



Civil Resolution Tribunal

Date Issued: April 13, 2021

File: SC-2020-008596

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Mistry v. Aparicio*, 2021 BCCRT 383

B E T W E E N :

MANISH MISTRY

APPLICANT

A N D :

ITALO GUZMAN APARICIO

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about a private used car sale. The applicant, Manish Mistry, bought a 2008 Honda Civic DX 5 speed coupe (car) from the respondent Italo Guzman

Aparicio, on October 8, 2020. Mr. Mistry says Mr. Aparicio misrepresented the car as running well, given the car became inoperable 8 days after Mr. Mistry bought it.

2. Mr. Mistry claims \$3,360 as a refund of the car's purchase price, inclusive of tax. Mr. Mistry also claims \$287.56 in towing and taxi costs, plus \$304.23 for parts he bought for the car. He also claims \$1,000 for inconvenience and loss of access to a safe car. Mr. Mistry's claims total \$4,951.79.
3. Mr. Aparicio says the car was old when he sold it and that he did not misrepresent its condition or withhold any information about it. Mr. Aparicio asks that the claims be dismissed.
4. The parties are each 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). 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 parties to a dispute that will likely continue after the dispute resolution process has ended.
6. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me.
7. 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, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.
9. I note in his reply submissions Mr. Mistry requested that this decision be kept confidential, so as to avoid negatively impacting either party's public image. The CRT's proceedings are generally open, consistent with an 'open court' principle that allows for transparency. I find there is nothing in this dispute that would warrant less than full publication of this decision and so this decision will be published in full, as provided for under the CRTA.

ISSUE

10. The issue in this dispute is whether Mr. Aparicio misrepresented the car 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 claim like this one, as the applicant Mr. Mistry bears the burden of proving his claim, on a balance of probabilities. While the parties and Mr. Mistry in particular submitted a large volume of evidence and submissions, I have only referenced below what I find is necessary to give context to my decision.
12. The underlying facts are not disputed. Mr. Aparicio advertised the manual shift transmission car on Facebook marketplace. In the ad, Mr. Aparicio described the car as having 170,000 kilometers and that it "still runs and drives well". Mr. Aparicio set out some of the car's features and said there were "no damages" (reproduced as written). In context, I find the "no damages" meant there was no accident history or visible body damage to the car. Mr. Mistry does not particularly argue otherwise.
13. The ad did not mention any warranty, from the dealership, manufacturer, or otherwise.

14. Mr. Mistry test drove the car around September 23, 2020, and a second time before purchase. After reviewing the car's service records and texting with Mr. Aparicio, Mr. Mistry bought the car on October 6, 2020 for \$3,360, including tax. Mr. Mistry chose not to have the car professionally inspected. There is no evidence or any suggestion Mr. Mistry had any concerns about the car's performance while test driving it, and in particular no issues with noises, the clutch slipping or not fully engaging, which as discussed below are the mechanical problems at issue.
15. Mr. Mistry had the car towed 3 times between October 14 and 21, 2020. On October 20, Mr. Mistry had the car inspected by a mechanic, David Moniz with Sidney Transmission, who also drove it with Mr. Mistry taking video from the passenger seat during their drive. Mr. Moniz diagnosed 3 issues: clutch slipping, oil leak with possible "R main dripping", and left axle clicking. More on this below.
16. It is undisputed and the submitted evidence shows that before the car's sale Mr. Aparicio gave Mr. Mistry the following: insurance papers, various maintenance records dating back to 2017 (Mr. Aparicio had bought the car in July 2019) with the most recent from March 2020, a Carfax report, and dealership documents. None of the paperwork indicates any outstanding problems with the clutch or transmission. A March 2019 report shows the transmission with check marks, which I infer means it passed inspection without issue.
17. Mr. Mistry submitted an October 29, 2020 email from Ayman Hammado, owner/operator of Tennyson Auto Repair/Sales of Victoria Ltd (Tennyson). Mr. Hammado wrote Mr. Mistry had brought the car to Tennyson on October 15, 2020, for a diagnosis of an inoperative clutch. Mr. Hammado wrote that he found the clutch fluid was low due to a leak in the master cylinder, plus a rattle from the clutch plate "with an additional possible issue in the transmission internal components". Mr. Hammado wrote, "due to the severity and advanced stage of the failure of these components, these issues appeared to have existed for some time" and that it was unlikely they would have only developed over a couple of weeks. I accept Mr. Hammado's opinion as expert evidence under the CRT's rules. More on this below.

