



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Warkentin v. Alpha Auto Access Ltd.*, 2022 BCCRT 17

B E T W E E N :

JEFFREY WARKENTIN and MICHELLE POULSEN

APPLICANTS

A N D :

ALPHA AUTO ACCESS LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This dispute is about a used car sale.
2. In June 2020, the applicants, Jeffrey Warkentin and Michelle Poulsen, bought a 2012 Mini Cooper car from the respondent, Alpha Auto Access Ltd. (Alpha), for \$7,159.64. The applicants say they had to replace the car's transmission 27 days after purchase.

3. The applicants allege Alpha sold the car with a one-year warranty and it should reimburse the repair costs under that warranty. They also allege that Alpha breached the implied warranty of durability under the *Sale of Goods Act* (SGA) by selling a car with a pre-existing issue that broke down shortly after purchase. They claim reimbursement of the \$3,740.04 they paid to replace the car's transmission and \$189.28 for the diagnostics.
4. Alpha denies that there was a 1-warranty on the car and says the parties' sales contract excluded the implied SGA warranties. Alpha also says there is no conclusive evidence that the transmission problem pre-existed the sale and the used car could have broken down at any time from driving.
5. Mr. Warkentin represents the applicants and Alpha is represented by an employee or director.

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. 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 and fairness.

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.

Preliminary Matters

10. Prior to filing a dispute with the CRT, the applicants had made a complaint with the Vehicle Sales Authority (VSA). VSA is the governing body for car dealerships. The VSA has authority to administer and enforce the *Motor Dealer Act* and a portion of the *Business Practices and Consumer Protection Act*. The VSA closed its investigation because of this CRT dispute. I find there is no duplication of proceedings and nothing prevents the CRT from resolution this dispute, nor was this argued.
11. In the Dispute Notice, the applicants mentioned that they could alternatively return the car to Alpha for a refund of the full purchase price, if awarded. However, a claim for a full \$7,159.64 refund exceeds the CRT's small claims monetary limit of \$5,000. So, I have only considered the applicants' request for reimbursement of the transmission. The applicants also did not pursue the alternative remedy in argument.

ISSUES

12. The issues in this dispute are:
 - a. Did any warranties apply to this sale?
 - b. If so, did Alpha breach the warranty and must it reimburse the applicants for the transmission and diagnostic expenses?

EVIDENCE AND ANALYSIS

13. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities (which means “more likely than not”). 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.
14. On June 7, 2020 the applicants bought the car from Alpha for \$7,159.64 after test driving it. The car had 179,597 kilometers on the odometer.
15. Prior to the sale, Alpha had a mechanic from Loyal Auto Parts and Service (Loyal) perform a multi-point inspection on the car. Alpha undisputedly gave the applicants a copy of the Loyal inspection report. I find the inspection was fairly cursory because Loyal did not check several “under hood” items, including the transmission fluid. The applicants did not have the car inspected by any other mechanic before purchase. Apart from “Carfax” reports, the applicants do not say that they obtained the car’s prior service records and so, I find they must not have done so.
16. The applicants say that on about July 3, 2020, and after driving the car for 1,616 kilometers, it broke down and they had it towed to “Mini Richmond”. As stated in its July 13, 2020 invoice, Mini Richmond discovered the transmission fluid had a “strong burning smell and found metal shavings inside the transmission”. Mini Richmond recommended a transmission replacement. The applicants paid \$189.28 for this diagnosis.
17. The applicants submitted an opinion by Jeffery Chang, Mini Richmond’s shop “Forman” and BMW Master Technician with Red Seal Automotive Certification. I find Jeffery Chang has the necessary qualifications to provide an opinion about the car’s transmission and I accept the opinion as expert evidence under CRT rule 8.3. Jeffery Chang concluded that the transmission problem was “abnormal transmission gear wear” and pre-existed the sale.
18. Alpha referred the applicants to its preferred mechanic, Stan’s Transmission Centre Ltd. (Stan) who undisputedly could not determine whether the transmission issue was

pre-existing. Stan replaced the transmission with a refurbished one for \$3,740.04 as shown in its July 24, 2020 invoice.

19. The applicants asked Alpha to cover their expenses for the replaced transmission. Alpha offered to pay \$600 towards the total repair costs, which the applicants undisputedly rejected.

Did any warranties apply to this sale?

20. As shown in the photograph in evidence, Alpha's advertisement shows a Mini Cooper car with the words "One Year Warranty" in the top corner. The applicants argue the sales contract therefore included a 1-year warranty and Alpha is responsible to pay to replace the transmission under warranty.
21. Alpha says nothing about its advertisement but says the parties' contract expressly excluded the warranty.
22. The warranty section in the parties' signed contract states the following:

If the vehicle is suitable for the transportation, the only warranty is as follows:

Customer refused to purchase an extended warranty.

If any repairs are to be effected, they are listed along with the additional cost, if any, as follows:

Alpha Auto Access is not responsible for any upcoming repairs.

