



Civil Resolution Tribunal

Date Issued: March 30, 2021

File: SC-2020-006795

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Russell v. Tater*, 2021 BCCRT 341

B E T W E E N :

AMBER RUSSELL

APPLICANT

A N D :

TRAVIS TATER

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about a private sale of a used car. The applicant, Amber Russell, purchased the car from the respondent, Travis Tater. Ms. Russell says Mr. Tater misrepresented the car's condition and that it was unsafe to drive because of a rusted hole in its frame. She requests an order that Mr. Tater take back the car and refund

the full price of \$2,300. She also says Mr. Tater breached an agreement to replace the car's rear brakes and rotors. She requests \$241.34 as reimbursement for having a third party complete this work.

2. Mr. Tater denies the claim. He says he was unaware that the car had any such issue when he sold it. He says Ms. Russell, or another driver, caused the damage. Mr. Tater acknowledges he promised to replace the rear brakes but explains he did not because no one followed up with him about it.
3. The parties represent themselves.
4. For the reasons that follow, I find that Mr. Tater did not breach his agreement to fix the brakes and rotors or the implied warranty of durability under section 18(c) of the *Sale of Goods Act* (SGA). I am also not satisfied he misrepresented the car. I dismiss Ms. Russell's claims.

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. Some of the evidence in this dispute amounts to a "she said, he said" scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. Here, I find

that I am properly able to assess and weigh the documentary evidence and submissions before me. 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.

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.

ISSUES

9. The issues in this dispute are as follows:
 - a. Did Mr. Tater breach the parties' contract by failing to repair or replace the car's rear brakes and rotors?
 - b. Did Mr. Tater breach the implied warranty of durability under section 18(c) of the SGA?
 - c. Did Mr. Tater misrepresent the car's condition?
 - d. If so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, Ms. Russell as the applicant must prove her claims on a balance of probabilities. I have reviewed all the parties' submissions and evidence, but only comment on them as necessary to explain my decision.

11. I begin with the undisputed background facts. Mr. Tater advertised his 2006 Mazda 3 for sale online. The parties agree the ad said the car had superficial rust. The ad itself is not in evidence. Ms. Russell saw the ad and responded to it.
12. On July 24, 2020, Ms. Russell met Mr. Tater and purchased the car for \$2,300. The parties filled out a transfer and tax form from the Insurance Corporation of British Columbia but did not otherwise document their agreement.
13. In submissions Ms. Russell said her family member, NR, purchased the car. If this was the case, Ms. Russell would potentially lack standing to make her claims. However, in an agreed statement of facts, the parties agreed that Ms. Russell purchased the car. Given these circumstances, I find Ms. Russell has standing in this dispute.
14. Prior to purchase, Ms. Russell test drove the car with Mr. Tater. Based on the test drive, both parties concluded that the car needed its front wheels aligned and its rear brakes and rotors replaced. Ms. Russell says that Mr. Tater agreed that as part of the sale he would fix the rear brakes and rotors at his workplace at a reduced rate. Mr. Tater says he agreed to fix the brakes but did not comment specifically on the rotors. As he did not dispute this, I find it likely he agreed to replace the rotors as well.
15. Ms. Russell says she chose not to have the car inspected because Mr. Tater said that it was safe had had been “hoisted” and “checked over” by himself and other mechanics at his workplace. He also said he had replaced the front brakes. Mr. Tater did not deny making these statements, so I find he said them.

Events After the Sale

16. On August 19, 2020, Ms. Russell took the car to a mechanic for a wheel alignment. A tire shop invoice shows that a mechanic could not perform the alignment because of a “large amount of rust” in the car’s frame. The mechanic also noted the car was unsafe to drive. The mechanic noted the car vibrated at speeds of over 80 kilometers per hour but did not say if the vibration affected the car’s safety or how severe it was.

17. It is undisputed that the rust at issue is located underneath the car, near the front wheel on the driver's side. Ms. Russell also provided photos of the rust, which shows significant flaking forming a hole. Mr. Tater also provided pictures of the rust that he took when Ms. Russell or NR drove the car to his workplace in late October 2020.
18. In late August 2020 Ms. Russell exchanged several text messages with Mr. Tater and Mr. Tater's partner. Mr. Tater wrote that he was not aware of the hole when he sold the car and was not responsible for it.

Issue #1. Did Mr. Tater breach the parties' contract by failing to repair or replace the car's rear brakes and rotors?