18. Mr. Mistry also submitted a text from “John” with “Johns Best Choice”, who said the clutch fluid had leaked and that in his 30 years of being a mechanic “this shouldn’t happen” within 8 days of a used car purchase and that “this was an ongoing problem” from the day Mr. Mistry bought the car. I do not accept this text as expert opinion as “John” is not fully identified. However, nothing turns on this since his opinion is consistent with Mr. Hammado’s opinion I have accepted above.
19. I turn then to the applicable law.

Sale of Goods Act

20. Mr. Mistry argues that a car becoming inoperable 8 days after purchase is not considered durable.
21. Apart from misrepresentation that I discuss below, the principle of ‘buyer beware’ generally applies to a private used vehicle sale. It means that the buyer assumes the risk that the purchased vehicle might be either defective or unsuitable to their needs (see *Connors v. McMillan*, 2020 BCPC 230, citing *Rushak v. Henneken* [1986] B.C.J. No. 3072 (BCSC) affirmed 1991 CanLII 178 (BCCA)). In *Connors*, citing *Floorco Flooring Inc. v. Blackwell*, [2014] B.C.J. No. 2632 which involved a vehicle sale at auction, the court concluded at common law there is no duty for a seller to disclose known defects, though they cannot actively conceal them. In short, a buyer is generally responsible for failing to adequately inspect a good before buying it.
22. However, in British Columbia the ‘buyer beware’ principle is limited by the warranties set out in section 18 of the *Sale of Goods Act* (SGA). Section 18(c) applies to private sales like this one and requires that the goods sold be durable for a reasonable period with normal use, considering the sale’s context and surrounding circumstances (see *Drover v. West Country Auto Sales Inc.*, 2004 BCPC 454).
23. In *Sugiyama v. Pilsen*, 2006 BCPC 265, the BC Provincial Court applied section 18(c), and said there were a number of factors to consider when determining

whether a vehicle is durable for a reasonable period of time, including the age, mileage, price, the vehicle's use, and the reason for the breakdown. In *Sugiyama*, the claimant bought an 8-year old car with over 140,000 kilometers on the odometer. After driving it for only 616 kilometers, the car broke down. The court determined the car was roadworthy and could be safely driven when it was purchased. There were no apparent defects in the car. Therefore, even though the car broke down after very little driving, the court found that it was durable for a reasonable time.

24. I find that the facts before me are similar to *Sugiyama*. I accept Mr. Aparicio regularly drove the car up until he sold it, and that Mr. Mistry drove the car for 8 days before noticeable problems became apparent to him. The car was 12 years old, had a high odometer reading of 174,000 kilometers, and a relatively low cash value of \$3,360.
25. Further, as the court held in *Wanless v. Graham*, 2009 BCSC 578, a case involving a 10-year old car sold for \$2,000, people who buy old used vehicles must expect defects in such vehicles will come to light at any time. I find this applies to Mr. Mistry's used car purchase. Even if the underlying clutch problems existed at the time of sale, as explained by Mr. Hammado, I find that does not mean the car was not durable when it was sold, given the case law discussed above. Notably, Mr. Moniz drove the car in mid-October 2020, without identifying safety concerns that would prevent his driving it. I find this shows it is unlikely the car was unsafe at the time Mr. Mistry bought it. Within the context of Mr. Aparicio's sale of the old car with high mileage, I find the car was reasonably durable at the time of sale even though it became inoperable 8 days later. So, I find there was no breach of warranty under the SGA.

Misrepresentation

26. Mr. Mistry also argues Mr. Aparicio misrepresented the car's condition in the ad, because the car could not have been in well-running condition at the time of sale.

