



Civil Resolution Tribunal

Date Issued: August 27, 2021

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Raji v. Chattha*, 2021 BCCRT 944

BETWEEN:

ADEWALE RAJI and ADENRELE RAHMAN

APPLICANTS

AND:

AMRINDER CHATTHA

RESPONDENT

AND:

ADEWALE RAJI and ADENRELE RAHMAN

RESPONDENTS BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This dispute is about a private used car sale.
2. On about February 28, 2021, the applicants and respondents by counterclaim, Adewale Raji and Adenrele Rahman purchased a 2011 Hyundai Sonata from the respondent and applicant by counterclaim, Amrinder Chattha.
3. Mr. Raji and Mr. Rahman say they purchased the Hyundai based on Mr. Chattha's representations that it was in "good condition" and "regularly serviced". They say Mr. Chattha's representations were false. After having the Hyundai professionally assessed 3 days after the sale, they say they learned it had serious mechanical issues and was not safe to drive. They seek \$5,000 for the alleged cost to repair the vehicle to "make it roadworthy".
4. Mr. Chattha says the Hyundai was in good condition and durable for its age and kilometers. He says he regularly serviced it with oil and filter changes. Mr. Chattha says he had no issues while driving it and the diagnosed issues were simply normal wear and tear. He denies that he owes any refund for the car.
5. In the counterclaim, Mr. Chattha says Mr. Raji and Mr. Rahman are "wrongfully accusing him" and this has caused him business losses and mental suffering. Mr. Chattha seeks damages of \$3,000 for "cancellation for appointments during car sale leading to loss of business". Mr. Chattha also seeks \$2,000 for mistakes he allegedly made at work from "mental anguish, pain and distress" from the accusations.
6. The parties are self-represented.
7. For the reasons that follow, I dismiss this dispute.

JURISDICTION AND PROCEDURE

8. 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.

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. Some of the evidence in this dispute amounts to a "they said, he 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.
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 Mr. Raji and Mr. Rahman's claims are:

- a. Did Mr. Chattha negligently or fraudulently misrepresent the condition of the Hyundai?
 - b. Did Mr. Chattha breach the implied warranty of durability under the *Sale of Goods Act* (SGA)?
 - c. To what extent, if any, are Mr. Raji and Mr. Rahman entitled to the claimed \$5,000 for repairs?
13. The issue in the counterclaim is whether Mr. Chattha is entitled to \$5,000 in compensation for alleged business losses from cancelled appointments and mistakes due to mental anguish.

EVIDENCE AND ANALYSIS

14. In a civil proceeding like this one, Mr. Raji and Mr. Rahman must prove their claims on a balance of probabilities, which means “more likely than not”. In the counterclaim, Mr. Chattha bears the same burden of proof.
15. 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

16. Mr. Raji and Mr. Rahman say that Mr. Chattha advertised the 2011 Hyundai Sonata on Facebook Marketplace. The parties agree that Mr. Chattha stated in the advertisement that the Hyundai was in “good condition” and the asking price was \$5,500. The advertisement is not in evidence.
17. On about February 28, 2021, Mr. Raji and Mr. Rahman met Mr. Chattha at his home to personally inspect the Hyundai and take it for a test drive. They say Mr. Chattha did not mention that it had any mechanical faults. However, they say that during the test drive the check engine error light came on and they noticed noise when steering. They also noticed some “minor issues such as worn out tires”.

