



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Newton-Evers v. Fraser City Motors Ltd. dba Langley Chrysler Dodge Jeep*,
2021 BCCRT 798

B E T W E E N :

HEVAN NEWTON-EVERS and LANCE JOHNSON

APPLICANTS

A N D :

FRASER CITY MOTORS LTD. dba LANGLEY CHRYSLER DODGE
JEEP

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This dispute is about a used vehicle. The applicants, Hevan Newton-Evers and Lance Johnson, say the respondent, Fraser City Motors Ltd. dba Chrysler Dodge Jeep sold them a “faulty car”. The applicants say the vehicle’s transmission failed five months

after purchase. The applicants say the \$9,000 transmission repair should have been covered under warranty. The applicants also claim that the respondent forged Ms. Newton-Evers signature five times to “further benefit them financially” and “lock us into paying off this repair”. The applicants have limited their claim to \$5,000 for the transmission repair costs, to remain within the Civil Resolution Tribunal’s (CRT) small claims jurisdiction.

2. The respondent denies selling the applicants a faulty car. The respondent says the vehicle was used, the complimentary drivetrain warranty period had expired, and no aftermarket warranty was purchased. The respondent says it contributed \$3,000 to transmission repair costs, loaned the applicants money to pay for a portion of the repair costs, and helped source financing for the remaining repair costs as a goodwill gesture.
3. The applicants are self-represented. The respondent is represented by an employee, AW.

JURISDICTION AND PROCEDURE

4. These are the CRT’s formal written reasons. 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. 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.

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. Whether the respondent sold the applicants a defective vehicle or breached the implied warranties in section 18 of the *Sale of Goods Act (SGA)*,
 - b. Whether the transmission repair is covered under warranty, and
 - c. If yes to either of the above, whether the respondent must pay the applicants the \$5,000 claimed for the transmission repairs.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and argument that I find relevant to provide context for my decision.
10. I note at the outset that neither party provided significant documentary evidence. The applicants' evidence consists of two screen shots of text messages and one screen shot of a portion of a document signed by Ms. Newton-Evers, all of which I find unhelpful. The respondent's evidence consists of a service invoice dated March 16, 2020, a powertrain warranty dated March 15, 2020 and signed by Mr. Johnson, and a CarFax report for a 2014 Ford Escape dated February 23, 2020.

11. It is undisputed that the applicants purchased a vehicle from the respondent. However, neither party provided any documentary evidence of the vehicle purchase itself. I infer from the available evidence that the applicants purchased a 2014 Ford Escape (Escape) from the respondent in March 2020. There is no evidence to show what the applicants paid for the Escape. It is also unclear whether the applicants jointly purchased the Escape.
12. As noted above, the respondent says it contributed \$3,000 to the transmission repair costs as a goodwill gesture. The repair bill is not in evidence. In their submissions, the applicants say the respondent's goodwill contribution is unclear and was not shown on the repair bill. However, the applicants do not dispute that the respondent's contributions were a goodwill gesture. Given that it is undisputed that the repair contributions were a goodwill gesture and not an admission of liability, I find nothing turns on the respondent's goodwill contributions and I will not address them further.

Was the Escape defective or durable for a reasonable period of time?

13. It is undisputed that the respondent is in the business of selling vehicles. So, unlike vehicle sales by private individuals, the transaction between the respondent and the applicants was not "buyer beware". Under section 18 of the SGA, there is an implied warranty that the vehicle was in the condition described, was of saleable quality, and would be durable for a reasonable period of time having regard to the use to which it would normally be put and to all the surrounding circumstances of the sale.
14. Here, I find the parties disagree about whether the vehicle was in satisfactory condition at the time of purchase, whether it was durable for a reasonable period of time after purchase, and whether there was a breach of the implied warranty under section 18 of the SGA. There is no evidence of the vehicle's condition, or a description of the vehicle's condition, at the time of purchase.
15. A used vehicle is considered merchantable if it is in usable, even if not perfect, condition (see *Clayton v. North Shore Driving School et al*, 2017 BCPC 198 at paragraphs 99 – 110).

