



Civil Resolution Tribunal

Date Issued: July 30, 2021

File: SC-2021-001692

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Robinson v. King's Auto Sales Ltd.*, 2021 BCCRT 831

B E T W E E N :

MELISSA ROBINSON

APPLICANT

A N D :

KING'S AUTO SALES LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

1. This dispute is about the commercial sale of a used car.
2. On September 19, 2020, the applicant, Melissa Robinson, purchased a 2010 Kia Forte from the respondent car dealership King's Auto Sales Ltd. (King) for \$6,849, plus an extended 2-year warranty.

3. Ms. Robinson says the Kia is a “lemon”. She says after a couple of weeks the engine developed a “ticking” sound. She says after about 5 months the ticking got worse and the Kia needed a complete engine rebuild.
4. Ms. Robinson claims King breached the implied warranty of durability under the *Sale of Goods Act* (SGA). She seeks a refund of \$5,000, which is the small claims monetary limit of the Civil Resolution Tribunal (CRT).
5. King says the Kia had no pre-existing issues at the time of sale. It says the Kia never broke down, the ticking was normal for old engines, and the Kia “could operate this way for many years to come”. King says Ms. Robinson could have repaired the Kia under her extended warranty but she chose not to. King says Ms. Robinson is not entitled to a refund in the circumstances.
6. Ms. Robinson is self-represented. King is represented by its principal or officer.
7. For the reasons that follow, I dismiss Mr. Robinson’s claim.

JURISDICTION AND PROCEDURE

8. These are 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.
9. 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.

10. 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.
11. 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

12. The issues in this dispute are:
 - a. Did King breach an implied warranty under the SGA?
 - b. If so, to what extent is Ms. Robinsons entitled to the claimed \$5,000 refund?

EVIDENCE AND ANALYSIS

13. In this civil proceeding Ms. Robinson, as the applicant, must prove her claims on a balance of probabilities, which means “more likely than not”. 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.

Background

14. As mentioned, Ms. Robinson purchased the 2010 Kia from King on September 19, 2020 for \$6,849. It had 184,601 kilometers on the odometer at the time of sale. Ms. Robinson also purchased a third-party “Lubrico Warranty”.
15. Prior to the sale, King had the Kia inspected by an independent company “Charged Auto Repair” (Charged). Charged’s inspection checklist shows it assessed the Kia and determined it had no issues. The engine was assessed as “OK”. The Kia had no identified defects at the time of sale, which is undisputed.

16. The parties agree that about 2 weeks after the sale, Ms. Robinson brought the Kia back to King because of a ticking sound. The ticking sound is also confirmed by audio-video evidence and witness statements. King suggested the ticking was only “a bit of glazing on a lifter” and normal for old engines.
17. On October 13, 2020, Ms. Robinson had her car inspected by “Island Muffler & Auto Services” (Island). The Island repair order says “Recent purchase client wants a once over noise from engine only in the morning with trans in park. Goes away when shifted out of park. Client describes as a humming noise. Running well otherwise...” (reproduced as written).
18. Island’s October 13, 2020 repair order shows that it performed a “multi point inspection” and assessed the noise was “possibly from A/C clutch operating - normal”. It also mentions a “valve train noise” that was “somewhat normal”. The repair order shows Island replaced the engine valve cover but found no other problems with the Kia’s engine. Ms. Robinson does not say if she repaired the A/C clutch or valve train.
19. According to Ms. Robinson’s February 7, 2021 text message to King, she took the Kia into Budget Brake and Muffler (Budget) to assess the ongoing ticking noise. She texted King that Budget told her the noise was the “timing chain”.
20. Ms. Robinson says Budget later told her the Kia needed an engine replacement and she got an estimate from Budget to replace it under the third-party Lubrico Warranty. It is undisputed that the Lubrico Warranty would have covered up to \$2,500 for an engine rebuild.
21. Ms. Robinson provided an April 15, 2021 estimate by Budget to replace the “Engine Block Assembly”. It says the estimate is based on a visual inspection. Under the heading “Deferred Service”, Budget estimated \$4,224.16 to “remove and replace components as required to assess and install materials and/or perform needed service, adjustments as required”. I find the estimate does not actually say the engine needed to be rebuilt. Rather, it says Budget needed to perform more work to assess what was required and if it had to rebuild the engine it would cost \$4,224.16 to do so.

