Civil Resolution Tribunal

Date Issued: May 14, 2021

File: SC-2020-008723

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Pantlin v. Plotnikoff*, 2021 BCCRT 516

B E T W E E N :

RYAN PANTLIN

APPLICANT

A N D :

LUKE PLOTNIKOFF

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Sherelle Goodwin

INTRODUCTION

1. This dispute is about a private used vehicle sale.

2. The applicant, Ryan Pantlin, purchased a 2005 GMC Sierra from the respondent, Luke Plotnikoff on October 8, 2020 for $11,000. Mr. Pantlin says the vehicle's transmission coolant line failed and that the resulting fluid loss damaged the vehicle's

transmission 3 days after purchase. Mr. Pantlin says Mr. Plotnikoff misrepresented the vehicle as being in good mechanical condition. Mr. Pantlin claims $3,002 for repair costs plus $339.57 in towing costs.

3. Mr. Plotnikoff denies misrepresenting the vehicle's condition and says he was unaware of any transmission or coolant line issues. He says Mr. Pantlin failed to have the car inspected by a mechanic, to his own detriment. Mr. Plotnikoff asks that the claim be dismissed.

4. Both parties are 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). 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. In some respects, this dispute amounts to a "he said, he said" scenario. Credibility of witnesses, particularly where there is conflict, cannot be determined solely by the test of personal demeanour in a courtroom or tribunal proceeding. In *Yas v. Pope,* 2018 BCSC 282, at paragraphs 32 to 38, the court recognized that oral hearings are not necessarily required where credibility is in issue. Further, bearing in mind the tribunal's mandate, which includes proportionality and a speedy resolution of disputes, I find that I am properly able to assess and weigh the evidence before me without an oral hearing.

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.

9. Mr. Pantlin submitted an October 11, 2020 towing receipt as late evidence. He says he originally uploaded the receipt at the correct time, but it was accidentally deleted by CRT staff when they deleted multiple extra copies of other evidence Mr. Pantlin had inadvertently uploaded. Based on copies of emails between Mr. Pantlin and the CRT staff, I accept Mr. Pantlin's explanation. I find Mr. Pantlin originally submitted the towing receipt in the required time period. Further, the late submitted copy of the towing receipt was provided to Mr. Plotnokiff, who had the opportunity to review it and provide any submissions. So, I find Mr. Plotnokiff was not prejudiced by the late evidence. I accept the late evidence and will consider it below.

ISSUE

10. The issue in this dispute is whether Mr. Plotnikoff misrepresented the vehicle's condition or breached an implied warranty of durability and, if so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

11. In a civil claim like this one Mr. Pantlin must prove his claims on a balance of probabilities because he is the applicant. I have weighed all the evidence submitted and reviewed both parties' submissions but only refer to the evidence necessary to explain and provide context to my decision.

12. It is undisputed that Mr. Plotnokiff advertised his vehicle for sale for $11,000, although neither party submitted a copy of the advertisement as evidence.

13. On October 7, 2020 Mr. Pantlin and his brother met with Mr. Plotnokiff to view the vehicle. Mr. Pantlin test drove the car. Mr. Plotnikoff told Mr. Pantlin he had other people interested in the vehicle. Mr. Pantlin paid Mr. Plotnikoff a $500 deposit to hold the vehicle until the following day. On October 8, 2020, Mr. Pantlin paid Mr. Plotnikoff an additional $3,000 in cash plus a $7,500 bank draft, for a total purchase price of $11,000. Mr. Pantlin registered and insured the vehicle in his name that day and took possession of it. None of this is disputed.

14. Mr. Pantlin says that on October 11, 2020 he was driving the vehicle, with his mother, when it "became undrivable". He says he observed a large pool of transmission fluid under the vehicle and called a tow truck. Mr. Pantlin's mother provided a written and signed statement saying she was in the car when it broke down on the day after Mr. Pantlin purchased it. Mr. Pantlin's mother did not specify the date of the breakdown, or what date she believed Mr. Pantlin bought the vehicle. So, I find nothing turns on this statement. Based on the tow truck receipt and Mr. Pantlin's submissions, I find the vehicle broke down on October 11, 2020, 3 days after Mr. Pantlin bought it.

Misrepresentation

15. The principle of "buyer beware" generally applies to private purchases of used vehicles (see *Cheema v. Mario Motors Ltd*., 2003 BCPC 416). It means that the buyer assumes the risk that the purchased vehicle might be either defective or unsuitable to their needs (see Conners *v. McMillan*, 2020 BCPC 230, citing *Rushak v. Henneken* [1986] B.C.J. No. 3072 (BCSC) affirmed 1991 CanLII 178 (BCCA)). In *Conners*, citing *Floorco Flooring Inc. v. Blackwell*, [2014] B.C.J. No. 2632, the court concluded that there is no common law 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.

16. The parties agree that Mr. Pantlin said he wanted to have the vehicle inspected by a mechanic. Mr. Pantlin says Mr. Plotnikoff refused to allow the inspection, which Mr. Plotnikoff denies. I find nothing turns on whether Mr. Plotnikoff agreed to allow Mr. Pantlin to take the vehicle for an inspection or not. It is undisputed that Mr. Pantlin did not, ultimately, have the vehicle inspected. Mr. Pantlin was not obliged to purchase the vehicle. I find he chose not to have an inspection, and so assumed the risk that the vehicle might be defective.

17. Mr. Pantlin says Mr. Plotnikoff misrepresented the vehicle as being in "good running condition with no mechanical issues", other than requiring new front brakes. Mr. Pantlin says the vehicle was not in good running condition and that the transmission coolant line had been incorrectly repaired just prior to the sale.

