



# Civil Resolution Tribunal

Date Issued: August 6, 2021

File: SC-2021-000497

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hanson v. Holden*, 2021 BCCRT 862

BETWEEN:

SHERRY HANSON

**APPLICANT**

AND:

CAREY HOLDEN

**RESPONDENT**

---

## REASONS FOR DECISION

---

Tribunal Member:

Roy Ho

## INTRODUCTION

1. This dispute is about a private used motorhome sale. The applicant, Sherry Hanson, purchased the motorhome from the respondent, Carey Holden, for \$1,500.

2. Miss Hanson says the motorhome was defective and undriveable and that Mr. Holden misled her about its condition. She claims \$1,300 for repairs. Mr. Holden says that the motorhome was working when he sold it to Miss Hanson and that he did not mislead her. He asks that this dispute be dismissed.
3. The parties are each self-represented.
4. For the reasons that follow, I dismiss Miss Hanson's claims.

## **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 the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision *Yas v. Pope*, 2018 BCSC 282, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find I can fairly hear this dispute through written submissions.
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 Mr. Holden misrepresented the motorhome or breached an implied warranty of durability in selling it, and if so, what is the appropriate remedy.

## **EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, the applicant Miss Hanson must prove her 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.
11. In early December 2020, Mr. Holden advertised a used 1978 Dodge motorhome with about 68,000 miles (approximately 109,435 kilometers) for sale. In the ad, Mr. Holden only described the motorhome as "runs and drives". Mr. Holden set out in the ad the things he had fixed or replaced in the motorhome, and what needed to be fixed or replaced.
12. In mid-December 2020, the parties agreed to a \$1,500 sale price, and Miss Hanson gave Mr. Holden a \$500 deposit. There is no evidence when Miss Hanson paid Mr. Holden the balance, but it is undisputed that she purchased the motorhome. Miss Hanson undisputedly did not test drive the motorhome, nor did she have a mechanic inspect it prior to purchasing it.
13. After Miss Hanson purchased the motorhome, the parties agreed to store it on Mr. Holden's property for Miss Hanson to do some work on it. Mr. Holden drove the motorhome and parked it in his backyard where it remained for approximately 3 weeks.
14. Miss Hanson submits that the motorhome stalled 3 times when Mr. Holden moved it, suggesting that it had a preexisting problem. She says she has evidence of this, but she did not provide it. Conversely, Mr. Holden suggests he drove the motorhome 500 yards to his backyard without issue. So, I find I am left with an evidentiary tie. Miss Hanson has the burden to break the tie, and I find she has

not done so here. So, I accept Mr. Holden's evidence that the motorhome did not stall at this time.

15. On January 6, 2021, Miss Hanson attempted to move the motorhome when it got stuck in mud in Mr. Holden's backyard. It is undisputed that it took Miss Hanson about 4 hours operating the motorhome to get it unstuck from the mud. Miss Hanson eventually got the motorhome unstuck and parked it in Mr. Holden's front yard.
16. On January 7, 2021, Miss Hanson tried to move the motorhome again and it became stuck in mud in the front yard. While Miss Hanson was trying to free the motorhome from the mud, it broke down. Ultimately, Miss Hanson had the motorhome repaired for \$1,924.75 and moved it from Mr. Holden's property.
17. The thrust of Miss Hanson's position is that the motorhome had a preexisting mechanical condition, which Mr. Holden allegedly misrepresented. She also says that Mr. Holden's ad was generally misleading about the motorhome's condition. So, she seeks \$1,300 reimbursement from Mr. Holden for the motorhome's repairs. It is unclear why Miss Hanson did not claim the full repair invoice amount of \$1,924.75, but I find nothing turns on this given my conclusion below.
18. Mr. Holden denies that he misrepresented the motorhome. He says the motorhome was working when he sold it and that Miss Hanson overheated the motorhome and blew all the vacuum lines in her attempts to free the motorhome from mud.
19. I turn next to the relevant law.

### ***Sales of Goods Act***

20. Apart from misrepresentation that I discuss below, the principle of 'buyer beware' generally applies to a private used vehicle sale. It means that the buyer assumes the risk that the purchased vehicle might be either defective or unsuitable to their needs (see *Connors v. McMillan*, 2020 BCPC 230). In *Connors*, the court concluded 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.

21. However, in British Columbia the 'buyer beware' principle is limited by the warranties set out in section 18 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).
22. In *Sugiyama v. Pilsen*, 2006 BCPC 265 at paragraph 45, the BC Provincial Court applied the implied warranty of durability in the context of a used car sale. The court noted that the seller is not a guarantor of the car's future performance. The buyer knows that some problems will inevitably occur, and the greater the age and car's mileage, the more likely it is that something will break down. The court also outlined factors affecting the extent of any implied warranty for a used car. These include age, mileage, price, the prior and intended vehicle's use, and the reason for the breakdown. The court found that an older car with high mileage was durable for a reasonable period of time if it was roadworthy and could be safely driven when purchased.
23. In *Sugiyama*, the claimant had purchased a car and its engine broke down after driving it for a fairly short time. The court determined that the car was still durable for a reasonable time because one had to consider its age (8 years old), mileage (over 140,000 km), and price of about \$5,000. Therefore, even though the car broke down after very little driving, the court found that it was durable for a reasonable time.
24. I find that the facts before me are similar to *Sugiyama*. The \$1,500 motorhome was undisputedly old with high mileage and driven for a short time before it broke down. There is evidence that the motorhome was roadworthy and no evidence that it could not be safely driven.
25. Even if Miss Hanson had established the motorhome had a preexisting condition, which I discuss below, that does not change my conclusion about durability, given the case law discussed above. Notably, the motorhome was undisputedly drivable a few times prior to it getting stuck in the mud twice. This was also confirmed in an undated text message from Miss Hanson stating she had the motorhome

