plug as being the overheating’s cause. Mr. Lukac did not submit a written statement to this effect from Mr. Ball, or from any other expert. I place no weight on Mr. Reid’s alleged hearsay statement from Mr. Ball, given that it is inconsistent with his written opinion in evidence. I am also unable to determine from Mr. Lukac’s submitted photos that the missing plug, even if it was missing at the time of sale, could cause the overheating that damaged the engine.
22. I accept Mr. Ball’s signed opinion that the boat’s damage was caused by overheating due to a lack of water, which I find is not contradicted by any other expert opinion. I find Mr. Lukac’s insufficient use of water in running the engine on July 18 most likely caused the engine to overheat and so Mr. Lukac is responsible for the resulting damage.
23. I note Mr. Lukac also complains about the boat’s trailer connections and tire fenders. Based on the evidence and submissions, including photos, I find these were obvious or patent defects that would have been apparent to Mr. Lukac on reasonable inspection, if they were things that were pre-existing rather than developments during the 3 weeks Mr. Lukac owned the boat. Mr. Lukac looked over the boat and chose to buy it immediately, without a professional inspection. I find Mr. Reid’s advertisement did not warrant the boat had no issues at all. Even if the trailer’s condition was misrepresented in the ad, I find Mr. Lukac did not reasonably rely on that representation because the defect he describes was there to be seen when he looked over the boat. I find there is no basis for any compensation based on these alleged defects.
24. Given my conclusion above, I find Mr. Lukac’s claim must be dismissed. So, I do not need to go into detail about his claimed damages.

25. 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. Lukac was unsuccessful so I dismiss his claim for reimbursement of CRT fees and expenses. Mr. Reid did not pay fees or claim dispute-related expenses. I note Mr. Reid submitted evidence that DF paid Mr. Ball, but DF is not a party to this dispute, there is no evidence Mr. Reid reimbursed DF for that expense, and Mr. Ball's invoice in evidence is for his diagnostic examination of the boat rather than his opinion. So, I make no order for expenses.

ORDER

26. I order Mr. Lukac's claims and this dispute dismissed.

Shelley Lopez, Vice Chair