



# Civil Resolution Tribunal

Date Issued: May 14, 2021

File: SC-2020-007676

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Bourke v. Holbek*, 2021 BCCRT 515

**B E T W E E N :**

PATRICK BOURKE

**APPLICANT**

**A N D :**

ERIK HOLBEK

**RESPONDENT**

---

## **REASONS FOR DECISION**

---

Tribunal Member:

David Jiang

## **INTRODUCTION**

1. This dispute is about the private sale of a used mountain bike. The applicant, Patrick Bourke, purchased the bike from the respondent, Erik Holbek. Mr. Bourke says Mr. Holbek misrepresented the bike's condition. Alternatively, he says Mr. Holbek failed to disclose latent or hidden defects. Mr. Bourke claims \$1,576.41 as reimbursement

for repairs and replacement parts. This is slightly less than his initial claim for \$1,609.23.

2. Mr. Holbek disagrees. He says he sold the bike with reasonable wear on it. He submits he regularly serviced the bike at a local bike shop. He says it did not require repairs when he sold it.
3. The parties are self-represented.
4. For the reasons that follow, I dismiss Mr. Bourke'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. 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 in the interests of justice.
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. Holbek breach the implied warranty of durability under section 18(c) of the *Sale of Goods Act*?
  - b. Did Mr. Holbek misrepresent the bike's condition?
  - c. Did Mr. Holbek fail to disclose any latent defects in the bike?

## **EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, Mr. Bourke as the applicant must prove his 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. The background facts are undisputed. In June 2020, Mr. Holbek advertised his used 2018 Transition Smuggler mountain bike for sale online. The ad said the bike was a "stock bike" in good condition, regularly serviced and "ready to ride". The price was \$3,900.
12. Mr. Bourke exchanged electronic messages with Mr. Holbek in late June 2020. Mr. Holbek confirmed the bike was "stock". The parties agree this meant it was composed of original equipment manufacturer parts. Mr. Bourke wrote the following:

Other than the tires which I replaced with 2.4" Minions. They have 80% left. There's no damage. The rear triangle had a hairline crack near the bottom bracket that was warrantied this spring. All the suspension bearings were changed at that time too. I bent the rear derailleur at some point (not sure how)

and replaced that this year too. The suspension (front and rear) has been serviced regularly...it didn't get ridden that much in 2019...

13. The parties negotiated and at the end of June 2020, Mr. Bourke agreed to buy the bike for \$3,600 and pay for shipping from BC to Quebec. He paid in full in July 2020. Mr. Bourke did not inspect the bike prior to purchase or have a third party inspect it. The bike arrived on July 16, 2020.
14. Mr. Bourke says the bike arrived dirty, which I do not find proven by evidence. He had it inspected on August 1, 2020 by a company, Bosk Vélo Café (BVC). Mr. Bourke says BVC's report, written in French, says that all the pivot bearings needed replacement and the fork and seat post needed to be rebuilt. The parties do not dispute this translation. BVC quoted \$617.30 for this work, which Mr. Bourke claims for. He also claims \$251.99 for a new fork, shown in an invoice. The fork manufacturer wrote in a document that the fork bushings needed to be replaced, there was a minor oil leak and dirty oil present, and service was past due. Bushings are ring-like components.
15. Mr. Bourke also claims the following, which are not supported by any documents: \$54 for shipping repair items, \$210 for rear shock maintenance, \$322.48 for a new cassette, \$51.04 for a new chain, and \$69.60 for "BB". A cassette is the cluster of sprockets on the bike's rear hub. I infer BB refers to a bottom bracket.
16. On August 4, 2020, Mr. Bourke texted Mr. Holbek to pay for repairs he deemed necessary. The parties were unable to agree on an amount of compensation.

***Issue #1. Did Mr. Holbek breach the implied warranty of durability under section 18(c) of the Sale of Goods Act?***

17. 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.

18. In general, sales of used vehicles are governed by the principle of “buyer beware”. I find this equally applies to the sale of a used bike. The implied warranty of SGA section 18(c) is an exception to this rule.
19. In *Sugiyama v. Pilsen*, 2006 BCPC 265 at paragraph 45, the BC Provincial Court applied the implied warranty of durability in the context of a used car sale. The court noted that the seller is not a guarantor of the car’s future performance. The buyer knows that some problems will inevitably occur, and the greater the age and mileage of the car, the more likely it is that something will break down. The court also outlined factors affecting the extent of any implied warranty for a used car. These include age, mileage, price, the prior and intended use of the vehicle, and the reason for the breakdown. The court found that an older car with high mileage was durable for a reasonable period of time if it was roadworthy and could be safely driven when purchased.
20. In *Sutherland* the CRT member applied the principles from *Sugiyama* to the sale of a used bike and I adopt the same approach here. Based on its price, I find that the bike was a higher-end model. It was 2 years old at the time of sale. As noted in the online ad, the bike’s tires had already been replaced and some repair work had taken place. The bike was also “stock”. I find from this that a reasonable person would conclude from the ad that the bike had high mileage despite its relatively young age. I find that to be reasonably durable in these circumstances, the bike had to be roadworthy, but some repairs would be expected.
21. In this dispute there is no indication the bike was not roadworthy when purchased. The evidence indicates the bike needed some repairs but none of the reports or invoices say the bike was unsafe or at imminent risk of breakdown.
22. In reaching that conclusion, I also place significant weight on a December 3, 2020 letter from SM, a manager at the bike shop Dodge City Cycles (DCC). SM wrote Mr. Holbek purchased the bike new from DCC and it was “meticulously maintained by Mr. Holbek through our store”. SM wrote that DCC performed regular maintenance, including fork and shock service in March 2020, before the sale. SM also says DCC

performed a pre-sale inspection and talked to Mr. Bourke over the phone. SM also wrote that \$3,600 was a “very fair price” for the bike.