16. The applicants say the fact that the transmission needed repair about five months after they bought the Escape shows it was not in satisfactory condition or of saleable quality. The applicants also say that the respondent failed to properly inspect the Escape before selling it. The respondent says that it is unfortunate that the transmission failed six months after purchase, but disputes selling the applicants a faulty vehicle. The respondent says that vehicles are made of “nuts, bolts, metal, plastic” and things go wrong.
17. I find that the transmission’s condition when the applicants bought the Escape, and its durability given the length of time and manner in which the Escape was driven are outside ordinary knowledge, and must be answered with expert evidence (see *Bergen v. Guliker*, 2015 BCCA 283). The applicants say that after the transmission failed, they took the Escape to a mechanic who told them that the transmission would have been a problem before they bought it. However, the applicants have not provided any expert or other evidence to support this.
18. As noted above, in a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities. In the circumstances, I find that the applicants have not established that the Escape’s transmission was in unsatisfactory condition at the time of purchase.
19. The next consideration is whether the Escape was durable for a reasonable period of time after the applicants bought it. When assessing this, factors such as the vehicle’s age and mileage, the nature of use before and after purchase, the price paid, the reasons for any defects, and the parties’ expectations as determined by express warranties are considered (see *Sugiyama v. Pilsen*, 2006 BCPC 265).
20. As noted, the parties provided very little documentary evidence in this dispute. There was no documentary evidence of the purchase agreement, or any express warranties in the purchase agreement, other than the powertrain warranty. I find that the presence of a warranty was an acknowledgement by the parties that the vehicle might require repairs in the future. So, the fact that the Escape needed repairs does not lead to the conclusion that it was not reasonably durable.

21. The applicants say the transmission failed approximately 5 months after the Escape was purchased. In *Sugiyama*, the court found that a serious engine failure after 32 days of driving did not mean that the vehicle was not roadworthy or safe to drive when it was sold. I make a similar finding here, in the absence of specific evidence about how long the Escape might reasonably have been expected to last given its make, model, age, and without evidence about how the Escape was maintained or driven in the past. I find that the applicants have not established that the Escape was not durable for a reasonable period of time. Keeping in mind that the applicants bear the burden of proof, I find that there was no breach of the implied warranty in the SGA.

Is the transmission repair covered under warranty?

22. As noted above, the applicants say the transmission repair should be covered under warranty. The only warranty in evidence is the drivetrain warranty dated March 15, 2020. The drivetrain warranty is provided for 3 months or 5,000 kilometers, whichever comes first. It is undisputed that the applicants owned the Escape for approximately five months prior to the transmission repairs. So, I find that the drivetrain warranty had expired when the transmission failed. Accordingly, I find the transmission repairs were not covered under the drivetrain warranty.

The applicants' forgery allegations

23. The applicants also say the respondent forged Ms. Newton-Evers signature five times to benefit themselves financially and lock Ms. Newton-Evers into a loan to pay for the transmission repairs. However, apart from one screen shot of Ms. Newton-Evers name on an unidentifiable document, the applicants did not provide any other documentary evidence in support of this allegation. Here, I find there is no evidence to support the applicants' allegation that the respondent forged Ms. Newton-Evers signature, and I place no weight on it.

Summary, Fees and Expenses

24. Given my conclusions that the respondent did not breach the implied warranty in the SGA, and that the transmission repairs are not covered under the drivetrain warranty, I find that the respondent is not responsible to pay the \$5,000 claimed.
25. 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. As the applicants were unsuccessful, I dismiss the applicants' fee claim. The respondent did not pay any CRT fees or claim any dispute-related expenses, and so I award none.

ORDER

26. I dismiss the applicants' claims and this dispute.

Leah Volkens, Tribunal Member