



Civil Resolution Tribunal

Date Issued: March 19, 2021

File: SC-2020-008199

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Manley v. Rice*, 2021 BCCRT 308

BETWEEN:

AMANDA MANLEY

APPLICANT

AND:

DANICA RICE

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about the purchase of a used horse trailer.
2. The applicant, Amanda Manley, bought a 1990 Circle J horse trailer from the respondent, Danica Rice, in September 2020 for \$3,000. Ms. Manley says she had the trailer inspected after she bought it and discovered the trailer's brakes did not

work and there was extensive rust on the frame making the trailer unsafe. Ms. Manley says that Ms. Rice misrepresented that the trailer was in good condition. Ms. Manley seeks \$3,230.25 for a full refund of the trailer's purchase price and travel expenses she incurred to purchase the trailer.

3. Ms. Rice denies that she misrepresented the trailer's condition and says she used the trailer regularly until she sold it to Ms. Manley. Ms. Rice says she would have provided Ms. Manley with the opportunity to have the trailer inspected, but she chose not to do so. Ms. Rice says she does not owe Ms. Manley anything.
4. Each party is 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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me, and I find that there are no significant issues of credibility or other reasons that might require an oral hearing. 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 the interests of justice.
7. 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. 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.
9. I note that Ms. Manley filed all her evidence after the deadline to provide evidence had expired. CRT staff determined that Ms. Manley had been unable to upload her evidence due to an expired password. While Ms. Rice objects to the admission of certain items of Ms. Manley's evidence, I find Ms. Rice had the opportunity to review and provide submissions in response. Consistent with the CRT's mandate that includes flexibility, I find there is no actual prejudice to Ms. Rice in allowing the late evidence. Therefore, I admit Ms. Manley's evidence and have considered it in my reasons below.

ISSUE

10. The issue in this dispute is whether Ms. Rice either misrepresented the trailer or breached an implied warranty of durability in selling it, and if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, as the applicant, Ms. Manley must prove her claims on a balance of probabilities. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.
12. The Facebook Marketplace ad in evidence shows that Ms. Rice advertised a Circle J Two horse bumper pull. The evidence shows the initial ad price was \$4,000, which was later reduced to \$3,600. The ad description states:

Circle J two horse straight haul. Good condition. New ramp. This trailer continues to serve our horses needs. They range from 14.1-16.1 hh. Nice tack area. Easy to manoeuvre and weighs approximately 1600 lbs empty. 68" tall.

13. In a separate section of the ad, the trailer's condition is classified as: "Used – Fair".
14. Ms. Manley responded to the Facebook ad, and the evidence shows Ms. Manley and Ms. Rice participated in a 14-minute Facetime call on September 21, 2020. Ms. Rice says that she provided Ms. Manley with a visual tour of the trailer during the call, including inside, outside, and underneath the trailer. Ms. Manley does not dispute that the call included a video tour. She says they also talked "extensively" about the trailer's condition and that Ms. Rice told her it was structurally sound and needed only cosmetic fixes. Ms. Rice does not particularly deny saying the trailer was structurally sound.
15. The parties agreed on a \$3,000 price. Ms. Rice says she accepted a reduced price because of issues identified with the trailer during their video call, such as rust and the brakes and lights needing to be checked. Ms. Manley says she asked for the price reduction because it was what she was comfortable spending, but says it had nothing to do with the age or condition of the trailer. Given the parties' video call, I find it is more likely than not that the reduced price was negotiated at least in part due to some issues identified with the trailer's condition, discussed further below.
16. The evidence shows that Ms. Manley paid Ms. Rice a \$2,000 deposit by e-transfer on September 21, 2020. Ms. Manley arranged to finalize the purchase and pick up the trailer from Ms. Rice on September 23, 2020. Ms. Manley paid Ms. Rice the \$1,000 purchase price balance by e-transfer during their meeting, and the parties filled out the transfer papers. Ms. Manley hooked up the trailer to her own vehicle and drove it back to the Lower Mainland.
17. Ms. Manley says when she first saw the trailer in-person, she noticed the plug was "different" and there was an adaptor attached. Ms. Manley says Ms. Rice told her the

cord was altered and the adaptor was necessary because of an issue with her truck, not the trailer, which Ms. Rice does not particularly deny. However, Ms. Rice says that Ms. Manley was aware of the plug and adapter issue during their video call. On balance, I find that Ms. Manley knew about the plug and adapter before she picked up the trailer, and that this issue contributed to the reduced purchase price.