27. If a seller misrepresents a vehicle's condition, the buyer may be entitled to compensation for losses arising from that misrepresentation. A "misrepresentation" is a false statement of fact made during negotiations or in an advertisement that induces a reasonable person to enter into the contract. 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).
28. Mr. Mistry argues Mr. Aparicio misled him by giving assurances about his earlier dealership inspection. I do not accept this, as it is undisputed Mr. Mistry had all of the dealership paperwork before purchase, which showed the dealership's 2019 inspection, a year before the October 2020 sale.
29. Further, I find Mr. Aparicio regularly used the car for work as a pizza delivery driver, right up until the time of sale. There is no evidence Mr. Aparicio ever experienced problems with the car when he drove it. Mr. Aparicio submitted various screenshots from 2019 through October 2020, which he had posted to social media appearing to show his happy use of the car.
30. Mr. Mistry submitted a number of post-purchase October 2020 videos that showed an audible noise coming from the car's engine. I find these videos unhelpful, since if the noise was there at the time the car was sold, Mr. Mistry would have heard it. So, I find the noise was not present when the car was sold on October 6, 2020. I find no evidence of misrepresentation arising from the noise that developed later.
31. I also find Mr. Mistry's submitted post-purchase October 2020 videos, showing Mr. Moniz driving the car and giving his assessment of clutch problems, do not assist Mr. Mistry's claim that Mr. Aparicio negligently or fraudulently misrepresented the car's condition. The fact the car had noticeable clutch issues after the sale is not disputed. The issue here is that there is no evidence Mr. Aparicio knew or ought to have known about them. I also note that Mr. Mistry commented in one video that he did not think "it was slipping this bad when I came up here", which I find shows the

car's underlying clutch issues were less severe at the time of sale than they were by the time Mr. Mistry had the car towed.

32. Next, contrary to Mr. Mistry's apparent argument, I find the fact that Mr. Aparicio informed Mr. Mistry that he had other potential buyers for the car, does not support a conclusion Mr. Aparicio exerted undue influence on Mr. Mistry to buy the car.
33. I also find no evidence that at the time of sale Mr. Aparicio represented to Mr. Mistry that the extended warranty Mr. Aparicio had bought for the car would transfer to Mr. Mistry. The fact that the extended warranty was mentioned in the paperwork Mr. Aparicio passed on to Mr. Mistry, or that post-purchase the parties discussed whether that warranty might be transferable to Mr. Mistry, does not mean Mr. Mistry reasonably believed at the time of purchase that he would receive the extended warranty. Mr. Mistry's submitted text message to Mr. Aparicio before purchase shows Mr. Mistry had advised he had contacted the car dealership and that the dealership said Mr. Aparicio should be able to transfer the car's warranty, to which Mr. Aparicio responded that he thought it would be fine if he just gave Mr. Mistry his own paperwork for the car and Mr. Mistry could explain the car's sale. I find this simply shows that Mr. Aparicio was not entirely sure about whether the warranty was transferable but was willing to try and be helpful, and that Mr. Mistry knew that.
34. Mr. Mistry appears to submit that because Mr. Aparicio never used his extended warranty it should have been transferable to Mr. Mistry. However, I have no evidence before me to support that the warranty did not expire after a certain period, whether used or not. I find all of the above shows Mr. Aparicio did not make any binding representation about any available warranty, either at the time of sale or after. Further, in reply submissions Mr. Mistry says that Mr. Aparicio told him around the time he viewed the vehicle that there was no warranty, and that the dealership's paperwork showing an extended warranty "led him to believe" the car included an extended warranty. I find this was an unreasonable assumption on Mr. Mistry's part, given the evidence before me that includes the parties extensive text messages and voice recordings.

35. In short, I find Mr. Aparicio did not experience any of the clutch or transmission problems that arose around October 15, 2020, 8 days or so after Mr. Mistry's purchase of the car. I also find there is no evidence Mr. Aparicio was aware of any of these issues at the time of sale. While I accept it likely the underlying issues existed, that does not mean Mr. Aparicio knew or even ought to have known they existed. It is undisputed Mr. Aparicio is not a mechanic.
36. Given my conclusions above, I find Mr. Aparicio did not negligently or fraudulently misrepresent the car when he said it "runs well". I accept that for him, it did run well given the car's known age and mileage. I dismiss this aspect of Mr. Mistry's claim.
37. In summary, I dismiss Mr. Mistry's claims and find he is not entitled to a refund. Given this conclusion, I do not need to detail Mr. Mistry's claimed damages.
38. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to the recovery of their CRT fees and reasonable dispute-related expenses. Mr. Aparicio was successful but did not pay fees or claim expenses. I dismiss Mr. Mistry's claim for reimbursement of CRT fees.

ORDER

39. I order Mr. Mistry's claims and this dispute dismissed.

Shelley Lopez, Vice Chair