



# Civil Resolution Tribunal

Date Issued: April 6, 2021

File: SC-2020-008804

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Sutherland v. Ramsey*, 2021 BCCRT 363

BETWEEN:

JAMES SUTHERLAND

**APPLICANT**

AND:

LUKE RAMSEY

**RESPONDENT**

---

## REASONS FOR DECISION

---

Tribunal Member:

Eric Regehr

### INTRODUCTION

1. The applicant, James Sutherland, bought a used bicycle from the respondent, Luke Ramsey. The bicycle had a hole in the frame, which Mr. Sutherland claims was a hidden defect that made it unsafe. He says that Mr. Ramsey misrepresented the bicycle's condition. Mr. Sutherland claims \$3,000, the amount he paid Mr. Ramsey for the bicycle.

2. Mr. Ramsey admits that he knew about the hole but says that he did not believe that it affected the bicycle's roadworthiness. He says that as far as he knew, the bicycle was safe when he sold it. He asks that I dismiss Mr. Sutherland's claims.
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. Mr. Sutherland calls into question Mr. Ramsey's credibility, or truthfulness. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision *Yas v. Pope*, 2018 BCSC 282, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.
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 pay money or to do or stop doing something. The tribunal's order may include any terms or conditions the CRT considers appropriate.

## **ISSUES**

8. The issues in this dispute are:
  - a. Was the bicycle reasonably durable?
  - b. Did Mr. Ramsey fraudulently or negligently misrepresent the bicycle's condition?
  - c. If so, what remedy is appropriate?

## **EVIDENCE AND ANALYSIS**

9. In a civil claim such as this, Mr. Sutherland as the applicant must prove his case on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
10. Mr. Ramsey advertised the bicycle on Facebook marketplace. At the time, it was 5 years old, and Mr. Ramsey stated in the ad that the bicycle had a carbon frame and was in "good" condition with "the usual wear and tear" for a bicycle that age. Mr. Sutherland viewed the bicycle and took it on a test ride. He did not have the bicycle professionally inspected. He bought the bicycle from Mr. Ramsey on June 22, 2020, for \$3,000. Mr. Sutherland did not see that there was a hole drilled into the lower part of the frame, underneath the bottle holder, before he bought the bicycle. Mr. Ramsey knew about the hole but did not think to mention it. None of this is disputed.
11. Mr. Sutherland says that on September 2, 2020, a mechanic told him about the hole. Mr. Sutherland provided text messages with the mechanic, who suggested that he return the bicycle because it was "super dangerous". Mr. Sutherland asked Mr. Ramsey for a refund, which Mr. Ramsey refused. Mr. Ramsey says that the hole was there when he bought the bicycle. He says that he assumed that it was a

feature of the frame so that the user could run wires through the frame. He did not believe that it is a safety issue.

12. Mr. Sutherland argues that Mr. Ramsey misrepresented the bicycle's condition because he said that the frame was in "good" condition other than "wear and tear". Mr. Sutherland's submissions raise both negligent misrepresentation and fraudulent misrepresentation.
13. I note that Mr. Sutherland also argues that Mr. Ramsey had an obligation to disclose the hole as a material latent defect relying on *Nixon v. MacIver*, 2016 BCCA 8, a case about the sale of real property, or land. He cites another CRT decision, *Universal Decor Wedding Events Inc. v. DC Machine Parts Inc.*, 2019 BCCRT 267, which said that this doctrine applied to the sale of goods. Other CRT decisions are not binding on me, and I disagree with that aspect of *Universal Decor*. I am aware of no court authority that applies the legal test about when a seller of land must disclose latent defects to the sale of goods. So, I find that the legal concept of material latent defects does not apply to the sale of the bicycle.
14. Rather, I find that this dispute raises 3 legal doctrines about the sale of goods: negligent misrepresentation, fraudulent misrepresentation, and the implied condition of reasonable durability under section 18(c) of the *Sale of Goods Act* (SGA). I note that the parties did not raise this provision of the SGA, but I find that their submissions squarely address whether the bicycle was reasonably durable. So, I did not ask them for further submissions about this issue.
15. Mr. Sutherland provided several reports as expert reports, which he says prove that the hole in the frame made the bicycle unsafe, including from a bicycle mechanic, a carbon fiber repairperson, and an engineer. Mr. Ramsey says that I should not accept these reports as expert reports under the CRT's rules, for various reasons. I find that I do not need to address this issue. This is because even if I accept the reports as expert evidence, I find that the bicycle was reasonably durable and that Mr. Ramsey did not fraudulently or negligently misrepresent the frame. My reasons follow.

### ***Was the bicycle reasonably durable?***

16. As noted, section 18(c) of the SGA says that there is an implied condition that goods will be durable for a reasonable period of time. Section 20 of the SGA says that parties can contract out of this implied condition, but there is no evidence that the parties turned their mind to this. So, I find that the implied condition applies to the sale. I note that the other implied conditions and warranties in section 18 of the SGA do not apply to private sales.
17. What is “reasonably durable” depends on the normal use of the goods and the sale’s circumstances. In *Sugiyama v. Pilsen*, 2006 BCPC 265, the court applied the implied condition to a used car sale. The court found that the seller of a used car cannot guarantee the car’s future performance, and that a buyer must expect problems at some point. The court found that the older the car, the more likely it will break down. For older cars, the court found that if it is “roadworthy” when purchased, it is likely to be considered reasonably durable. In that case, the court found the used car was reasonably durable even though it broke down after only 616 kilometers of driving. I see no reason not to apply the same principles to the sale of a used bicycle.
18. There is no direct evidence about how far Mr. Sutherland rode the bicycle in the roughly 10 summer weeks between buying it and finding the hole. However, Mr. Sutherland says that he was a student and that he spent nearly all of his summer job earnings to buy it. Given the bicycle’s price and the fact that Mr. Ramsey used it for competitive racing, I infer that it is a high-end bicycle. I find it unlikely that Mr. Sutherland spent most of his savings on a high-end bicycle unless he intended to use it. So, I find that Mr. Sutherland rode the bicycle regularly throughout the summer.
19. Mr. Ramsey says that the hole was in the frame throughout the time he owned it. There is no evidence to suggest that this is not true. He provided evidence from his ride tracking software that shows that he rode more than 4,300 kilometers on the bicycle while he owned it. There is no suggestion that there was any problem with

the bicycle's performance because of the hole, either when Mr. Ramsey owned it or when Mr. Sutherland owned it. So, the parties' use of the bicycle does not support a finding that it was not reasonably durable when Mr. Sutherland bought it.

