



# Civil Resolution Tribunal

Date Issued: May 11, 2021

File: SC-2020-008924

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Burnstad v. McBride*, 2021 BCCRT 498

BETWEEN:

SANDRA BURNSTAD and RICHARD LONG

**APPLICANTS**

AND:

WILSON MCBRIDE and AMBER MCBRIDE

**RESPONDENTS**

AND:

SANDRA BURNSTAD and RICHARD LONG

**RESPONDENTS BY COUNTERCLAIM**

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## REASONS FOR DECISION

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Tribunal Member:

Chad McCarthy

## **INTRODUCTION**

1. This dispute is about the purchase of a motorhome. The applicants (and respondents by counterclaim), Sarah Burnstad and Richard Long, paid \$4,500 to the respondents (and applicants by counterclaim), Wilson McBride and Amber McBride, for the motorhome. The applicants say that after driving the motorhome, they discovered it was defective, so they parked it and decided not to register a change of ownership. The applicants claim a \$4,500 refund because they say the motorhome is undriveable and unsellable, and because they allege that they do not own the vehicle, which the respondents now possess.
2. The respondents say that the sale is complete, and they owe no refund. They say that the applicants wrongly refused to register the ownership transfer and abandoned the motorhome on a roadside, which was ticketed and towed away. The respondents say that because they incorrectly remained listed as the registered owners, they were charged for towing and storage. So, the respondents moved the vehicle to their property to stop further fees from accumulating in their names and have held the vehicle for the applicants to retrieve. The respondents counterclaim \$5,000 for reimbursement of the towing bill and storage costs.
3. Ms. Burnstad and Mr. Long are each self-represented in this dispute. Mr. McBride represents both himself and Ms. McBride.

## **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. Although the parties' submissions each call into question the credibility of the other party in some respects, I find I can properly assess and weigh the written evidence and submissions before me, and that an oral hearing is not necessary in the interests of justice. In the decision *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always needed where credibility is in issue. Keeping in mind that the CRT's mandate includes proportional and speedy dispute resolution, I find I can fairly 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 do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

## **ISSUES**

8. The issues in this dispute are:
  - a. Who owns the motorhome?
  - b. Are Ms. Burnstad and Mr. Long entitled to a refund of \$4,500, or another amount, for the motorhome?
  - c. Are Ms. Burnstad and Mr. Long responsible for motorhome towing fees and storage, and if so, how much?

## **EVIDENCE AND ANALYSIS**

9. In a civil proceeding like this one, as the applicants Ms. Burnstad and Mr. Long must prove their claims on a balance of probabilities. The respondents must prove their counterclaims to the same standard. I read and weighed all the submitted evidence, but I refer only to the relevant evidence as needed to provide context for my decision.

### ***Who owns the motorhome?***

10. Undisputed text messages show that Ms. Burnstad responded to the respondents' online ad offering their 1981 motorhome for sale for \$4,500. The respondents told Ms. Burnstad that several potential buyers were scheduled to view the vehicle before she was available to see it. So, Ms. Burnstad said she would purchase the vehicle immediately. The respondents asked, "Are you sure?" and Ms. Burnstad said she was "dead serious." The respondents accepted the purchase, and said that some ceiling panels were soft, and that this was perhaps related to signs of moisture they had seen on the ceiling. Ms. Burnstad did not express any concerns about this, or the related photos provided by the respondents, and said that she could fix anything. Ms. Burnstad then e-transferred the respondents \$3,000, saying that this was all her bank allowed her to transfer in a single day.
11. The applicants say that this \$3,000 payment was only a refundable deposit to reserve the vehicle, and that the respondents should not have "accepted" the payment until after they had viewed the motorhome in person and approved its condition. I find this allegation is completely unsupported on the evidence before me. I find there is no indication that the \$3,000 payment was a deposit, or that the sale was conditional on the applicants' inspection of the motorhome or anything else. I find the parties' text messages clearly show that the applicants agreed to purchase the motorhome for \$4,500, without an inspection and without any further conditions.

