



Civil Resolution Tribunal

Date Issued: January 24, 2022

File: SC-2021-003234

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *0912860 B.C. Ltd. v. Right Trucks Sales & Service Ltd.*, 2022 BCCRT 88

BETWEEN:

0912860 B.C. LTD.

APPLICANT

AND:

RIGHT TRUCKS SALES & SERVICE LTD. and DON GRAY

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. This dispute is about a used vehicle purchase. The applicant, 0912860 B.C. Ltd. (091), purchased a used 2010 Isuzu NRR (truck) from the respondent, Right Trucks

Sales & Service Ltd. (Right Trucks). The other respondent, Don Gray, was Right Trucks' salesperson in the transaction.

2. 091 says the truck required nearly \$8,000 in repairs to get it in "good running condition" as Right Trucks promised in the contract. 091 claims \$5,000, the small claims monetary limit for the Civil Resolution Tribunal (CRT), so I find it abandons any claim to amounts over \$5,000. 091 is represented by an employee or principal.
3. Right Trucks is represented by Mr. Gray. The respondents say they paid for certain agreed-upon repairs and they owe nothing more. They also say the truck was otherwise in good running condition and 091 drove it several thousand kilometres before it needed any other repairs.

JURISDICTION AND PROCEDURE

4. These are the CRT's formal written reasons. 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. Right Trucks did not file a Dispute Response and is technically in default. However, as noted above, Mr. Gray, a principal or employee of Right Trucks, filed a Dispute Response. Mr. Gray says his submissions are for him and for Right Trucks. So, I accept Mr. Gray's submissions on behalf of Right Trucks and I exercise my discretion not to assume liability against Right Trucks.

ISSUE

9. The issue in this dispute is whether Right Trucks breached any express or implied contractual warranties, and if so, what remedy is appropriate?

EVIDENCE AND ANALYSIS

10. As the applicant in this civil proceeding, 091 must prove its claim on a balance of probabilities, meaning more likely than not. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision.
11. On May 14, 2019, 091 entered into a purchase agreement to buy the truck from Right Trucks for \$26,000 plus tax (contract). The contract identified Mr. Gray as the salesperson, but he is not a party to the contract, which I find is between 091 and Right Trucks. Directors, officers and employees are not generally liable for a corporation's actions or bound by its contracts, in the absence of fraud or improper conduct, which are not present here. 091 has not explained why it thinks Mr. Gray is personally liable for its claimed damages. For these reasons, I dismiss the claim against Mr. Gray.

12. The contract included a warranty section. Pre-printed on the contract was the statement, “No warranty implied or given” with space for initials, which was left blank. Below that, Right Trucks wrote that the “ABS issue” (which I infer means an issue with the truck’s anti-lock braking system) was to be resolved by repairing a “tone ring”. Below that, Right Trucks wrote “to be in good running condition, fully serviced.” Because the “No warranty” statement was not initialed and was followed by 2 specific warranties, I find the “No warranty” statement had no effect. Right Trucks did not argue otherwise.
13. The “ABS light” was on when 091 test drove and purchased the truck, so all parties were aware of an issue with the ABS. The day after the purchase, 091 drove the truck to Berks Intertruck Ltd. (Berks), a third party-repair shop, to address the ABS issue. As shown in its June 10, 2019 invoice, Berks found the tone ring had “no fault” but undertook further investigation and repairs to fix the ABS. Right Trucks undisputedly paid this \$1,679.87 invoice, and 091 does not suggest that Right Trucks breached a warranty related to the ABS. This initial Berks invoice included some other work that I discuss below.
14. There are 2 more Berks invoices dated August 30 and September 26, 2019, totaling \$6,204.65. The invoices address engine repairs and other repairs. 091 says these repairs were necessary to get the vehicle in good running condition as promised by Right Trucks. Right Trucks says the truck had significant miles on it, so 091 should have expected the truck to eventually need repair. Right Trucks also says 091 drove the truck thousands of miles before the additional work.

Warranties

15. 091 relies on section 18 of the *Sale of Goods Act* (SGA). Where the SGA section 18 warranties apply, there is an implied condition that the goods: a) are reasonably fit for their purpose, b) are of “merchantable” quality, meaning suitable for sale, and c) will be durable for a reasonable period of time under normal use in the circumstances. I find each of these conditions applied to the truck purchase as Right Trucks is a “supplier” under the SGA.

