



Civil Resolution Tribunal

Date Issued: June 21, 2020

File: SC-2020-009506

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Siemens v. Belmont Collision (1975) Ltd.*, 2021 BCCRT 678

BETWEEN:

CHRISTIAN SIEMENS

APPLICANT

AND:

BELMONT COLLISION (1975) LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. The applicant, Christian Siemens, hired the respondent, Belmont Collision (1975) Ltd. (Belmont), to inspect a vehicle Mr. Siemens was considering purchasing.

2. Mr. Siemens says he purchased the vehicle relying on Belmont's inspection report. He says the inspection report failed to note a loud engine knock or that the engine would soon need replacing. He seeks \$5,000 for the cost of replacing the engine.
3. Belmont says the inspection, priced at \$152.99, was cursory and did not involve an in-depth inspection of the engine. Belmont says it was not negligent in conducting the inspection and communicating the results. It also says the engine noise would have been readily apparent to Mr. Siemens, and any claim for damages should be against the seller, not Belmont. Belmont says the claim should be dismissed
4. The applicant is self-represented. Belmont is represented by an employee or principal.

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.

ISSUE

9. The issue in this dispute is whether Belmont's vehicle inspection was negligent or breached the parties' contract, and if so, what remedy is appropriate.

EVIDENCE AND ANALYSIS

10. As the applicant in this civil dispute, Mr. Siemens must prove his claim on a balance of probabilities. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision.
11. On May 20, 2020, Mr. Siemens hired Belmont to conduct a pre-purchase inspection on a 2011 Chevy Silverado (truck) for \$152.99. The truck's former owner (seller) dropped off and picked up the truck. The truck's odometer read 172,158 km. None of this is disputed.
12. Belmont conducted the pre-purchase inspection and provided a written vehicle inspection report. The report was a 1-page checklist listing various vehicle components with checkboxes for "checked and ok", "may require attention", or "requires immediate attention". Each truck component was marked checked and ok except 4 components that required immediate attention: the exterior body, the wipers, the driver's side door handle, and the battery connection. The comments section elaborated on the battery connection issue. It also noted the engine light was on.
13. Mr. Siemens says he bought the truck exclusively because of the inspection report. He says Belmont negligently failed to note the "excessively loud engine knock" or advise that the truck's engine would soon require replacing.

14. The parties disagree about whether a loud engine knock was present at the time of the inspection. Belmont says its inspector did not detect a loud engine knock but only an intermittent and minor engine noise during the road test. Mr. Siemens does not say when he discovered the knock. I find it is not necessary to determine how loud the engine noise was during the inspection. This is because I find, for the reasons that follow, that Belmont was not negligent even if the loud knock was present during the inspection.
15. The elements of a negligence claim that Mr. Siemens must establish are:
 - a. Belmont owed him a duty of care,
 - b. Belmont failed to meet the applicable standard of care,
 - c. Belmont's failure caused him harm, and
 - d. The harm was reasonably foreseeable.
16. It is undisputed that Belmont was aware that Mr. Siemens intended to rely on the pre-purchase inspection in making his decision to purchase the truck. In the circumstances, I find Belmont owed Mr. Siemens a duty of care.
17. In claims of professional negligence, it is generally necessary for the applicant to prove a breach of the applicable standard of care with expert evidence. (see *Bergen v. Guliker*, 2015 BCCA 283). This is because a particular industry's standards are often outside of an ordinary person's knowledge. Mr. Siemens did not provide expert evidence, such as evidence from another qualified vehicle inspector, about whether the engine knock should have been discovered in a pre-purchase inspection, and what should have been noted on the inspection report.
18. Examining the inspection report form, I find it supports Belmont's position that this was a cursory inspection of the components listed on the checklist and not a detailed assessment of the vehicle's engine. I say this because there is no indication in the written report that Belmont checked the engine's condition at all. The only engine-related item on the checklist is "engine oil".

19. Mr. Siemens says Belmont should have noted the engine noise issue in the “other” checkbox under the “underhood” section. While I accept that Belmont could have done this, I find the fact that there is no “engine” item or section should have indicated to Mr. Siemens that Belmont did not inspect the engine. Also, under the notes section, the inspection report said that the engine light was on. I infer that this means the dashboard’s warning to check the engine was illuminated. I find this note indicated an undiagnosed issue with the engine. I find that a reasonable person in Mr. Siemens’ position would have made further inquiries about the engine’s condition upon seeing the note or upon seeing the check engine light on. There is no evidence that Mr. Siemens followed up about the check engine light before the purchase.
20. Belmont says its technician advised the truck’s seller, who picked up the truck, about the engine noise. It says the technician mistook the seller for Mr. Siemens. I find nothing turns on this because Belmont took further steps to discuss the inspection with Mr. Siemens. Specifically, Mr. Siemens does not dispute Belmont’s evidence that its manager called him and left a message asking him to call back to discuss the inspection, but Mr. Siemens did not call back. I find Belmont likely would have advised Mr. Siemens about any engine noise if Mr. Siemens returned its call.
21. Turning to causation, I find that Mr. Siemens failed to prove that he incurred any loss. I say this because Mr. Siemens does not provide any independent confirmation of the truck’s engine issues or the need for replacement. Mr. Siemens says his mechanic advised him to begin looking to repair or replace the engine. This is hearsay evidence because there is no statement from the mechanic. While hearsay evidence can be admissible in CRT proceedings, I find the question of the engine’s condition and the effect of the engine’s condition on the value of the truck is central to this dispute. So, I put no weight on Mr. Siemen’s hearsay evidence about the engine.
22. Mr. Siemens also provides no documentation of the truck’s purchase, and no evidence about the cost of replacing the engine. Parties are advised in the CRT process of the importance of providing evidence to support their claims. I find Mr.

Siemens has not proved the essential elements of his negligence claim, including evidence establishing the amount of the claimed damages.

23. As for Mr. Siemens' potential breach of contract claim, it is undisputed that Belmont refunded the \$152.99 inspection cost. Mr. Siemens argues that the refund is evidence of fault. He places particular emphasis on the undisputed evidence that a Belmont representative apologized, and the refund cheque memo line stated, "refund customer as mech messed up." I accept Belmont's explanation that it issued the refund as a courtesy. Refunds are not admissions of liability, as there may be business and goodwill reasons for issuing refunds. As well, the *Apology Act* states that an apology is not an admission of fault or liability.
24. Under section 49 of the CRTA and CRT rules, a successful party is generally entitled to recover their CRT fees and reasonable dispute-related expenses. Belmont was successful but did not pay fees or claim expenses. I dismiss Mr. Siemens' claim for reimbursement of CRT fees.

ORDER

25. I dismiss Mr. Siemens' claims and this dispute.

Micah Carmody, Tribunal Member