



Civil Resolution Tribunal

Date Issued: August 9, 2021

File: SC-2020-009772

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Yip v. OpenRoad Auto Group Limited*, 2021 BCCRT 873

BETWEEN:

WAI TING ROSINA YIP

APPLICANT

AND:

OPENROAD AUTO GROUP LIMITED dba OPENROAD TOYOTA –
RICHMOND and OPENROAD AUTO GROUP LIMITED

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about the sale of a demonstration or demo vehicle. The applicant, Wai Ting Rosina Yip, purchased the vehicle from the respondent, OpenRoad Auto Group Limited dba OpenRoad Toyota – Richmond (OpenRoad). I find the other named respondent, OpenRoad Auto Group Limited, is the same legal entity.

2. Ms. Yip says OpenRoad misrepresented the vehicle by stating it had no previous owners when in fact it had 2. She also says OpenRoad misrepresented its repair history. She says that as such, OpenRoad should not have charged her for freight and pre-delivery inspection (PDI) fees, which she says are typically charged for new vehicles. She claims \$2,033 as reimbursement for the freight and PDI fees. She also says that by virtue of being preowned it was more prone to flat tires. She claims \$400 as reimbursement for fixing a flat tire that occurred a few months after the sale. Ms. Yip also claims \$500 as compensation for time spent researching the vehicle's status prior to beginning this dispute. Her claims total \$2,933.
3. OpenRoad denies it misrepresented the vehicle. It says it consistently and accurately referred to the vehicle as a demo vehicle with no previous owners.
4. Ms. Yip represents herself. A manager represents OpenRoad.
5. For the reasons that follow, I dismiss Ms. Yip's claims.

JURISDICTION AND PROCEDURE

6. 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.
7. 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. Some of the evidence in this dispute amounts to a "she said, they said" scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the

most likely account depends on its harmony with the rest of the evidence. 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.

8. 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.
9. 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

10. The issue in this dispute is whether OpenRoad misrepresented the vehicle, and if so, what remedies are appropriate.

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicant Ms. Yip must prove her claims on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and arguments that I find relevant to provide context for my decision.
12. I begin with the undisputed background facts. Ms. Yip purchased a Toyota RAV4 vehicle from OpenRoad under the terms of a November 23, 2019 written contract. The contract said the vehicle was a "Demo" vehicle. In another area, a checkbox showed Ms. Yip purchased a "Demonstration Vehicle", as opposed to the other checkboxes indicating a new or used vehicle. The contract said OpenRoad

discounted the vehicle price by \$3,000 to reflect that it was a demo vehicle. OpenRoad also charged for the freight and PDI fees at issue. Under term 4 of the contract, OpenRoad represented that the vehicle did not sustain any damage requiring repairs totaling more than \$2,000.

13. The parties completed the purchase on November 27, 2019. ICBC documents show Ms. Yip registered and insured her vehicle that same day.

Did OpenRoad misrepresent the vehicle, and if so, what are the appropriate remedies?

14. Ms. Yip says OpenRoad misrepresented the car, so I have considered the law of negligent and fraudulent misrepresentation. To show negligent misrepresentation, Ms. Yip must establish the following: 1) there must be a duty of care, 2) the representation must be untrue, inaccurate, or misleading, 3) OpenRoad must have breached the standard of care in making the misrepresentation, 4) Ms. Yip must have reasonably relied on the misrepresentation, and 5) Ms. Yip's reliance resulted in damages.
15. To show fraudulent misrepresentation, Ms. Yip must establish the following: 1) OpenRoad made a representation of fact to Ms. Yip, 2) the representation was false, 3) OpenRoad knew that the representation was false or was reckless about whether it was true or false, 4) OpenRoad intended for Ms. Yip act on the representation, and 5) Ms. Yip was induced to enter into the contract in reliance upon the false representation and suffered a detriment or loss.

Representations About the Number of Previous Owners

16. Ms. Yip says OpenRoad represented that the vehicle had no previous owners when she says it did. Ms. Yip relies on an excerpt from a February 25, 2020 CARFAX report for the vehicle at issue. She did not provide the full report. The excerpt stated that the vehicle's first owner was reported on April 14, 2019. Ms. Yip points out this is several months before she purchased the vehicle. Another entry stated that the vehicle's

registration was issued or renewed on October 27 and again on December 1, 2019. Ms. Yip says this means there were 2 prior owners of the vehicle.

17. OpenRoad instead relies on a February 24, 2021 CARFAX report for the same vehicle. OpenRoad provided a complete copy of the report. Contrary to Ms. Yip's version, the report said the first owner was reported on November 27, 2019. I find this referred to Ms. Yip, as she registered and insured the vehicle on this date.
18. I find the best explanation for the discrepancy comes from JPV, a CARFAX representative. JPV wrote to OpenRoad in a February 2021 email, "I was able to dig up the report your customer ordered. Please note that she ordered the wrong report (ICBC info missing)".
19. In reply to this evidence, Ms. Yip says OpenRoad "misled" CARFAX. I find this allegation speculative and unsubstantiated by any evidence. I also find Ms. Yip's version of the report to be unreliable because it was incomplete and lacked any entry for November 27, 2019, when the vehicle sale completed. Given this, and the fact that JPV said Ms. Yip ordered the wrong report, I put no weight on her version of the report. I instead rely on OpenRoad's version of the CARFAX report, which I find shows Ms. Yip was the vehicle's first owner.
20. Ms. Yip also provided a March 19, 2021 letter from AM as expert evidence. I find the letter is expert evidence under CRT rule 8.3 as AM provided their qualifications as a licensed vehicle salesperson. AM wrote that the vehicle was, in fact, a used vehicle. However, AM noted that they relied on Ms. Yip's version of the CARFAX report to reach this conclusion. AM did not comment on OpenRoad's version at all, and I find it unclear if they were aware of it. As AM's opinion is based on what I find is an unreliable report, I place no weight on their opinion. Given my conclusions, I find it unproven that OpenRoad misrepresented the number of the vehicle's previous owners.

Representations About Vehicle Damage Repairs of Over \$2,000

21. In the contract OpenRoad represented that the vehicle had not sustained damage requiring repairs totaling more than \$2,000. AM wrote in their report that OpenRoad breached this obligation by failing to disclose that it replaced the transfer case electromagnetic clutch assembly on October 26, 2019. AM said this work would cost more than \$2,000.
22. OpenRoad provided documents showing it replaced the assembly as part of a Canada-wide service bulletin from Toyota. I find from this that the work was not specific to Ms. Yip's vehicle, and not repairs to any vehicle damage. Given this, I find OpenRoad did not have any obligation to disclose it. I make this finding regardless of the work's value. I place no reliance on AM's opinion on this issue.
23. Ms. Yip also alleges OpenRoad repaired other vehicle damage without disclosing it. I find this speculative and unsupported by the evidence. So, I find that OpenRoad did not misrepresent any vehicle damage or repairs.
24. In summary, I find OpenRoad did not misrepresent the vehicle. So, I dismiss all of Ms. Yip's claims. 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. OpenRoad did not pay any CRT fees or claim any dispute-related expenses, so I order none.

ORDER

25. I dismiss Ms. Yip's claims and this dispute.

David Jiang, Tribunal Member