



Civil Resolution Tribunal

Date Issued: August 4, 2021

File: SC-2020-008401

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Check v. Pacific Coast Yacht Sales Ltd.*, 2021 BCCRT 854

BETWEEN:

DANA CHECK

APPLICANT

AND:

PACIFIC COAST YACHT SALES LTD. and PHILIP CRAGG

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about the sale of a used boat. The applicant, Dana Check, bought an 1802 Trophy Walkaround 2006 boat from the respondent, Pacific Coast Yacht Sales Ltd. (Pacific). The respondent Philip Cragg is Pacific's President.

2. Mr. Check says during a post-purchase inspection it was determined the boat's gearcase was damaged and full of water. While Mr. Check acknowledges the boat was sold "as is", he says Pacific misrepresented the boat's condition. Mr. Check claims \$4,200 for replacement of the damaged boat parts.
3. The respondents say the boat was 14 years old and was sold "as is" and that the buyer was to do their own inspections, which Mr. Check did himself before he bought the boat. The respondents deny any misrepresentation and ask that the claim be dismissed.
4. Mr. Check is self-represented. Mr. Cragg represents the respondents.

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). 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 parties to a dispute that will likely continue after the dispute resolution 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. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find I can fairly hear this dispute based on the submitted evidence and through written submissions.
7. Under section 42 of the CRTA, 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, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.
9. I could not access one of Mr. Check's evidence items and he re-submitted it, which was a copy of a CRT decision he had already mentioned in his submissions as discussed further below. Pacific had an opportunity to comment on this re-submitted evidence item, but in doing so Pacific essentially restated its main arguments. Given this, I did not ask for Mr. Check's reply submissions as I find there was nothing new and because I did not rely on Pacific's later submissions on this evidence item.

ISSUES

10. The issues in this dispute are:
 - a. Is Mr. Cragg personally liable under Mr. Check's contract for the boat's purchase?
 - b. Did Pacific breach any *Sale of Goods Act* warranty or misrepresent the boat?
 - c. To what extent, if any, is Mr. Check entitled to the claimed \$4,200 for boat repairs?

EVIDENCE AND ANALYSIS

11. In a civil claim like this one, as the applicant Mr. Check has the burden of proving his claim, on a balance of probabilities (meaning "more likely than not"). I have only referenced below what I find is necessary to give context to my decision.
12. The background facts are largely undisputed. In July 2020, Pacific advertised the 2006 motorboat for sale online, and in the posting included a link to a "walk around video". Nothing turns on the walk-around video (which Mr. Check submitted separately), since the alleged boat damage is undisputedly not external. More on the advertisement further below.

13. As shown in a 1-page “Purchase Agreement and Deposit Receipt”, at the end of August 2020 Mr. Check agreed to buy the boat from Pacific for \$24,920. The agreement’s stated terms and conditions were listed as “satisfactory engine start”. As set out in a 1-page “Bill of Sale”, Pacific sold the boat to Mr. Check in an “as is where is condition” and Mr. Check acknowledged he had removed the condition of sale and accepted the boat “as is”. I find the agreement and bill of sale comprised Mr. Check’s contract for the boat’s purchase.

Mr. Cragg’s liability

14. Only Pacific is identified as the seller on the agreement, bill of sale, and in the boat’s advertisement. Mr. Cragg is not mentioned, other than he signed the bill of sale as Pacific’s President. At law, officers, directors and employees of corporations are not personally liable unless they committed a wrongful act independent from that of the corporation (*Merit Consultants International Ltd. v. Chandler*, 2014 BCCA 121). There is no such evidence here against Mr. Cragg and no specific allegations against him in his personal capacity. I dismiss Mr. Check’s claims against Mr. Cragg. I turn then to Pacific’s liability.

Sale of Goods Act and Pacific’s alleged misrepresentation

15. There is no dispute that Pacific is in the business of selling boats. Therefore, unlike sales of goods by private individuals, the transaction between Pacific and Mr. Check was not “buyer beware”. Mr. Check says he believed he was buying an “operating unit”. As noted, Mr. Check says the boat’s motor was damaged on inspection right after purchase and so he says its condition was not as advertised.

16. Generally, sections 18(a), (b), and (c) of the *Sale of Goods Act* (SGA) apply to commercial sales like this one. These sections set out an implied warranty that the good was in the condition described, was of saleable quality, and would be reasonably durable considering the use to which it would normally be put and to all the sale’s surrounding circumstances.

17. As noted, Mr. Check admits he bought the boat “as is”. He also admits he started up the engine before purchasing it, but notes he never tried the boat in water until after he bought it.
18. Mr. Check says he towed the boat home after purchase and dropped it off for inspection by a third party to confirm the boat was “water ready”. Mr. Check says the inspection revealed the boat’s motor is damaged and leaking water, and he submitted a close-up video showing the leak. Mr. Check also submitted a screenshot of a text from Jay Morgan with Mid Island Power and Marine, who wrote “when boat came in and we began to do your service we found gearcase full of water as per video I sent you”. Pacific questions whether the video showing the leak is of the motor it sold Mr. Check. On balance, I find the boat Pacific sold Mr. Check had a damaged gearcase.
19. However, I find the “as is” sale condition is inconsistent with the SGA’s durability warranty, and so SGA section 18(e) applies which means that the durability warranty in SGA section 18(c) does not apply to the boat’s sale. In particular, section 18(e) says an express warranty (like sold “as is”) overrides the implied SGA warranties if the express warranty is inconsistent with the SGA. I come to the same conclusion that the implied warranties of fitness for purpose and merchantability (SGA sections 18(a) and (b)) are negated by the “as is” condition of sale.
20. I turn then to misrepresentation and Pacific’s advertisement for the boat. If a seller misrepresents a good’s condition, the buyer may be entitled to compensation for losses arising from that misrepresentation. Mr. Check essentially argues Pacific misrepresented the boat’s condition. Mr. Check says that had he known the boat’s gearcase had the water issue, he would not have bought the boat.
21. A “misrepresentation” is a false statement of fact made during negotiations or in an advertisement that has the effect of inducing a reasonable person to enter into the contract (see *Shaughnessy v. Sidhu*, 2016 BCPC 308). 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 caused the resulting damage: see *Queen v. Cognos Inc.*, [1993] 1 SCR 87 at paragraph 110.

