



Civil Resolution Tribunal

Date Issued: March 23, 2021

File: SC-2020-009497

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Corea v. Watt*, 2021 BCCRT 325

B E T W E E N :

GERALD COREA

APPLICANT

A N D :

CODY WATT

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about a used vehicle sale. The applicant, Gerald Corea, bought a 2007 Mazda from the respondent Cody Watt. Mr. Corea says the car required a major oil leak repair that he says Mr. Watt failed to disclose before the sale. Mr. Corea claims \$3,400 in repair costs.

2. Mr. Watt denies there was a known oil leak problem before the sale, and says inspection reports he obtained confirmed this. Mr. Watt also says he cannot have caused the leak because it developed 62 days after he sold the car to Mr. Corea.
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.
8. Mr. Corea submitted certain evidence late, namely an email from a Mazda dealership about its identification of the oil leak. Mr. Watt objects to the late evidence. Bearing in mind the CRT's flexible mandate, under the CRT's rules I allow the late evidence

and consider it in my reasons below. I say this because Mr. Watt had the opportunity to respond to it, and so I find there is no prejudice to him in my accepting it.

ISSUE

9. The issue in this dispute is whether Mr. Watt sold Mr. Corea a car that was not reasonably durable or misrepresented the car's condition, and if yes what is the appropriate remedy.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, as the applicant Mr. Corea 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.
11. The parties agree:
 - a. On October 1, 2020, Mr. Corea bought a 2007 Mazda Speed 6 from Mr. Watt, for \$6,000.
 - b. At the time of sale, the car had 176,000 kilometers on it.
 - c. Mr. Corea chose not to have the car professionally inspected before the sale.
 - d. On around December 1, 2020, Mr. Corea contacted Mr. Watt to say the car was leaking oil.
12. In his late evidence, the Mazda dealership confirmed Mr. Corea contacted it on October 2 and an appointment was booked for October 23, 2020. Mr. Corea says that because oil started leaking right after purchase, Mr. Watt must have known about it.
13. While the parties disagree about whether Mr. Watt expressly said there was no oil leak, I find nothing turns on whether he did or not. Mr. Watt does not deny he did not disclose leaks to Mr. Corea. Rather, Mr. Watt essentially says he was not aware of any oil leak.

14. Mr. Watt had the car inspected on September 8, 2020, shortly before the sale. The car also passed a government inspection. The non-government inspection report shows the car had a “lube, oil & filter service”. While Mr. Corea says that this report does not specifically say the car was checked for oil leaks, given the oil service specifically noted I find it likely that the report would have noted an oil leak if there had been one. I am not prepared to rely on the internet articles Mr. Corea submitted to conclude it is likely a serious oil leak would have been missed on inspection. They do not qualify as expert evidence under the CRT’s rules and I find they are not sufficiently reliable in any event. However, if were true a serious leak would likely have been missed on inspection, then it is arguably even less likely Mr. Watt would have been aware of a leak.
15. Mr. Watt submitted an opinion from Lyle Hirowatari R.S.E., who says he is a Red Seal Heavy Duty Mechanic since 1987 and a Red Seal Parts person since 2012. He is also a Commercial Vehicle Inspection Program Inspector since 1989, and has been an instructor in heavy mechanical trades for 21 years. I do not accept Mr. Corea’s suggestion that Mr. Hirowatari is unqualified because he is a “heavy duty” mechanic, rather than an automotive mechanic. I accept Mr. Hirowatari is qualified as an expert under the CRT’s rule, with respect to the nature of the oil leak diagnosed by Mazda.
16. Mr. Hirowatari says there is no way to give an exact length of time that a seal has been leaking, due to varying environmental factors. I accept Mr. Corea called Mazda about an oil leak the day after the sale, which is supported by the Mazda email Mr. Corea submitted late. However, Mr. Hirowatari also says if there is a leak of any kind and any severity it is a “failure item” for an out of province inspection like the one Mr. Watt had done in September 2020.
17. Based on Mr. Hirowatari’s opinion, I find it unlikely the car would have passed the September 2020 inspection if the oil leak had been present at that time. There is no expert evidence to the contrary. However, given Mr. Corea discovered an oil leak the day after the car’s purchase, I turn to whether there was an oil leak that Mr. Watt knew or ought to have known about at the time of sale.

Misrepresentation

18. 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 patent or obvious 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.
19. A "misrepresentation" is a false statement of fact made during negotiations or in an advertisement. If a seller misrepresents a good's condition, 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.
20. Here, the issue is whether Mr. Watt misrepresented the car's condition by failing to disclose there was a known oil leak. As noted, Mr. Watt says there was no leak and relies on the inspection reports issued about 3 weeks before the sale.
21. Mr. Corea relies on an email from Mazda's "fixed ops advisor", who wrote that the oil build up was quite thick, and that "according to our senior tech" seemed to have started quite a while ago. Contrary to Mr. Corea's submission, neither this email nor the work order in evidence say oil had been leaking out of the car for some time. More importantly, the evidence does not show Mr. Watt would likely have been aware of the thick oil build up, given that the buildup was thick and hardened onto the transmission. The Mazda repair invoices also show there was a "very minor" leak coming from the engine oil pan. I have no evidence that the minor oil pan leak would have been apparent to Mr. Watt before the sale. I also have no evidence before me about which leak caused Mr. Corea to report an oil issue on October 2, 2020.

22. In short, I find there is no evidence before me to support a conclusion that Mr. Watt knew or ought to have known the car had an oil leak at the time of sale. So, I find there was no misrepresentation.

Sale of Goods Act

23. The buyer beware principle discussed above is also limited by the warranties set out in section 18 of the *Sale of Goods Act* (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 like this one.

24. 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.

25. 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. I find the facts of *Sugiyama* similar to those before me.

26. Here, Mr. Corea bought a 13 year old car, with significant mileage, for only \$6,000. Mr. Corea chose not to have a professional inspection done. I find the oil leak likely

would have been found on October 1 if Mr. Corea had chosen to have a professional inspection done, since he says the car was leaking oil the next day. As Mr. Corea himself submits, the fact that a car has a major oil leak does not make it inoperable. I find this fact does not support a conclusion the car was not durable at the time of sale.

27. I find the implied warranty of durability was limited in the context of this sale, given the car's age, high mileage, and relatively low price. I find that Mr. Corea has not proven on a balance of probabilities that the car was not reasonably durable in the circumstances. So, I find Mr. Watt did not breach the implied warranty of durability in SGA section 18(c).
28. Given my conclusions above, I find that Mr. Corea is not entitled to any reimbursement for the car's repairs and I dismiss his claims.
29. 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. As Mr. Corea was unsuccessful, I dismiss his claim for reimbursement of CRT fees. Mr. Watt did not pay CRT fees. No dispute-related expenses were claimed, so I make no order about them.

ORDER

30. I dismiss Mr. Corea's claims and this dispute.

Shelley Lopez, Vice Chair