23. The applicants say the reason they declined to purchase an extended warranty was because they thought, based on the advertisement, they already had a 1-year warranty. They argue that a reasonable person would understand the contract's words "extended warranty" to mean a warranty that extends an existing warranty for a longer period of time, past the 1 year mark. The applicants also say the VSA concluded that Alpha's advertisement might mislead consumers into believing that they would receive a 1-year warranty included in the purchase price. However, the

VSA's general conclusion is not binding on me. I also find the fact that the advertisement contained the warranty banner does not mean that the warranty was included in the price of this sales contract. The advertisement itself did not include the price and I find its inclusion would depend on what the parties negotiated. The applicants do not say the parties specifically discussed the 1-year warranty or negotiated it as part of the \$7,159.64 purchase price and so, I find they likely did not. The 1-year warranty is also not mentioned in the written contract and the contract explicitly states that Alpha has no responsibility for "upcoming repairs". I find a reasonable interpretation of this clause is that the parties expressly agreed there would be no repair warranty. For these reasons, I find the parties' contract did not include an express 1-year warranty.

24. Next, the applicants argue that the SGA applied to this contract and implied a condition under SGA 18(c) that the car would be durable for a reasonable period of time. As noted, they allege that Alpha breached the SGA's implied durability warranty because the car's transmission broke down shortly after purchase due to a pre-existing issue.
25. Generally, SGA section 18(c) would apply to a commercial sale like this one and imply a condition that the sold good will be durable for a reasonable period of time considering its normal use and the sale's surrounding circumstances. The SGA subsections 18(a) and (b) generally imply conditions that the sold good is in the condition described and is of saleable quality. SGA section 18(e) says that "an express warranty or condition does not negative a warranty or condition implied by this Act unless inconsistent with it".
26. SGA sections 20 and 69 allow parties to agree to exclude the implied section 18 conditions in a sale for used goods like this one.
27. In *Queen Charlotte Lodge Ltd. v Hiway Refrigeration Ltd.*, 1998 CanLII 6552, the BC Supreme Court held at paragraph 33 that the contract must have "clear and direct language" that parties meant to contract out of the SGA. In *Sugiyama v Pilsen*, 2006 BCPC 265, the BC Provincial Court considered the SGA implied warranties and

concluded that a clause that the parties' contract had "no representations, warranties or guarantees except as expressly set out in the contract" without reference to the SGA was not clear enough to exclude the SGA protections.

28. I find the contract's express condition that "Alpha Auto Access is not responsible for any upcoming repairs" is inconsistent with the SGA section 18 conditions as they relate to the car's condition and durability. Whether the car's transmission issue rendered the car unfit to drive (section 18(a)) or meant it was not reasonably durable (section 18(c)), a normal measure of damages under SGA section 56 for a warranty breach would be the car's repair costs. Even though the contract does not mention the SGA, I find there is no other interpretation of this contractual exclusion clause other than to relieve Alpha from liability for damages (repair costs) from a failure of the car's condition or durability. I find this express condition satisfies the *Queen Charlotte* requirement for clear and direct language that the parties contracted out of the SGA. So, I find this condition overrides the implied SGA warranties under sections 18(a) and 18(c). SGA section 18(b) only applies where the good was sold by description, which was not the case here. For these reasons, I find the SGA implied warranties do not apply to this contract.
29. Absent a warranty, the principle of "buyer beware" generally applies to purchases of used cars: see *Cheema v. Mario Motors Ltd.*, 2003 BCPC 416. It means that the buyer assumes the risk that the purchased car might be either defective or unsuitable to their needs: see *Connors v. McMillan*, 2020 BCPC 230, citing *Rushak v. Henneken* [1986] B.C.J. No. 3072 (BCSC) affirmed 1991 CanLII 178 (BCCA). A buyer is generally responsible for failing to adequately inspect a used car before purchasing it. However, a seller, whether commercial or private, cannot misrepresent or actively conceal known defects.
30. As mentioned, Loyal's multipoint inspection did not inspect the transmission fluid. The applicants say Alpha had wrongly told them it was because the transmission fluid could not be checked. The applicants say they "expect the reason the transmission fluid was indicated as not checked on the inspection report was plausible deniability

to the existing transmission issue which would have been evident with a simple fluid check”. I find their allegation not entirely clear. The applicants seem to be alleging that Alpha concealed a pre-existing known transmission defect or dissuaded them from getting a more thorough inspection. However, I find they have proven neither. It was not Alpha who performed the inspection, it was a third-party business. There is no evidence that Alpha knew or should have known about the transmission issue. I find the evidence does not lead to a conclusion that Alpha was trying to hide or conceal anything about the transmission.

31. I find a reasonable buyer would have concluded that Loyal’s inspection was superficial or cursory considering the number of important “under hood” items it did not check. I find nothing in evidence to conclude that the applicants were prevented from getting the car more thoroughly inspected themselves before they purchased it.
32. Considering the lack of warranty, I find the applicants assumed the risk by purchasing a used car with relatively high mileage, no detailed service history and no thorough, independent, inspection. I find the principle of buyers beware applied to this car sale. I find Alpha is not responsible for applicants’ expense to diagnose the issue or repair the car by replacing the transmission. I dismiss the applicants’ claims for these expenses.
33. 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.
34. Alpha paid a \$50 CRT fee to cancel a default decision and order and seeks reimbursement of that fee. As the successful party in this dispute, I find that Alpha is entitled to the \$50 reimbursement from the applicants. Alpha did not claim any dispute-related expenses. As the unsuccessful party, I find the applicants are not entitled any reimbursement.

ORDERS

35. Within 30 days of the date of this order, I order the applicants to pay Alpha a total of \$50 in CRT fees.
36. Alpha is entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.
37. I dismiss the applicants' claims.
38. Under section 48 of the CRTA, the CRT will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the CRT's final decision.
39. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Trisha Apland, Tribunal Member