12. Soon after making the \$3,000 payment, the applicants arrived at the respondents' home and paid an additional \$1,500 in cash. The applicants say that they viewed the motorhome, but the respondents' children purposefully distracted them from seeing alleged problem areas. I find the evidence does not support any unreasonable distractions by the respondents' children, or that the applicants were prevented from viewing the vehicle. As noted, I find that the applicants had already agreed to purchase the motorhome without a personal inspection. I find that the sale was complete, and the applicants became the motorhome's owners, when they made the \$1,500 cash payment to the respondents. It is undisputed that Mr. McBride filled out the "seller" portion of an APV9T Transfer/Tax Form (TTF) for the vehicle and gave it to the applicants, along with the vehicle registration document bearing his signature.
13. The applicants say that they obtained a temporary operating permit (TOP) to take the motorhome for a "test drive." The respondents say that there was no test drive, but they allowed the applicants to leave the motorhome overnight when they returned with the vehicle later that day. The applicants undisputedly picked up the vehicle the next day under the 2-day TOP. I find there was no test drive, and that the applicants purchased the motorhome before they first drove it.
14. I find the evidence shows that the applicants expressed an intent to resell the purchased motorhome shortly after the date of purchase. It is undisputed that the applicants offered the motorhome for sale in an online advertisement. I find this supports that the applicants owned the vehicle and knew they did. I find that the applicants then began alleging various flaws with the motorhome, and they sought a refund from the respondents. I find the evidence shows that the applicants refused to register the motorhome's transfer of ownership because they wanted to undo the purchase, although they also claimed that the sale was never completed, including in their later sale advertisements. On the evidence before me, I find that the applicants are the motorhome's owners.

15. Contrary to the applicants' suggestion, I find that actual ownership of a motor vehicle is not the same as registering ownership with the Insurance Corporation of British Columbia (ICBC). Section 3(3) of the *Motor Vehicle Act* (MVA) says that the owner of a vehicle must apply for registration and licence in the form required by ICBC. I find that the required form is the published TTF. Instructions printed on the TTF say that the purchaser must present the TTF and vehicle registration to an ICBC Autoplan Broker within 10 days of sale. As the purchasers and new owners, I find that the applicants failed to apply to register the motorhome's ownership change as required under the MVA. I find that this failure to register did not cancel the purchase.

***Are Ms. Burnstad and Mr. Long entitled to a refund for the motorhome?***

16. Vehicle sales like this one are generally "buyer beware," meaning the buyer is expected to assess the vehicle's condition before purchasing it (see *Floorco Flooring Inc v Blackwell and Ootsa Lake*, 2014 BCPC 248, at paragraphs 60 to 69). I find the buyer beware principle applies to this sale. As noted, the applicants agreed to purchase the motorhome without a personal inspection. I find that the parties did not agree to any trial period or any possibility of returning the vehicle for a refund.

17. The applicants say that the respondents misrepresented the motorhome's condition. They allege various problems, such as mould in the bathroom and rot in the walls. However, I find that the applicants accepted the risk of flaws by agreeing to purchase the decades-old vehicle without an inspection. Even if the parties had agreed the sale was contingent on an inspection, I find that the alleged flaws were visible or had been sufficiently identified to the applicants by the time of the initial in-person viewing. Yet the applicants expressed no concerns at that time, including about moisture and ceiling panel softness issues, and they completed the purchase. Further, Ms. Burnstad wrote in her text messages, "If the engine runs that's all I care about," and no engine issues are alleged. I also find the applicants did not directly dispute the \$1,500 cash receipt provided by the respondents, which said the vehicle was "sold as is". I find the respondents did not misrepresent the motorhome's condition and are not responsible for any pre-purchase defects.

18. The “buyer beware” principle is limited by section 18(c) of the *Sale Of Goods Act* (SGA). It says that goods sold must be durable for a reasonable period with normal use, considering the sale’s circumstances. The applicants do not say that the motorhome broke down or developed further problems due to a lack of durability, but say that alleged wall rot has made the motorhome fragile and dangerous to use.
19. First, I found above that the applicants were alerted to potential moisture and panel issues before paying for the motorhome, and that they accepted those flaws and any risks they presented. Second, even if alleged structural issues were not known and accepted by the applicants, I find that proving such defects and whether they affect the vehicle’s durability is a subject outside of ordinary knowledge that requires expert evidence to prove.
20. The applicants submitted a June 15, 2020 letter from Taylor Restoration Services (TRS) that addressed moisture and panel softness issues and said that the vehicle should not be driven on the road. However, the author’s qualifications are not stated as required by the CRT rules about expert evidence. Further, the respondents later asked TRS if it repaired motorhomes and trailers, and TRS responded, “We are not experts in RV’s and mobile homes”. I find the TRS letter is not expert evidence and I give it no weight. So, I find there is no expert evidence before me, and that any structural and safety issues are unproven. In any event, I find that the motorhome was 39 years old, was visibly well-used, and that moisture issues and panel softness issues were known to the applicants at the time they purchased it for \$4,500.
21. I also find that the “as is” condition of sale printed on the \$1,500 cash receipt is inconsistent with the SGA section 18(c) durability warranty, so section 18(e) likely removes that warranty. Regardless, even if that was not the case, I find the applicants have failed to prove that the motorhome was not reasonably durable given its age and known condition at the time it was purchased.