22. A fraudulent misrepresentation occurs when a seller makes a representation of fact, the representation is false, the seller knew it was false or recklessly made it without knowing it was true or false, and the buyer is induced by the false representation to buy the item (see *Ban v. Keleher*, 2017 BCSC 1132 and *Shaughnessy* at paragraph 91).
23. Pacific's ad said the boat was a "go-to fishing boat" that was "ready to go" and that it had "great layouts and design". The ad also noted the boat had been serviced in 2020. As noted, the parties' later contract (agreement and bill of sale) said Mr. Check bought the boat "as is" after removing the satisfactory engine start condition.
24. While Mr. Check argues he was deceived, I find there is no evidence before me that Pacific knew the boat was not "ready to go" or recklessly said that it was. While Mr. Check alleges it is "very clear that this boat was not serviced", Mr. Morgan's text message shows the problem only became evident after he started to service the boat. Mr. Morgan's text does not say the boat could not have been serviced in 2020. So, I find there is no evidence before me that the boat was not serviced at some point in 2020, or that the damage could not have occurred after that service, without Pacific's knowledge, before the August 2020 sale. I find there was no fraudulent misrepresentation.
25. I turn to negligent misrepresentation, which occurs when a seller fails to exercise reasonable care to ensure their representations are accurate and not misleading to the buyer. While Mr. Check argues Pacific misrepresented the number of hours the motor had used, I find there is insufficient evidence of this. So, bearing in mind my conclusion above about the 2020 service, I find the only remaining representation at issue here is that the boat was "ready to go".
26. I note Mr. Check relies on a prior non-binding CRT decision in *Whelan v. Labrecque*, 2020 BCCRT 455. In *Whelan*, the dispute was also over a used boat

sold “as is”. In that case, the tribunal member found that the respondent seller had misrepresented the boat’s condition when he said it had been recently serviced, had a “very strong” motor, and could be used for certain activities.

27. In the case before me, Mr. Check argues he told Pacific he wanted to use the boat for commercial purposes, which Pacific denies. I find there is no supporting evidence this was the boat’s stated purpose, and as noted the boat was sold “as is”. Further, Pacific did not say the boat’s motor was in a particularly good or “strong” condition and at most said the boat was “ready to go”. I find *Whelan* distinguishable on its facts and as noted it is not binding on me in any event.
28. I turn back to whether Pacific’s representation that the boat was ready to go was negligent. While Mr. Check submitted estimates for the gearcase’s replacement, neither Mr. Morgan nor those estimates comment on the leak’s cause or when it arose. They also do not comment on whether Pacific would likely have been aware of the damage at the time of sale. I find Mr. Check has not proven Pacific failed to take reasonable care in representing the boat as being “ready to go”.
29. Even if I had found Pacific was negligent in saying the boat was “ready to go”, I find Mr. Check did not reasonably rely on that representation. I say that because he later agreed to buy the boat “as is where is” and based only on his own personal inspection of starting the engine. In other words, I find Mr. Check ultimately agreed to buy the boat accepting that it may have latent or hidden defects. For these reasons, I find Mr. Check’s claim based on negligent misrepresentation must fail.
30. Given my conclusions above, I find Mr. Check’s claim must be dismissed as he has not proved Pacific breached any warranty or misrepresented the boat. So, I do not need to discuss Mr. Check’s claimed damages in any detail.
31. Under section 49 of the CRTA and the CRT’s rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. Mr. Check was unsuccessful and so I dismiss his claim for CRT fee reimbursement. As Mr. Cragg was successful, I order Mr. Check to reimburse Mr.

Cragg the \$50 he paid in CRT fees for this dispute. Neither party claimed dispute-related expenses, so I order none.

ORDERS

32. I dismiss Mr. Check's claims. Within 21 days of this decision, I order Mr. Check to pay Mr. Cragg \$50 for reimbursement of paid CRT fees. Mr. Cragg is entitled to post-judgment interest, as applicable.

33. Under section 48 of the CRTA, the CRT will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the CRT's final decision. The Province of British Columbia has enacted a provision under the *COVID-19 Related Measures Act* which says that statutory decision makers, like the CRT, may waive, extend or suspend mandatory time periods. This provision is in effect until 90 days after June 30, 2021, which is the date of the end of the state of emergency declared on March 18, 2020, but the Province may shorten or extend the 90-day timeline at any time. A party should contact the CRT as soon as possible if they want to ask the CRT to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

34. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Shelley Lopez, Vice Chair