18. Ms. Manley says she drove the trailer directly to a trailer dealership in her area to have it inspected and deal with the minor work she knew was required, including changing the trailer's plug. Ms. Manley says the mechanic told her not only was the plug incorrect, the plug's cord wires had been cut, making the brakes non-functional. She says he also discovered 3 of the 4 brakes were seized, and when he hoisted the trailer up, he found extensive rust so that 2 of the 3 axle supports were completely detached, there were holes in the trailer's frame, and spots where the shackles had punched through the frame. Ms. Manley says the trailer was not roadworthy and could not be insured, so she did not even complete the transfer into her own name.
19. Ms. Manley says she assumed the trailer was in good working order and relied on Ms. Rice's representations that the trailer was structurally sound and in good condition when deciding to buy it. While she has not specifically framed her claim as such, I find Ms. Manley's allegations amount to a claim that Ms. Rice misrepresented the trailer's condition. I have also considered whether Ms. Rice breached the implied warranty of durability under the *Sale of Goods Act* (SGA).
20. I turn now to the applicable law.

Misrepresentation

21. In a private sale of used goods, a purchaser is expected to reasonably assess the used goods' condition before purchase. This is because a seller is not obligated to tell a buyer about obvious (patent) defects. The applicable principle is referred to as the doctrine of *caveat emptor* or "buyer beware": *Connors v. McMillan*, 2020 BCPC 230. However, sellers cannot purposely conceal an otherwise obvious defect, and they cannot misrepresent the goods to induce the buyer to purchase them.

22. A “misrepresentation” is a false statement of fact made during negotiations or in an advertisement. If a seller misrepresents the condition of a good, the buyer may be entitled to compensation for losses arising from that misrepresentation. However, 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.
23. Here, Ms. Manley admits that she was aware of the plug adapter issue before she completed the purchase. So, I find Ms. Manley’s misrepresentation claim is restricted to her allegations about the trailer’s seized brakes and rusty frame and axle supports.
24. Ms. Manley submitted a screenshot of a November 25, 2020 email from Mark Smith. Mr. Smith said he works for Kitt Equipment, where Ms. Manley took the trailer after she purchased it. Mr. Smith’s email stated that when he jacked the trailer up, he noticed the hangers for the equalizer and the leaf springs that hold the axles on were rusted off and not connected to the trailer. He said he also noticed one side of the frame was so rusted he could push a finger through. Mr. Smith concluded that the trailer cannot be driven on the road.
25. I find Mr. Smith’s email does not meet the requirements for an expert opinion because he does not set out his job title or his qualifications by education, training, or experience, as required under CRT rule 8.3. So, while I accept Mr. Smith’s observations that there was rust underneath the trailer, I place no weight on his opinion about whether the rust impacted the trailer’s structural integrity or that the trailer is not roadworthy.
26. Ms. Manley also submitted several photographs showing underneath the trailer. I find from these photographs that there is obvious extensive rust underneath the trailer, including cracking and holes in some areas. However, I cannot determine from the photographs that the rust impacts the structural integrity of the axles and frame, or whether it is only superficial rust in those areas. I find that the mere presence of rust on the frame and axles was a patent defect that could have been discovered on a

reasonable inspection of the trailer. Further, I find the parties' video tour showed the trailer's underside, and Ms. Manley does not deny that she was aware of rust on the trailer's undercarriage before she agreed to purchase it. Given the trailer was 30 years old and the apparent rust on what appears to be the entirety of the trailer's underside, I find Ms. Rice was not obligated to further bring this patent defect to Ms. Manley's attention, and I find there is no evidence that Ms. Rice was attempting to conceal the rust.

