



Civil Resolution Tribunal

Date Issued: December 14, 2021

File: SC-2021-003785

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Faireather v. Klimmer*, 2021 BCCRT 1302

BETWEEN:

DON FAIREATHER

APPLICANT

AND:

REECE KLIMMER, EXELL POWER SERVICES LTD., and
RON KLIMMER

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about a used vehicle purchase. The applicant, Don Faireather, says he purchased a used 2011 Ford F350 diesel truck from the respondent Reece Klimmer. He says that the respondent Ron Klimmer was a previous owner of the truck, which was registered to the respondent Exell Power Services Ltd. (Exell). I infer

that Exell is Ron's company. Given that 2 of the respondents share a last name, and given the applicant's name discrepancies discussed below, I will refer to the individual parties as Don, Reece, and Ron, intending no disrespect.

2. Don says the truck was not sufficiently durable because its transmission failed a short time after he purchased it. He also alleges that Reece knew the transmission was faulty, and claims \$3,000 for truck repairs.
3. Reece and Don are each self-represented in this dispute. Reece says he also represents Exell and Ron, who is his father. Neither Exell nor Ron filed a Dispute Response, so they are not officially participating in this dispute. However, Don does not deny that Reece was authorized to sell the truck on behalf of Exell and Ron as their agent, and does not object to Reece's submissions on their behalf. Given the outcome of my decision below, I find nothing turns on Exell and Ron's lack of participation in this dispute.

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. 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. 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 in the interests of justice.

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.
8. As reflected in the style of cause above, Don gave his name as “DON FAIREATHER” in the Dispute Notice. Submitted evidence shows that the applicant may go by the name Don Fairweather. However, Don has not amended the Dispute Notice, and has not identified an error in the name given. Even if the name listed on the Dispute Notice is spelled incorrectly, I find nothing turns on this, given the outcome of my decision below.

ISSUE

9. Did the respondents misrepresent the truck’s condition to Don or break an express or implied warranty of durability, and if so, do they owe \$3,000 for repairs?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, Don as the applicant must prove his claims on a balance of probabilities, meaning “more likely than not”. 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.
11. Reece says that although the truck was owned by Exell and Ron, he had been driving it full time for the past 4 years. On the submissions and text messages in evidence, I find that Reece advertised the truck for sale, and handled all aspects of its sale to Don, as Exell’s agent. An undisputed vehicle Transfer/Tax Form in evidence shows that Exell was the registered owner of the truck, which it sold to Don on March 20,

2021 for \$25,000. The truck's odometer undisputedly read 267,253 kilometers (km) when Don purchased it.

12. In an April 19, 2021 letter to Reece and Exell, Don wrote that the transmission "blew up" after 50 km of driving, and he asked them to repair the truck. I find that this description is not entirely consistent with the other submitted evidence. Text messages showed that Don complained to Reece that the truck's automatic transmission began shifting gears with difficulty after he installed new tires on the truck. A service invoice showed Don took the truck to Family Ford on March 31, 2021 when the odometer read 267,627 km, with complaints of the truck shifting gears harshly. The invoice noted that Don said the truck did not act up on the way to the shop that day. So, I find that the truck began having difficulty shifting sometime after Don purchased it, but the truck was still functional and driveable. I find the transmission did not blow up.
13. The Family Ford invoice said that the automatic transmission fluid had a severe clutch burn smell to it, and that the truck gave clutch assembly error codes. The invoice said that the transmission "will have" severe wear on its internal components, and would have to be either rebuilt or replaced. Other invoices in evidence show that Don paid \$2,000 plus shipping, GST, and PST for a used replacement transmission, and paid Family Ford \$2,554.30 to install it in the truck. However, Don only claims \$3,000 in this dispute.
14. Don says Reece misrepresented the condition of the truck in his online advertisement, and that the truck was not as described. Don says he thinks Reece knew that the truck had a transmission problem, which is why Reece had the transmission serviced before selling it.
15. Negligent misrepresentation is when:
 - a. A seller makes an untrue, inaccurate, or misleading representation to a purchaser,
 - b. The seller makes the representation negligently, and

- c. The purchaser suffers damage from reasonably relying on the misrepresentation.

16. A fraudulent misrepresentation is when:

- a. A seller states a fact to a purchaser,
- b. The seller knows the statement is false, or is reckless about whether it is true or false, and
- c. The misrepresentation incents the purchaser to buy something.

17. In either case, for there to be misrepresentation, a seller must make a statement that is false, inaccurate, or misleading. I find that the submitted online truck advertisement said that the truck had a few minor dents and blemishes “but nothing major”. It also said that all service had been done on time. However, contrary to Don’s submissions, I find nothing in the online advertisement or in the parties’ text messages shows that the respondents said the truck was in perfect working order, or said that a mechanic had “gone over the truck and gave it a clear bill of health.” I also find the evidence does not support Don’s text message allegation that Reece gave him his word there were “no problems and it was all good to go”.