18. 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).

19. Mr. Plotnikoff denies misrepresenting the vehicle's condition and says he believed the vehicle was in good shape. He acknowledges disclosing the needed brake repairs to Mr. Pantlin, and says he also disclosed that the air conditioning would need recharging and the dashboards were dim and might need replacing. Since Mr. Pantlin does not dispute these statements, I accept them as true.

20. Mr. Pantlin says his mechanic (PC) inspected the vehicle on October 13, 2020 and told Mr. Pantlin that the transmission coolant line had been improperly repaired 1 to 2 weeks earlier, resulting in the line coming out of the radiator, leaking fluid and causing damage to the transmission. Mr. Pantlin provided an October 23, 2020 automotive invoice with PC's name on it and handwritten notes which, I infer, were

written by PC. The handwritten notes say that the radiator clip was missing and that the radiator cover was pushed over the fitting, hiding that it was previously broken. The notes do not indicate how long the fitting had been broken or if and when it had previously been repaired.

21. The invoice does not set out PC's experience or qualifications as a mechanic and Mr. Pantlin has not submitted any evidence on this issue. I cannot accept the October 23, 2020 invoice as expert evidence under the CRT rules because it does not set out PC's qualifications or confirm that the handwritten notes are from PC. Even if I had accepted the handwritten notes as expert evidence, I find they do not support Mr. Pantlin's argument that the transmission fluid line was repaired shortly before Mr. Plotnikoff sold Mr. Pantlin the vehicle. I place no weight on Mr. Pantlin's recollection of his October 13, 2020 conversation with PC, because it is second-hand information which is not supported by the invoice or the notes.

22. Mr. Pantlin says he relied on Mr. Plotnikoff's statement because Mr. Plotnikoff claimed to have a mechanical background and said he personally changed the vehicle's oil every 5,000 km. I infer Mr. Pantlin argues that Mr. Plotnikoff either attempted to repair the coolant line or radiator himself, or should have known it was broken, due to his alleged mechanical background. Mr. Plotnikoff agrees that he changed the oil himself, but denies saying he was a mechanic, or had any mechanical background.

23. Mr. Pantlin submitted a March 14, 2021 signed statement from his brother saying that "the information stated by Ryan Pantlin in his tribunal case…" was true. Mr. Pantlin's brother did not say which information he was referring to or whether he had read Mr. Pantlin's dispute submissions. Without knowing precisely what information the brother refers to, I place no weight on his blanket statement confirming all of Mr. Pantlin's information was true.

24. Mr. Plotnikoff denies repairing the transmission or the engine, or having a mechanic do that work. He expressly denies attempting to repair the coolant line or radiator. Mr. Plotnikoff says he never took the vehicle to a mechanic after he purchased it in April 2020. This is consistent with Mr. Pantlin's recollection of their October 11, 2020

conversation. I disagree with Mr. Pantlin that because Mr. Plotnikoff did not take the vehicle to a mechanic, he must have done mechanical work on it himself, given that Mr. Plotnikoff only owned the vehicle for approximately 6 months. I disagree with Mr. Pantlin that Mr. Plotnikoff must have done other mechanical work on the vehicle, because he changed the oil.

25. It is undisputed that Mr. Plotnikoff used the vehicle to drive 60 km to work and back daily. The parties agree that Mr. Pantlin test drove the vehicle with Mr. Plotnikoff on October 11, 2020 without any concerns. I find it less likely that Mr. Plotnikoff would continue to drive the vehicle, or take a potential purchaser for a test drive, if he believed there was a transmission, radiator, or engine problem.

26. On balance, I find Mr. Pantlin has failed to show that Mr. Plotnikoff knew, or should have known, of any radiator, coolant hose, or transmission issues when he sold the vehicle to Mr. Pantlin. I further find that Mr. Plotnikoff did not misrepresent the vehicle by saying it was generally in good working condition, but for the disclosed issues.

Implied Warranty of Reasonable Durability

27. While Mr. Pantlin did not expressly argue breach of durability warranty, I find his emphasis on the timing of the car's breakdown amounts to an argument the car was not durable. So, I have considered the implied warranty of durability set out in section 18(c) 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).

28. 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.

29. 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 in this dispute. Even if the radiator had been previously repaired, and the clip was missing, as explained by PC, that is not determinative of the car's durability when it was sold, given the case law discussed above.

30. In this dispute, the vehicle was approximately 15 years old at the time of sale. I accept Mr. Plotnikoff's undisputed statement that the vehicle had approximately 205,000 km on the odometer at the time of sale. As noted, I accept that Mr. Plotnikoff disclosed the mechanical issues he was aware of, including squeaking brakes, inefficient air conditioning, and dim dashboard lights. I find Mr. Pantlin was, or should have been, aware that he was purchasing an older vehicle, without an inspection, and that it could break down after the sale. On balance, I find the car was reasonably durable at the time of sale, even though it broke down 3 days later. So, I find there was no breach of warranty under the SGA.

31. I find Mr. Pantlin has failed to prove that Mr. Plotnikoff misrepresented the condition of the vehicle at the time of sale or breached any implied warranty of durability. So, I dismiss his claims.

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. As Mr. Pantlin was unsuccessful, I dismiss his claim for CRT fees. As the successful party, Mr. Plotnikoff paid no CRT fees and claimed no dispute-related expenses.

ORDER

33. I dismiss Mr. Pantlin's claims and this dispute.

Sherelle Goodwin, Tribunal Member