18. Mr. Raji and Mr. Rahman purchased the Hyundai without a professional pre-inspection after the parties negotiated the price down to \$4,500. The Hyundai undisputedly had about 220,000 kilometers on the odometer with no repair records, except 1 oil change receipt.
19. During the parties' pre-sale negotiation, the parties agree they discussed getting the Hyundai "diagnosed" prior to the sale. Mr. Raji and Mr. Rahman say Mr. Chattha told them a diagnosis was not necessary as the issues were probably cosmetic. They say they still planned to get it assessed by a professional but say they felt pressured to buy it that day. They describe the pressure as Mr. Chattha telling them he wanted to sell the Hyundai to make room for his new car and by requiring payment that day.
20. I have no independent evidence to know exactly what was said during the parties' pre-purchase discussion. However, I find Mr. Chattha made the following statements as they are agreed: the Hyundai was in good condition, regularly maintained, he drove it with his family and to work, and he had not experienced any issues when driving it. I find he stated that the engine light error was probably cosmetic but I am not satisfied he told Mr. Raji and Mr. Rahman not to get the issues diagnosed.
21. As it is not disputed, I also find Mr. Chattha asked to be paid at the time of sale. I find this does not equate to a pressure to buy. I find it is relatively normal in a private vehicle sale between unknown parties that the seller would want to be paid at the point of sale. I find Mr. Raji and Mr. Rahman were not pressured to buy and could have declined to buy the Hyundai. I also find they likely negotiated a lower price because they identified it had safety issues, which I come back to below.
22. Mr. Raji and Mr. Rahman say they did not drive the Hyundai after they purchased it and took the Hyundai to BMC Automotive (BMC) 3 days later to assess its issues.
23. As set out in a May 11, 2021 statement by Brendan Grant, BMC's owner, Mr. Grant assessed the Hyundai's interior, body and paint as "decent". However, he also diagnosed the Hyundai in "extremely poor" mechanical condition from its lack of mechanical maintenance and said it was unsafe to drive. He stated that the observed

noises were due to worn out right front lower ball joint, a blown right front strut assembly and a worn out steering column coupler. In addition to these parts, he said the tires, brakes and other steering parts were completely worn out and needed to be replaced. He described the check engine light issue as “evaporative” and not a priority.

24. Without a contrary assessment report, I find the Hyundai’s condition was as described by Mr. Grant at the time of sale. I also find it is reasonably supported by video evidence. Mr. Chattha is silent on the issues apart from saying he was not aware of them.

25. Based on the BMC’s March 5, 2021 repair invoice, I find Mr. Raji paid BMC \$4,733.56 to inspect and repair the Hyundai. This price included a new set of tires.

Mr. Raji and Mr. Rahman’s Claims

26. As Mr. Raji and Mr. Rahman frame their claim in misrepresentation, I turn to that legal issue first.

Misrepresentation

27. 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 *O’Shaughnessy v. Sidhu*, 2016 BCPC 308. If a seller misrepresents a vehicle’s condition, the buyer may be entitled to compensation for losses arising from that misrepresentation.

28. 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 been detrimental in the sense that damages resulted”: see *Queen v. Cognos Inc.*, [1993] 1 SCR 87 at paragraph 110.

29. Mr. Raji and Mr. Rahman allege Mr. Chattha fraudulently misrepresented that the Hyundai was in good condition and regularly maintained when it was not. They say a

car that is not roadworthy, safe to drive, or mechanically maintained is clearly not in “good condition”.

30. In assessing Mr. Chattha’s representations, I find they must be taken within the context of the entire sale, including the Hyundai’s issues that were observable at the time of the sale. This is not a case where the car was bought sight unseen.
31. Based on the photographs showing a clean interior and rust-free outer body, I find the Hyundai was in good cosmetic condition for its age. Within the context of the parties’ negotiations, I find Mr. Chattha also meant the Hyundai was in good mechanical condition. Mr. Chattha says he made this statement based on his own experience driving the Hyundai without any problems and within the context of its age and high kilometers. The evidence does not establish that Mr. Chattha experienced any serious problems while driving and the car did not break down. So, I accept he held the subjective view that the Hyundai was in good condition considering its age, high mileage and observed issues.
32. As for the maintenance, I find Mr. Chattha did not give false information about the type of maintenance he performed on the Hyundai. He gave Mr. Raji and Mr. Rahman an oil change receipt, which is the only type of maintenance that I find he did.
33. In the circumstances, I find Mr. Raji and Mr. Rahman have not proven that Mr. Chattha negligently or fraudulently misrepresented the Hyundai. I dismiss this aspect of their claim.
34. I turn to discuss the SGA.