20. Do Mr. Sutherland's reports establish that the bicycle was not roadworthy when he purchased it, even though the frame has not yet failed? Even taking them at face value, none of them say that the frame will imminently fail. The engineer says that, generally, aftermarket holes affect the integrity of carbon fiber products. The engineer says that it is impossible to know whether the frame is safe to ride or not and recommends against riding it without further testing. The carbon fiber repairperson says that the frame should be repaired but does not say that it is unsafe to ride. The bicycle salesperson says that they would not ride the bicycle with the hole in it. I find that these opinions fall short of proving that the bicycle was not roadworthy when Mr. Sutherland bought it.

21. For these reasons, I find that the bicycle was reasonably durable when Mr. Sutherland bought it. I turn next to Mr. Sutherland's claims that Mr. Ramsey misrepresented the bicycle's condition.

***Did Mr. Ramsey misrepresent the bicycle's condition?***

22. A negligent misrepresentation occurs when:

- a. The seller makes a representation to the purchaser that is untrue, inaccurate, or misleading,
- b. The seller breaches the standard of care in making the misrepresentation, and
- c. The purchaser reasonably relies on the misrepresentation to their detriment.

23. A fraudulent misrepresentation occurs when:

- a. The seller makes a statement of fact to the purchaser,

- b. The seller knows the statement was false, or is reckless about whether it is true or false, and
- c. The misrepresentation induces the purchaser into buying the good.

24. First, I find that Mr. Ramsey did not fraudulently misrepresent the bicycle's condition. I find it highly unlikely that he would have ridden 4,300 kilometers if he believed that the frame was unsafe. Mr. Sutherland says that just because Mr. Ramsey used the bicycle so much does not mean that he thought it was safe when he sold it. Mr. Sutherland says that Mr. Ramsey could have sold it as soon as he learned that it was unsafe. This is possible, but speculative, and there is no evidence to support it. Mr. Ramsey also points out that when Mr. Sutherland contacted him about the hole, Mr. Ramsey offered to pay to have a carbon frame expert look at the frame. Mr. Ramsey says that he did this because he was confident that the bicycle was roadworthy. I agree that Mr. Ramsey probably would not have made this offer if he believed that the bicycle was unsafe to ride.
25. The more difficult question is whether Mr. Ramsey was negligent in saying that the frame was in good condition when he knew about the hole. I accept that Mr. Ramsey honestly believed that the frame was in "good" condition. But, as the Supreme Court of Canada said in *Queen v. Cognos Inc.*, [1993] S.C.R. 87, it is not enough to be honest. The standard of care in negligent misrepresentation cases is that the person making the representation must exercise reasonable care. What is "reasonable" is objective, taking into account the seller's position.
26. On this point, Mr. Sutherland relies on Mr. Ramsey's cycling experience. Mr. Ramsey acknowledges that he is a highly experienced cyclist, who has completed competitive races and ran coaching sessions. Mr. Sutherland says that Mr. Ramsey must have known that the hole was a problem given this level of experience. However, there is no evidence that Mr. Ramsey has any experience or training maintaining bicycles. In fact, he says that he had the bicycle maintained by multiple mechanics, none of whom ever raised an issue with the hole. I agree that being an avid cyclist does not mean that Mr. Ramsey has expertise in carbon fiber frames.

27. Mr. Sutherland also relies on a statement in the report he received from an engineer. In that report, the engineer says that it is “well understood in the lay community” that holes should not be drilled into carbon fiber frames. I place no weight on this statement for 2 reasons. First, the state of knowledge of the bicycling community is outside of the engineer’s area of expertise. Second, the engineer’s opinion is based on a “quick internet search”.
28. Mr. Sutherland also provided a page from a carbon fiber frame repair website that says that no one should cut holes into carbon fiber frames. He provided similar evidence from his mechanic and a sales representative from the bicycle’s manufacturer.
29. I find that this evidence proves that professionals in the cycling industry may know that drilling holes in a carbon frame compromises its integrity. However, I find that it does not establish that Mr. Ramsey should have known that the hole may make the bicycle dangerous to ride. Just because Mr. Ramsey was a highly experienced rider does not mean that it is reasonable to expect him to have the knowledge of a carbon repair expert, engineer, or mechanic. I find that Mr. Sutherland seeks to place too high a burden on Mr. Ramsey.
30. So, I find that it was not careless or unreasonable for Mr. Ramsey to describe the bicycle as in good condition even though the frame had a hole. I therefore find that Mr. Ramsey did not fraudulently or negligently misrepresent the bicycle’s condition.
31. I dismiss Mr. Sutherland’s claim for a refund.
32. 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. Sutherland was unsuccessful, so I dismiss his claim for CRT fees and dispute-related expenses. Mr. Ramsey did not claim any dispute-related expenses or pay any CRT fees.



## **ORDER**

33. I dismiss Mr. Sutherland's claims, and this dispute.

---

Eric Regehr, Tribunal Member