18. I find the evidence does not show that Don asked any questions about the condition of the truck’s drivetrain before purchasing it. Further, I find the evidence does not show that Reece or the other respondents made any representations about the truck’s transmission or drivetrain before Don purchased the truck. So, I find the respondents made no negligent or fraudulent misrepresentations. I also find the respondents gave no express warranties about the transmission’s condition.

19. Used vehicle sales like this one are generally “buyer beware.” This means the buyer is expected to assess the vehicle’s condition before purchasing it (see *Floorco Flooring Inc v Blackwell and Ootsa Lake*, 2014 BCPC 248, at paragraphs 60 to 69). I find the buyer beware principle applies to this sale. I also find the evidence shows that despite the truck’s high mileage, Don agreed to purchase it before seeing it in

person, without asking questions about its drivetrain and without first asking for a test drive or an inspection. I find Don did not take any steps to determine if the truck had any current or potential drivetrain issues.

20. Don says that the truck was not reasonably durable, and his submissions list multiple “legal warranties” that he says apply to vehicle sales. I find these identified warranties are implied warranties under the *Sale of Goods Act* (SGA), although Don does not name the SGA directly.
21. The implied warranties under SGA section 18(a) (fitness for purpose) and 18(b) (merchantable quality) do not apply to private sales such as the truck sale in this dispute. However, SGA section 18(c) does apply to private used vehicle sales, and is a limitation on the “buyer beware” principle. Section 18(c) says that there is an implied condition that goods will be durable for a reasonable period of time, considering their normal use and the surrounding circumstances. I find the parties did not contract out of this implied warranty, so I find it applies to Don’s truck purchase.
22. The question of what is reasonably durable under SGA section 18(c) was considered in *Sugiyama v. Pilsen*, 2006 BCPC 265. The court said that a used vehicle seller is not a guarantor of the vehicle’s future performance, and that a buyer must expect problems at some point. The court also found that older vehicles are more likely to break down, and that if an older vehicle is “roadworthy” when purchased, it probably will be considered reasonably durable. In *Sugiyama*, the court found a used vehicle was durable for a reasonable period of time even though there was a serious engine failure after being driven 616 km in the month following its purchase. The vehicle had 140,146 km on the odometer when sold, and was approximately 9 years old.
23. Here, the truck was also about 9 years old when sold, but had been driven almost twice as far as the vehicle in *Sugiyama* (267,253 km). Neither the truck’s price when new, or the purchase prices of similar used trucks, are before me here, so I cannot determine whether the price Don paid for it was significantly above or below the usual market value for similar vehicles with similar mileage.

24. Although the Family Ford invoice speculates that unapproved fluid might have been used in the truck's transmission, I find the evidence does not support such a finding. A September 23, 2020 Valley Auto & RV Repair Inc. invoice shows that the truck had a lube, oil and filter service, a fuel filter replacement, and an automatic transmission fluid flush on that date, several months before Don purchased it. No mechanical problems were noted. Reece says he had this work done as preventative maintenance, and he did not experience any transmission difficulties with the truck. Having weighed the evidence, I find it does not support Don's allegation that Reece had this work done because he knew there was some kind of transmission problem. Further, I find nothing before me confirms exactly what was wrong with the transmission, or the reason for its failure.
25. Finally, Don says that the transmission started having problems after he changed the truck's tires, which was either after he drove it 50 km or 100 km. However, I find the other evidence does not show how far Don had driven when he noticed transmission difficulties. I find that the difficulties occurred within 374 km of driving, which based on odometer readings is how far Don drove between purchasing the truck and bringing it to Family Ford with transmission complaints.
26. I place particular weight on the truck's age, high mileage, the hundreds of km it was driven after being purchased, and that the unspecified transmission problem did not render the truck immediately undriveable but only made gear shifts more difficult. On balance and in the circumstances, I find the truck was reasonably durable when Don purchased it. I find there was no breach of SPA section 18(c).
27. Overall, I find there is no basis, whether in misrepresentation, breach of an express or implied warranty, or otherwise, to conclude that the respondents are responsible for the claimed transmission repairs to Don's truck. I dismiss Don's claim for \$3,000.

CRT FEES AND EXPENSES

28. Under section 49 of the CRTA, and the 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. Don was unsuccessful in his claim, and the respondents paid no CRT fees and claim no CRT dispute-related expenses. Don submitted receipts showing he paid registered mail charges to send a demand letter. However, I find he is not entitled to reimbursement because he was not successful in this dispute. In any event, the registered mail charges are not CRT dispute-related expenses because they were incurred before the CRT dispute was initiated. I order no reimbursements.

ORDER

29. I dismiss Don's claim, and this dispute.

Chad McCarthy, Tribunal Member