22. There is no statement in evidence from Budget diagnosing the ticking noise or stating its opinion about the engine.
23. The parties' texts and emails show that after Ms. Robinson sent King the Budget estimate, King sourced different mechanics who could have performed the work at a lower rate. King offered to cover some of the engine rebuild costs, which it said was a goodwill gesture.
24. Ms. Robinson says she decided not to repair the Kia. According to the submitted texts, the parties discussed a trade-in. King offered different used vehicles on its lot for a straight trade. Ms. Robinson declined. She says she did not want the vehicles King had on offer because they were either older or had mechanical issues.
25. Ms. Robinson says every time she drove her Kia she worried that it would leave her stranded without warning. She says after driving the Kia a total of 5,079 kilometers, she decided to trade it in for "another car that would be safer, more durable and reliable to drive."
26. Ms. Robinson submitted an April 29, 2021 letter from the financial services manager at Jim Pattison Toyota Victoria. The financial manager wrote that they offered a trade-in value of \$500 for the Kia "due to condition issues (the vehicle not reasonably durable or safe)".
27. The letter does not explain the financial manager's mechanical expertise, how they reached their conclusion about the Kia's condition, and it does not identify the "issues". I find the Toyota dealership also had an interest in undervaluing the Kia and there are no other details about the trade-in agreement to assess it. For these reasons, I find the statement is not reliable evidence about the Kia's condition and I have put no weight on it.
28. I turn next to consider Ms. Robinson's argument that she is entitled to a refund under the SGA.

Did King breach an implied warranty under the SGA?

29. There is no dispute that this commercial used car sale was subject to the implied warranties under section 18 of the SGA.
30. SGA section 18(a) implies a condition that the sold goods are reasonably fit for the purpose made known by the purchaser.
31. SGA section 18(b) implies a condition that the goods are of “merchantable” or saleable quality.
32. SGA section 18(c) implies a condition that the goods will be durable for a reasonable period of time having regard to the use to which they would normally be put and to all the surrounding circumstances of the sale.
33. In *Sugiyama v. Pilsen*, 2006 BCPC 265, the BC Provincial Court considered the SGA implied conditions in the context of a used car sale. The court set out a number of factors to consider when assessing whether the implied conditions were met including the age, mileage, price, the vehicle’s use, and the reason for any defective performance or breakdown.
34. In *Sugiyama*, the claimant purchased an 8-year-old car with over 140,000 kilometers on it and no apparent defects. After the claimant drove the car for only 616 kilometers, the engine needed replacement because the valve seats had worn out in the normal course of driving. The court held the car was merchantable and fit for its purpose when it was sold. Even though the car broke down after very little driving, the court still held that the car was durable for a reasonable time.
35. Here the Kia was older, had higher kilometers, was driven further after purchase and unlike in *Sugiyama*, the Kia’s engine never actually broke down. As I explain further below, I find King did not breach the implied warranties under the SGA.

36. At the time of sale, the Kia was independently inspected and had no apparent defects. There is also no expert opinion evidence diagnosing any hidden defect. In all the circumstances, I find the Kia was reasonably fit for its purpose and of merchantable quality when King sold it to Ms. Robinson. I find no breach of SGA sections 18(a) or 18(b).
37. While the Kia started ticking after Ms. Robinson purchased it, the only evidence diagnosing the ticking is Island's October 13, 2020 inspection. As mentioned, Island diagnosed the noises as somewhat normal and did not recommend any engine work.
38. There is no evidence from a qualified mechanic stating that the Kia was not safe or drivable because of the ticking noise or otherwise.
39. Ms. Robinson argues the Kia was not reasonably durable for its price because she had only driven it 1,187 kilometers when she was told the engine needed to be replaced. However, I find Budget's estimate is inconclusive. Also, Ms. Robinson says she drove the Kia over 4,000 kilometers more and the engine never failed. I find Ms. Robinson has not proven the engine was not reasonably durable.
40. Further, Ms. Robinson is not entitled to a refund simply because she was concerned her used Kia might break down in the future. In *Sugiyama*, the court commented that a seller is not a guarantor of a used car's future performance. Anyone buying a used car knows that some problems will inevitably occur. I find the same applies to Ms. Robinson's purchase here. King is not a guarantor of the used Kia's future performance. Its mechanical parts will inevitably wear down with normal use over time.
41. I find Ms. Robinson has not proven that King breached the implied warranties under the SGA and I dismiss Ms. Robinson's refund claim.
42. Given this conclusion, I find no need to discuss Kings' argument that Ms. Robinson could have repaired the Kia under the Lubrico Warranty to mitigate her loss.

43. 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 unsuccessful party, I find Ms. Robinson is not entitled to any reimbursement.

44. King did not pay any CRT fees nor claim any dispute related expenses.

ORDER

45. I dismiss Ms. Robinson's claim and this dispute.

Trisha Apland, Tribunal Member