16. In addition, the contract said the truck was “in good running condition, fully serviced,” other than the ABS issue, which as noted above was addressed. I find this “good running condition” representation took on contractual force by being expressly included in the contract: see *Gallen v. Butterley*, 1984 CanLII 752 (BC CA). It was therefore a warranty, and I consider whether Right Trucks breached it below.
17. In *Sugiyama v. Pilsen*, 2006 BCPC 265, the BC Provincial Court considered the SGA implied conditions in the context of a used car sale. The court set out a number of factors to consider when assessing whether the implied conditions were met, including the vehicle’s age, mileage, price, use, and the reason for any defective performance or breakdown.
18. In *Sugiyama*, the claimant purchased an 8-year-old car with over 140,000 kilometers on it and no apparent defects. After the claimant drove the car for only 616 kilometers, the engine needed replacement. The court held the car was merchantable and fit for its purpose when it was sold. Even though the car broke down after very little driving, the court still held that the car was durable for a reasonable time.
19. Here, the truck was 9 years old and had 248,644 km on it, substantially more than the car in *Sugiyama*. 091 says the type of truck is expected to last 500,000 km before needing engine replacement, but 091 provided no supporting evidence. Also, the invoices do not say that Berks replaced the engine. So, I find the truck had substantial mileage.
20. Right Trucks says the sale price was less than $\frac{1}{4}$ the price of a new truck. However, Right Trucks provided no evidence of the truck’s price when new or the price of similar used trucks. As a result, I cannot determine whether the price 091 paid for the truck was above or below market value for similar vehicles with similar mileage.
21. It is undisputed that 091 bought the truck for the purpose of delivering water. It is undisputed that the truck initially ran, and there is no suggestion or evidence that the truck did not carry water as required. Considering all the above, I find the truck was of “merchantable quality” and reasonably fit for its purpose.

22. I turn to whether the truck was durable for a reasonable period of time in the circumstances.
23. 091 provided a statement from one of its employees, DG, who says the check engine light came as he was driving the truck away from Right Trucks on May 14, 2019. I accept this statement, which is supported by Berks' June 10, 2019 invoice that says the customer complained of a "code/light on dash". According to the invoice, Berks installed a new temperature sensor. There is no indication that this failed to address the issue. As noted, Right Trucks paid Berks directly for this invoice.
24. 091 says it retrieved the truck on June 10, 2019. It does not explain the delay, but the invoice is also dated June 10, 2019. 091 says it operated the truck with the check engine light on until it "broke down" 7 days later. I do not accept this for 3 reasons. First, 091 does not explain why it drove the truck with the check engine light on. Second, Berks' June 10 invoice does not note the check engine light was still on or there were any unresolved issues. Third, 091 does not explain why it did not contact Right Trucks when the check engine light was not resolved after Berks' first service.
25. Critically, the odometer readings noted on Berks' invoices show that the truck was driven 3,258 miles or 5,243 km between the initial repair that started on May 15, 2019, and the engine repair that started June 17, 2019. I find 091 drove the truck without issue over 5,000 km after the initial repair. I find nothing in the August and September 2019 invoices linking engine issues to the initial engine issue addressed in the June 10, 2019 invoices.
26. In the circumstances, I find the truck was reasonably durable. I place particular weight on the truck's age, high mileage, and the thousands of kilometres it was driven after purchase. I find there was no breach of implied warranty under SPA section 18.
27. What about the explicit warranty that the truck was in good running condition and fully serviced? The parties did not make submissions about the meaning of "fully serviced". On a plain reading, and in context with "good running condition", I find it meant Right Trucks asserted that it undertook reasonable regular maintenance on the truck to

keep it running, such as oil changes. As noted above, the truck undisputedly ran. Other than the ABS issue and the initial check engine light that I find were fully addressed, the truck had no issues for 5,000 km.

28. The difficulty here is that there is no evidence 091 failed to service the truck and no evidence that the engine repairs would have been unnecessary had the truck been fully serviced. The fact that the engine required repairs 5,000 km after purchase is not, on its own, compelling evidence that the truck was not, at the time of sale, in good running condition and fully serviced. There is no statement, for example, from Berks or another mechanic providing their professional opinion that the truck was not reasonably maintained by its previous owner. The evidence does not allow me to conclude on a balance of probabilities that the truck was not in good running condition and fully serviced. So, I find Right Trucks did not breach the express warranty.
29. Based on the above, Right Trucks is not responsible for the claimed repairs to 091's truck. I dismiss 091's claim against Right Trucks.
30. Under section 49 of the CRTA and CRT rules, a successful party is generally entitled to recover their CRT fees and reasonable dispute-related expenses. Right Trucks and Mr. Gray were successful but did not pay CRT fees or claim expenses. I dismiss 091's claim for reimbursement of CRT fees.

ORDER

31. I dismiss 091's claims and this dispute.

Micah Carmody, Tribunal Member