23. Mr. Bourke denies ever speaking to SM or DCC and produced phone records for July and early August 2020. On balance, I find Mr. Bourke is correct on this issue. However, I do not find this means DCC was mistaken about its maintenance on the bike, which occurred over multiple sessions. I find Mr. Holbek has proven that he regularly maintained the bike through DCC. I am satisfied the bike was durable for a reasonable period of time.

***Issue #2. Did Mr. Holbek misrepresent the bike’s condition?***

24. To show negligent misrepresentation, Mr. Bourke must establish the following: 1) there must be a duty of care, 2) the representation must be untrue, inaccurate, or misleading, 3) Mr. Holbek must have breached the standard of care in making the misrepresentation, 4) Mr. Bourke must have reasonably relied on the misrepresentation, and 5) the reliance resulted in damages.
25. The applicable standard of care in a used car sale is to take “reasonable care” to not mislead the buyer about the vehicle’s condition: *Daniel v. Watkinson*, 2019 BCPC 319 at paragraph 57. I find the same standard applies to the bike sale.
26. To show fraudulent misrepresentation, Mr. Bourke must establish the following: 1) Mr. Holbek made a representation of fact to Mr. Bourke, 2) the representation was false, 3) Mr. Holbek knew that the representation was false or was reckless about whether it was true or false, 4) Mr. Holbek intended for Mr. Bourke act on the representation, and 5) Mr. Bourke was induced to enter into the contract in reliance upon the false representation and suffered a detriment.
27. Mr. Bourke says Mr. Holbek misrepresented the bike through the online ad, quoted earlier. He also says Mr. Holbek said the bike did not require any repairs or maintenance and was in “top working condition”. Mr. Holbek does not dispute saying these comments. Mr. Bourke acknowledges that on a used bike, some wear is expected, but “the maintenance should be up to date”.

28. I find that Mr. Holbek took reasonable care in the circumstances. As noted above, Mr. Holbek relied upon DCC to carry out regular maintenance. Mr. Holbek also had DCC inspect the bike shortly before the sale. I find Mr. Holbek acted reasonably based on the information he had from DCC. For the same reasons, I am not satisfied that Mr. Holbek knew his statements were false or was reckless about whether they were true or false. I find it likely he believed the maintenance was up to date, given DCC's comments. Given the above, I find Mr. Holbek did not negligently or fraudulently misrepresent the bike.

***Issue #3. Did Mr. Holbek fail to disclose any latent defects in the bike?***

29. Mr. Bourke says this is a “case of latent defect covered by legal warranty of quality”. Mr. Bourke did not explicitly say which defects were latent, so I find from his submissions the alleged latent defects are the various issues and repairs identified above.

30. In law, defects can be either patent or latent. Patent defects can be discovered through inspection and ordinary vigilance. In contrast, latent defects cannot be revealed by any inquiry which a buyer is in a position to make before entering the contract.

31. There are a considerable number of cases that state that in the sale of land, a seller must disclose a known latent defect to prospective buyers that would render a property dangerous or unfit for habitation. See *Nixon v. MacIver*, 2016 BCCA 8 at paragraph 34 and *Cardwell et al v. Perthen et al*, 2006 BCSC 333, aff'd 2007 BCCA 313 at paragraph 127. There are fewer cases that consider any obligation to disclose latent defects in the sale of used goods.

32. In the non-binding decision of *Sutherland v. Ramsey*, 2021 BCCRT 363 at paragraph 13, a CRT member held that the legal concept of material latent defects applied to the sale of land, but not goods, including a used bicycle. In *Connors v. McMillan*, 2020 BCPC 230, the BC Provincial Court considered the sale of a used motorhome that was sold “as is”. The court found there was mould behind its walls that was a latent

defect. The court concluded the seller was unaware of the mould and so not liable for it.

33. Ultimately, I do not find it necessary to decide whether the legal concept of material latent defects applies in this dispute. I have already found that Mr. Holbek relied on DCC to perform maintenance and did not misrepresent the bike's condition. I find there is no evidence that Mr. Holbek knew of any latent defects and failed to disclose them. I am not satisfied Mr. Holbek had any obligation to disclose latent defects he was not aware of. Aside from the implied warranty of durability and the representations considered above, this was a situation of "buyer beware".
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. Holbek is the successful party but did not pay CRT fees or claim expenses. As Mr. Bourke was unsuccessful, I dismiss Mr. Bourke's claim for reimbursement of paid CRT fees.

## **ORDER**

35. I dismiss Mr. Bourke's claims and this dispute.

---

David Jiang, Tribunal Member