27. Ms. Manley says she relied on Ms. Rice's representations that the trailer was in "good condition" and structurally sound. As noted, Ms. Rice does not specifically deny stating the trailer was structurally sound, so I find it is likely she did make this representation. However, Ms. Rice says she was using the trailer regularly before selling it, and there were no indications that it was structurally compromised. Given the absence of expert evidence proving the trailer is structurally unsound, I find there is insufficient evidence for me to conclude that Ms. Rice's statements were false. Even if they were false, I find Ms. Manley has not proven that Ms. Rice knew or ought to have known that the trailer's frame or axle supports were unsound.
28. Further, I find that Ms. Manley has not provided any evidence for her allegation that the trailer's brakes were seized. Mr. Smith did not mention anything about the trailer's brakes being seized and there is no documentation, such as a repair estimate, to support this allegation. In any event, I find there is no evidence before me that Ms. Rice made any specific representations about the condition of the trailer's brakes.
29. I find Ms. Manley has not proven Ms. Rice misrepresented the trailer's condition.

Sale of Goods Act

30. The buyer beware principle discussed above is also limited by the warranties set out in section 18 of the SGA. The SGA regulates contracts for the sale of goods in British Columbia. Section 18(c) of the SGA says that there is an implied condition the sold goods will be durable for a reasonable period, considering how the goods would be

normally used and the sale's surrounding circumstances. The other warranties in section 18 of the SGA do not apply to private sales.

31. The SGA does not define "durable". In *Krotz v. Willis*, 2020 BCCRT 877, a CRT member used the definition of durable from Collinsdictionary.com: "strong and lasts a long time without breaking or becoming weaker". While *Krotz* is not binding on me, I find the reasoning persuasive and adopt it here to find that under section 18(c) of the SGA, goods sold must last without breaking or becoming weaker for a reasonable period with normal use and considering the surrounding circumstances of the sale.
32. In *Sugiyama v. Pilsen*, 2006 BCPC 265, the BC Provincial court set out a number of factors to consider when assessing a used vehicle's reasonable durability, including, age, mileage, nature of use, price paid, reasons for defects, and the expectations of the parties as shown by any express warranties. The claimant in *Sugiyama* had purchased a car and its engine broke down after driving it for a fairly short time due to an undetectable defect. 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 km), and price of about \$5,000.
33. Here, Ms. Manley purchased a 30-year-old horse trailer for only \$3,000, without its maintenance history and with obvious extensive rust on the undercarriage and a known plug and adapter issue. Yet, Ms. Manley chose not to have a professional inspection done. Neither party provided evidence on whether \$3,000 was the market price for such a trailer in its sold condition. I find there is no evidence that the trailer became weaker or broke after Ms. Manley purchased it. Rather, I find the issues she complains of were present and there to be seen at the time of purchase. Further, in the absence of any expert evidence, I find Ms. Manley has not proven the trailer is structurally compromised or unsafe.
34. I find the implied warranty of durability was extremely limited in the context of this sale. I find that Ms. Manley has not proven on a balance of probabilities that the trailer was not reasonably durable in the circumstances. So, I find Ms. Rice did not breach the implied warranty of durability in SGA section 18(c).

35. I find the buyer beware principle applied to this sale and Ms. Manley took the risk by purchasing the trailer without a professional inspection. I find that Ms. Manley is not entitled to any reimbursement for the trailer's purchase price and I dismiss her claims.
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. I see no reason in this case not to follow that general rule. Since Ms. Manley was the unsuccessful party, I find she is not entitled to reimbursement of her CRT fees. Ms. Rice did not pay CRT fees and neither party claimed dispute-related expenses.

ORDER

37. I dismiss Ms. Manley's claims and this dispute.

Kristin Gardner, Tribunal Member