The SGA

35. The SGA applies to this private used car sale. SGA section 18(c) implies a condition that the goods sold will be durable for a reasonable period of time having regard to their normal use and the surrounding circumstances of the sale. There are other conditions in SGA section 18 that do not apply to private sales. These are conditions that the goods are fit for their purpose and are of saleable quality.

36. The SGA does not define “durable”. In *Krotz v. Willis*, 2020 BCCRT 877 and *Manley v. Rice*, 2021 BCCRT 308, the CRT members applied the definition of durable from Collinsdictionary.com: “strong and lasts a long time without breaking or becoming weaker”. While prior CRT decisions are not binding on me, I find the reasoning persuasive and adopt it here. I find SGA section 18(c) means that the goods sold must last without breaking or becoming weaker for a reasonable period with normal use and considering the surrounding circumstances of the sale.
37. In *Sugiyama v. Pilsen*, 2006 BCPC 265, the BC Provincial Court said there are a number of factors to consider when determining whether a vehicle is durable for a reasonable period of time, including the age, mileage, price, the use of the vehicle, and the reason for the breakdown.
38. In *Sugiyama*, the claimant bought an 8-year-old car with over 140,000 kilometers on the odometer for \$5,600 from a commercial seller. The car broke down after little driving because the engine valve seals were worn out, which was not detectable on normal inspection. The court held that the valve seals likely failed due to the accumulated “wear and tear” from over 140,000 kilometers of driving (paragraph 81). The court concluded that in the circumstances, the car was durable for a reasonable period of time.
39. Mr. Raji and Mr. Rahman purchased a 10-year-old car for \$4,500 that was driven about 220,000 kilometers and had no mechanical repair history. I find the implied condition of durability was extremely limited in the sale of this particular car.
40. This is not a situation where the Hyundai became weaker or broke down after Mr. Raji and Mr. Rahman purchased it. Instead, I find the mechanical parts had already worn out from driving. I also find the safety issues were either observed during the test drive or were there to be seen at the time of purchase. I find Mr. Raji and Mr. Rahman likely negotiated the price down by \$1,000 as consideration for the issues. Neither party provided evidence on whether the negotiated \$4,500 price accounted for anything different, like the market price for such a car. Without evidence to the contrary, I find Mr. Raji and Mr. Rahman purchased the car they bargained for.

41. Within the context of this sale, I find the Hyundai did not lack durability for a reasonable period of time. So, I find Mr. Chattha did not breach the implied warranty under the SGA.
42. Considering my conclusions, I find Mr. Raji and Mr. Rahman are not entitled to reimbursement for their repair costs and I dismiss their claims.

Mr. Chattha's Counterclaim

43. Mr. Chattha claims \$5,000 for alleged business losses as I described in the introduction section above.
44. Mr. Chattha says Mr. Raji and Mr. Rahman sent texts threatening him during working hours that they were commencing legal proceedings. He says this caused him to make mistakes during work because he was "suffering from mental pain and anguish". Mr. Chattha submitted copies of 2 contracts that he says contain mistakes.
45. I find Mr. Raji and Mr. Rahman simply notified Mr. Chattha that they intended to commence legal action and attempted to negotiate settlement. I find this is not a wrongdoing. Mr. Raji and Mr. Rahman had a right to bring an action to the CRT and it was proper to notify Mr. Chattha in advance to attempt to negotiate a settlement. I find Mr. Raji and Mr. Rahman are not responsible to compensate Mr. Chattha even if it caused him stress or financial loss, neither of which are proven. I also find Mr. Chattha is not entitled to compensation for canceling business appointments to sell his own vehicle. I find Mr. Raji and Mr. Rahman do not owe Mr. Chattha any compensation and I dismiss this counterclaim.

CRT Fees and Dispute-Related Expenses

46. 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. Considering neither party was successful, I find they are responsible for their own fees and expenses.

ORDER

47. I dismiss Mr. Raji and Mr. Rahman's claims and Mr. Chattha's counterclaim and this dispute.

Trisha Apland, Tribunal Member