



Civil Resolution Tribunal

Date Issued: October 14, 2021

File: SC-2021-002818

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Zabudsky v. Du*, 2021 BCCRT 1087

BETWEEN:

RYAN ZABUDSKY

APPLICANT

AND:

HAORAN DU

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This dispute is about a used bicycle sale. The applicant, Ryan Zabudsky, bought a used mountain bicycle from the respondent, Haoran Du. Mr. Zabudsky says he discovered that the front brake caliper was glued to the front fork after buying the bicycle. Mr. Zabudsky claims this was a hidden defect that made the bicycle unsafe

to use. Mr. Zabudsky says that Mr. Du misrepresented the bicycle's condition and he claims \$471.76 for repairs.

2. Mr. Du admits that he repaired the brake caliper with epoxy. However, he says that this did not affect the bicycle's roadworthiness. Mr. Du says that the bicycle was safe and usable when he sold it.
3. Both parties are each self-represented.

JURISDICTION AND PROCEDURE

4. 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.
5. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. Though I found that some aspects of the parties' submissions called each other's credibility into question, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the CRT's mandate of proportional and speedy dispute resolution, I decided I can fairly hear this dispute through written submissions.
6. 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.

7. 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

8. The issues in this dispute are:
 - a. Did Mr. Du breach the implied warranty of durability under section 18(c) of the *Sale of Goods Act (SGA)*?
 - b. Did Mr. Du misrepresent the bicycle's condition?
 - c. Did Mr. Du fail to disclose any latent defects in the bicycle?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicant, Mr. Zabudsky, must prove his 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.
10. Mr. Zabudsky purchased a used 2016 Trek X-Caliber 9 mountain bicycle from Mr. Du for \$700. Mr. Zabudsky says that he was aware that the bicycle needed some replacement parts and tuning based on the bicycle's visible condition. The day after buying the bicycle, Mr. Zabudsky says that he noticed that the front brake caliper's threads were stripped and the caliper was glued to the front fork. Mr. Zabudsky says this repair was unsafe. Since Mr. Du admits that he repaired the caliper with epoxy, I find that he did so. However, Mr. Du says that the caliper was securely attached to the fork by the epoxy and that he had used the bicycle for years without problems after the repair.
11. Mr. Zabudsky argues that Mr. Du misrepresented the bicycle's condition because he advertised it as a usable item. Mr. Zabudsky also says that Mr. Du concealed and failed to disclose the allegedly improper caliper repair. In his submissions, Mr.

Zabudsky also complains the seat post was too short. However, since Mr. Zabudsky is only claiming damages for the alleged caliper repair costs, I decline to consider this unrelated complaint.

Was the bicycle reasonably durable?

12. I find the parties entered into a private sale which was subject to section 18(c) of the SGA. Section 18(c) requires that goods sold be durable for a reasonable period, considering how the goods would be normally used and the sale's surrounding circumstances. The other implied warranties in section 18 of the SGA do not apply to private sales. I note that the parties did not raise this provision of the SGA. However, I find it unnecessary to ask the parties for further submissions because both parties have already addressed the issue of whether the bicycle was reasonably durable.
13. In general, sales of used vehicles are governed by the principle of "buyer beware". I find this equally applies to the sale of a used bicycle. The implied warranty of SGA section 18(c) is an exception to this rule.
14. 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 mileage of the car, 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 use of the vehicle, 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.
15. In the previous CRT decisions in *Sutherland v. Ramsey*, 2021 BCCRT 363 and *Bourke v. Holbek*, 2021 BCCRT 515, CRT members applied the principles from *Sugiyama* to the sales of used bicycles. Although these decisions are not binding on me, I agree with this reasoning and I adopt the same approach here. Based on Mr.

Zabudsky's submission that the used bicycle needed some replacement parts and adjustments when purchased, I find that to be reasonably durable in these circumstances, the bicycle only needed to be roadworthy.