22. So, I find that the applicants are not entitled to any refund or damages for the motorhome. As discussed further below, I find that the applicants abandoned the motorhome, which they say is structurally unsound, unsafe to drive, and unsellable. As a result, I find that the applicants place no value on the abandoned motorhome. So, I make no order about its return to, or retrieval by, the applicants.

***Are Ms. Burnstad and Mr. Long responsible for towing and storage fees?***

23. The applicants say that they arranged to leave the motorhome on a person's property, but I find this is unsupported on the evidence. Given parking tickets and related photos in evidence, I find that the applicants abandoned the motorhome at the side of a road several days after they purchased it. The vehicle was then ticketed for not displaying a valid licence plate and was towed to an impound lot.

24. The respondents say that fees for parking tickets, towing, and storage were charged to them because they incorrectly remained registered as the vehicle's owners. They say the ticket fees were waived, but they were charged for towing and storage. The respondents say that storage fees continued to accumulate, and their lawyer said a lien might be put on their house to collect those fees. So, to avoid further fees and possible collections activities, they decided to pay to retrieve the motorhome and store it in their driveway until the applicants could collect it.

25. I found above that the applicants are the motorhome's owners. I find that the respondents were only charged fees for towing and storage because the applicants chose not to register the ownership transfer as required under the MVA. So, I find the applicants are responsible for towing and storage fees.

26. Turning to the amounts of those fees, the respondents submitted an invoice and a credit card receipt showing they paid \$210.02 for the motorhome towing fee on July 7, 2020. I find the applicants owe the respondents \$210.02 for towing.

27. A June 30, 2020 letter from Clover Towing (CT) said that Mr. McBride owed them \$472.52 for storage fees, which continued to accumulate at \$25 per day. CT said that if it did not hear from Mr. McBride, it would dispose of the vehicle by July 24, 2020



and begin collections activities. Although the respondents submitted no storage payment receipt, on balance I find that they likely had to pay the accumulated storage fees before CT released the motorhome and agreed not to send the bill to collections. So, I find the applicants owe \$472.52 for storage fees CT charged to the respondents.

28. The respondents claim \$25 per day for storing the applicants' motorhome in their driveway since they picked it up. They say it has been inconvenient and has prevented them from parking a trailer there, which they planned to purchase as a motorhome replacement. I find the applicants did not agree to pay the respondents for storage. However, I find that it was reasonable to store the motorhome while awaiting my decision, which also prevented it from being disposed of by CT and stopped storage fees from accumulating. I also find it was an implied term of the purchase that the applicants would register the change in motorhome ownership. I find the applicants broke this term when they refused to register their ownership, which resulted in reasonably foreseeable inconvenience to the respondents, likely including reducing their available parking and delaying their intended trailer purchase (see *Wharton v. Tom Harris Chevrolet Oldsmobile Cadillac Ltd.*, 2002 BCCA 78 at paragraphs 48 and 55). On a judgment basis, I find that the applicants owe the respondents \$100 for the inconvenience of storing the applicants' motorhome on their property until the December 10, 2020 date of their counterclaim.

29. I allow the respondents' claim, for \$782.54 for towing, storage, and inconvenience.

## **CRT FEES, EXPENSES, AND INTEREST**

30. Under the *Court Order Interest Act*, the respondents are entitled to pre-judgment interest on the \$782.54 owing. I find pre-judgment interest is calculated from July 7, 2020, the date the respondents paid the towing fee and picked up the motorhome, to the date of this decision. This equals \$2.98.

31. 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. The applicants were unsuccessful in their claim, but the

respondents paid no CRT fees for that claim. I find the respondents were largely successful in their counterclaim, so they are entitled to reimbursement of the \$125 they paid in CRT fees for the counterclaim. Neither party claimed CRT dispute-related expenses.

## **ORDERS**

32. Within 30 days of the date of this order, I order Ms. Burnstad and Mr. Long to pay Mr. McBride and Ms. McBride a total of \$910.52, broken down as follows:
  - a. \$782.54 in for towing, storage, and inconvenience,
  - b. \$2.98 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$125 in CRT fees.
33. Mr. McBride and Ms. McBride are entitled to post-judgment interest, as applicable. I dismiss the applicants' claims.
34. Under section 48 of the CRTA, the CRT will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the CRT's final decision. The Province of British Columbia has enacted a provision under the *COVID-19 Related Measures Act* which says that statutory decision makers, like the CRT, may waive, extend, or suspend mandatory time periods. This provision is expected to be in effect until 90 days after the state of emergency declared on March 18, 2020 ends, but the Province may shorten or extend the 90-day timeline at any time. A party should contact the CRT as soon as possible if they want to ask the CRT to consider waiving, suspending, or extending the mandatory time to file a notice of objection to a small claims dispute.

35. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

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Chad McCarthy, Tribunal Member