19. It is undisputed that on July 27, 2020, Mr. Tater texted NR to advise that he could not fix the rear brakes the next day due to a family emergency. Ms. Russell says NR followed up with Mr. Tater by text on August 7, 2020 but Mr. Tater never responded. Mr. Tater says he never received this message. Neither party provided copies of any text messages between NR and Mr. Tater.
20. Ms. Russell replaced the rear brakes and rotors using a mechanic on August 15, 2020. An invoice shows this cost \$241.34. There is no indication that anyone noticed the rust or rusted hole at the time.
21. Ms. Russell has the burden to prove her claims. Without NR's text messages I am not satisfied that Mr. Tater ignored or refused requests to complete his work. I dismiss this claim.

Issue #2. Did Mr. Tater breach the implied warranty of durability under section 18(c) of the SGA?

22. I find the parties entered into a private sale which was subject to section 18(c) of the SGA. Section 18(c) requires that the goods sold be durable for a reasonable period, considering how the goods would be normally used and the sale's surrounding

circumstances. The other implied warranties in section 18 of the SGA do not apply to private sales.

23. A seller of used goods can exclude this implied warranty through a contract term, but the seller must do so in clear and unambiguous language: *Conners v. McMillan*, 2020 BCPC 230 at paragraphs 63 to 65.
24. In the August 2020 text messages, the parties disagreed on whether Ms. Russell purchased the car “as is where is”. This wording is typically used to show the buyer agreed to purchase the goods free of any conditions or warranties, including the implied warranty of durability under SGA section 18(c). However, Mr. Tater did not say in this dispute that he sold the car “as is where is”, so I find the implied warranty of durability applies to this sale.
25. I next consider whether the car was durable for a reasonable period of time. In *Sugiyama v. Pilsen*, 2006 BCPC 265, the BC Provincial Court outlined factors to consider. These include age, mileage, price, the prior and intended use of the vehicle, and the reason for the breakdown. In *Sugiyama* the claimant purchased a car that was 8 years old and had over 140,000 kilometers on it. The car broke down after the claimant drove it for 616 kilometers. The court found that the car was roadworthy and could be safely driven when purchased. The court concluded that the car was durable for a reasonable period of time.
26. In this dispute Ms. Russell purchased a car that was approximately 15 years old. Photos show that it had over 217,200 kilometers on it at the time of purchase. I find the implied warranty under SGA section 18(c) was very limited in this case, requiring only that the car was roadworthy and could be safely driven when purchased. The August 2020 invoice indicates the car was unsafe to drive because of rust. There are no details about the vibration. Given this, I find the key question is whether there was rust that made the car unsafe or not roadworthy at the time of purchase.

27. Ms. Russell says the mechanic at the tire shop verbally advised that the hole developed over the course of more than a year. Mr. Tater disagrees and says he and others looked at the underside of the vehicle at various times and only saw “typical fender rust”. He also says Ms. Russell or NR could have “bottomed out” the car to cause the hole.
28. The mechanic’s comment was verbal, so I find it to be hearsay. The CRT has discretion to admit information that it considers relevant, necessary, and appropriate, whether or not the information would be admissible in a court of law, including hearsay. While I find the statement to be admissible, I do not place any weight on it. It comes from an unnamed source with unknown qualification. The mechanic’s opinion is also key to this dispute. I find that Ms. Russell had the opportunity to obtain a statement from the mechanic but did not do so.
29. I considered finding from the August 2020 rust pictures alone that the car was unsafe or not roadworthy at the time of purchase. However, I conclude, with some reluctance, that as the rust was discovered a few weeks after the purchase, this issue is beyond ordinary experience and requires expert evidence. This is because I find the rate of rusting and its effects on the car’s safety or roadworthiness are outside of the knowledge or expertise of an ordinary person. See *Bergen v. Guliker*, 2015 BCCA 283 at paragraph 119. Ms. Russell did not provide such expert evidence in this dispute.
30. Given the above, I am not satisfied that the car was unsafe or not roadworthy at the time of purchase. I find that Ms. Russell has not shown that Mr. Tater breached the implied warranty of SGA section 18(c). I dismiss this claim.

Issue #3. Did Mr. Tater misrepresent the car’s condition?

31. 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: *Shaughnessy v. Sidhu*, 2016 BCPC 308 at paragraphs 89 to 95.

32. As noted above, Mr. Tater represented prior to the sale that the car was safe and had been “hoisted” and “checked over” by himself and other mechanics at his workplace.
33. I have found that Ms. Russell has not proven that the car was unsafe or not roadworthy at the time of purchase. Ms. Russell did not provide any evidence to show that the rust or rusted hole would have or should have been visible to Mr. Tater or others before the sale. Given this, I am not satisfied that Mr. Tater made a false statement of fact about the car. It follows that I am not satisfied he misrepresented the car. I dismiss this claim.
34. 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. Mr. Tater paid no CRT fees and claimed no dispute-related expenses. As he is the successful party, I order no reimbursement for the parties.

ORDER

35. I dismiss Ms. Russell’s claims and this dispute.

David Jiang, Tribunal Member