running. I also note that on at least 1 occasion of freeing the motorhome from the mud, there is evidence to suggest that it was put through strenuous use. This is supported by a photo submitted into evidence showing extensive damage to Mr. Holden's backyard lawn from Miss Hanson trying to get the motorhome unstuck. So, I find it is unlikely the motorhome was not working at the time Miss Hanson bought it.

26. Within the context of Miss Hanson's purchase of an old motorhome with high mileage and her prior use of it, I find the motorhome was reasonably durable at the time of sale even though it became inoperable approximately 3 weeks later. The onus of "buyer beware" is on Miss Hanson and she chose not to test drive or inspect the motorhome before purchasing it. In a private sale of used goods, a purchaser is expected to reasonably assess the used goods' condition before purchase (see *Floorco Flooring Inc v Blackwell and Ootsa Lake*, 2014 BCPC 248, at paragraphs 60 to 69). I find that Miss Hanson accepted the risk of flaws by agreeing to purchase the decades-old vehicle without a test drive or an inspection. So, I find there was no breach of warranty under the SGA.

### ***Misrepresentation claim***

27. 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 has the effect of inducing a reasonable person to enter into the contract.
28. "Buyer beware" is only set aside where there is negligent or fraudulent misrepresentation: see *Nevmerjitski v Ratinov*, 2018 BCCRT 293.
29. Fraudulent misrepresentation occurs when a seller makes a false representation of fact and the seller knew it was false or recklessly made it without knowing whether it was true or false. Negligent misrepresentation occurs when a seller fails to exercise reasonable care to ensure representations are accurate and not misleading. The misrepresentation must reasonably induce the purchaser to buy the item.

30. Miss Hanson says that Mr. Holden misrepresented the motorhome's condition saying that it "ran good", was in "excellent running condition", and "it would run on a long journey". In support, Miss Hanson submitted a witness statement from SO, who witnessed Mr. Holden making those statements. Mr. Holden generally denies he made such statements but does not specifically address SO's statement. So, I accept SO's evidence that Mr. Holden made those statements.
31. Miss Hanson says that Mr. Holden's statements were misrepresentations because the motorhome had a preexisting mechanical condition, which he allegedly knew about. In support, Miss Hanson relies on her mechanic's \$1,924.75 repair invoice. The invoice shows that the mechanic installed a fuel pump, rewired the motorhome, changed the oil, flushed the fuel, and repaired the fan and power steering belts. However, the mechanic's invoice does not identify a cause for the motorhome's failure. I also note that the mechanic did not replace the vacuum lines, yet Miss Hanson says they were replaced. So, I am unable to conclude from this record whether the mechanic's service was for regular maintenance, for repairing a preexisting problem, or repairing the motorhome from Miss Hanson's use of it. I find the mechanic's invoice unhelpful, so I give it no weight. I find that Miss Hanson has not proved that the motorhome failed because of a preexisting condition.
32. As Miss Hanson has failed to prove that the motor home had a preexisting condition, I find this also means that Mr. Holden's statements could not amount to misrepresentation because the statements could have been true and consistent with the motorhome's condition at the time of sale. This is particularly the case where it is unclear whether Miss Hanson's motorhome's use was the cause for the breakdown.
33. There is also no evidence that Mr. Holden knew or ought to have known that the motorhome would breakdown. Instead, I find it likely that Mr. Holden did not know and could not have known about any problems. I say this because what Mr. Holden believed were the motorhome's mechanical issues, as identified in his ad, did not form part of mechanic's repairs. I find this means Mr. Holden had limited knowledge about the motorhome's mechanical condition and the maintenance required. My finding is further supported by the fact that Mr. Holden volunteered

to drive the motorhome to his backyard for storage. I find it unlikely that he would have done so if he knew there was a fatal problem with the motorhome or was trying to conceal one.

34. I also find Mr. Holden did not misrepresent the motorhome in the ad because it undisputedly did “run and drive” as advertised. Mr. Holden’s ad was fairly clear about what he knew about the motorhome in disclosing a number of problems. So, contrary to Miss Hanson’s assertion that the motorhome would not “move more than 5 feet without dying”, I find that the motorhome was able to run when Miss Hanson purchased it.
35. Miss Hanson also argues that Mr. Holden “rigged” the motorhome to work for purposes of the sale. However, I find this allegation speculative and unproven.
36. On balance, I find Miss Hanson has not proved the respondent misrepresented the motorhome’s condition, fraudulently or otherwise. For this reason, I dismiss Miss Hanson’s claims and this dispute.
37. 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. Neither party paid CRT fees nor claimed dispute-related expenses, so I make no order for them.

## **ORDER**

38. I dismiss Miss Hanson’s claims and this dispute.

---

Roy Ho, Tribunal Member