16. Mr. Zabudsky says the bicycle was not roadworthy when purchased because the epoxy repair was unsafe. Mr. Zabudsky provided multiple videos and photographs showing apparent damage to the fork and caliper after he removed the caliper off the fork. However, I cannot determine from the evidence provided that the bicycle was damaged or unsafe before Mr. Zabudsky removed the caliper. Mr. Zabudsky's videos show that, to remove the caliper, he unscrewed bolts and pried the caliper off. I find that Mr. Zabudsky has not proved that there was an imminent risk that the brake caliper would detach itself without such effort. Rather, I find the effort Mr. Zabudsky took to remove the caliper shows that the caliper was significantly attached to the fork. Further, to establish that the epoxy repair was not safe, I find that expert evidence is needed because this is technical and outside common understanding (see *Bergen v. Guliker*, 2015 BCCA 283).
17. I find that Mr. Zabudsky is offering an expert opinion by saying that the epoxy repair was unsafe. However, CRT rule 8.3(3) says that expert evidence can only be considered if the expert states their qualifications and I am satisfied that the expert has the education, training or experience to give that opinion. Mr. Zabudsky says he is qualified to provide an expert mechanical opinion because he is a "tech teacher" and an automotive mechanic. However, without further explanation of Mr. Zabudsky's expertise, I am not satisfied that his teaching or automotive repair experience is sufficient expertise to provide a mechanical opinion about bicycle repairs.
18. Further, under CRT Rule 8.3(7), an expert's role is to assist the CRT and not to advocate for either side. This means that the expert must be neutral. As the applicant, Mr. Zabudsky is not neutral. While CRT Rule 1.2(2) allows me to waive the application of a rule, I find that it would be inappropriate in this dispute to admit Mr. Zabudsky's expert opinions because he is a party. For the above reasons, I do not admit Mr.

Zabudsky's opinions about whether Mr. Du's caliper repairs were improper or unsafe, and I have given it no weight.

19. In the absence of admissible expert evidence about the condition of the bicycle, I find that Mr. Zabudsky has failed to prove that Mr. Du's caliper repairs made the bicycle unsafe or non-roadworthy. So, I find that the bicycle was reasonably durable when purchased.

Did Mr. Du misrepresent the bicycle's condition?

20. To show negligent misrepresentation, Mr. Zabudsky must establish the following: 1) there must be a duty of care, 2) the representation must be untrue, inaccurate, or misleading, 3) Mr. Du must have breached the standard of care in making the misrepresentation, 4) Mr. Zabudsky must have reasonably relied on the misrepresentation, and 5) the reliance resulted in damages.
21. The applicable standard of care in a used car sale is to take "reasonable care" to not mislead the buyer about the vehicle's condition: *Daniel v. Watkinson*, 2019 BCPC 319 at paragraph 57. I find the same standard applies to the bicycle sale.
22. To show fraudulent misrepresentation, Mr. Zabudsky must establish the following: 1) Mr. Du made a representation of fact to Mr. Bourke, 2) the representation was false, 3) Mr. Du knew that the representation was false or was reckless about whether it was true or false, 4) Mr. Du intended for Mr. Zabudsky act on the representation, and 5) Mr. Zabudsky was induced to enter into the contract in reliance upon the false representation and suffered a detriment.
23. Mr. Zabudsky says Mr. Du misrepresented the bicycle's condition in the online advertisement and during the sale by saying that the bicycle was usable. Mr. Du acknowledges that he sold the bicycle as "used but well working." Based on this, I accept Mr. Zabudsky's submission that Mr. Du represented that bicycle as being usable. However, as discussed above, Mr. Zabudsky has failed to prove that the epoxy caliper repair made the bicycle not usable. So, I find that Mr. Zabudsky has not proved that Mr. Du misrepresented the bicycle's condition.

Did Mr. Du fail to disclose any latent defects in the bicycle?

24. Mr. Zabudsky says that Mr. Du failed to disclose the caliper repair.
25. In law, defects can be either patent or latent. Patent defects can be discovered through inspection and ordinary vigilance. In contrast, latent defects cannot be revealed by any inquiry which a buyer is in a position to make before entering the contract.
26. There are a considerable number of cases that state that in the sale of land, a seller must disclose a known latent defect to prospective buyers that would render a property dangerous or unfit for habitation. (*Nixon v. MacIver*, 2016 BCCA 8) In the non-binding decision of *Sutherland*, the CRT member held that the legal concept of material latent defects applied to the sale of land, but not goods, including a used bicycle.
27. However, I do not find it necessary to decide whether the legal concept of material latent defects applies in this dispute. As discussed above, I have already determined that Mr. Zabudsky has not proved that the epoxy caliper repair was defective and there is no legal obligation to disclose non-defective conditions.
28. For the above reasons, I dismiss Mr. Zabudsky's claim.

CRT fees and dispute related expenses

29. 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. Mr. Du is the successful party but did not pay CRT fees or claim expenses. As Mr. Zabudsky was unsuccessful, I dismiss his claim for reimbursement of paid CRT fees.

ORDER

30. I dismiss Mr. Zabudsky's claim and this dispute.

Richard McAndrew, Tribunal Member