



Civil Resolution Tribunal

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File: SC-2021-005818

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Begg v. Desmarteau*, 2022 BCCRT 86

B E T W E E N :

JUDY BEGG

APPLICANT

A N D :

NICOLE DESMARTEAU

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about a used vehicle purchase. The applicant, Judy Begg, purchased a used 1997 Volkswagen Cabriolet from the respondent, Nicole Desmarteau, for \$5,500. Ms. Begg says the car was defective, Ms. Desmarteau misrepresented its condition, and Ms. Desmarteau failed to refund the purchase price as agreed when Ms. Begg was not completely satisfied with the car. Ms. Begg claims \$5,000, the

maximum Civil Resolution Tribunal (CRT) small claim amount, for a refund of the purchase price. I find Ms. Begg has abandoned her claim to any amounts over \$5,000.

2. Ms. Desmarteau says she did not misrepresent the car's condition, and that Ms. Begg bought it without first viewing it in person and without an inspection. Ms. Desmarteau says she did not agree to any refund, and she owes nothing.
3. The parties are each self-represented 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.

ISSUES

8. The issues in this dispute are as follows:
 - a. Whether Ms. Desmarteau misrepresented the car's condition or failed to provide an agreed refund,
 - b. Whether the car was insufficiently durable, and
 - c. Whether Ms. Desmarteau owes a \$5,000 purchase price refund for any of the above.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, Ms. Begg as the applicant must prove her 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.
10. The parties lived in different cities. The undisputed evidence is that Ms. Begg viewed photos of the car online, and then purchased it on or around April 15, 2021 without first inspecting it personally and without the benefit of a third-party inspection. Ms. Begg paid the purchase price and had a third party pick up the car and deliver it to her before seeing it in person.
11. Except for any express or implied warranties, addressed later in this decision, the "buyer beware" principle generally applies to used vehicle purchases (see *Cheema v. Mario Motors Ltd.*, 2003 BCPC 416 at paragraph 10). That principle means that the buyer assumes the risk that the purchased vehicle might be defective or unsuitable to their needs and is expected to assess the vehicle's condition before purchasing it

(see *Conners v. McMillan*, 2020 BCPC 230). However, a seller cannot misrepresent or actively conceal known defects. Ms. Begg says that Ms. Desmarteau misrepresented the car's condition, and that it was not as described.

12. 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.

13. 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.

14. To prove damages for either negligent or fraudulent misrepresentation, a seller must make a statement that is false, inaccurate, or misleading, and the buyer must reasonably rely on the representation. Ms. Begg bears the burden of proving any alleged misrepresentations.

15. There is no car advertisement in evidence. The only direct evidence before me showing Ms. Desmarteau's description of the car's condition is a copy of what appears to be an online text chat between the parties from before the sale. Much of the text is visible, although some of Ms. Desmarteau's writings are obscured by annotations.

16. In the text chat, I find Ms. Desmarteau said she had not obtained a CARFAX report, and had no service records for the car. She also said the engine was running perfectly

with no oil leaks at all, and that she had the car “at the mechanics” who said nothing was needed at that time. Ms. Desmarteau said that the mechanic had “done” the power steering a few times and it squeaks a little, and that the transmission “does a tiny skip off the first gear” which the mechanic said was not serious. There are no records of Ms. Desmarteau’s mechanic’s findings in evidence, but I find there is no direct evidence showing her mechanic did not say those things.

17. Ms. Begg says that Ms. Desmarteau said the transmission only needs a “transmission flush”. I place limited weight on that statement because I find there is no evidence before me showing that Ms. Desmarteau described a transmission flush. However, I accept that Ms. Begg knew the transmission needed work. I also place no weight on Ms. Begg’s allegations that Ms. Desmarteau said the car was in “excellent mechanical condition,” because that is unsupported by evidence, and is contrary to her description of no service records and ongoing car symptoms.
18. I find Ms. Desmarteau’s car description identified possibly ongoing steering and transmission issues. The parties do not dispute that Ms. Desmarteau declined Ms. Begg’s pre-purchase request for Ms. Desmarteau to obtain a mechanical inspection of the car. However, Ms. Begg still chose to purchase the car without further inspection or investigation. So, I find Ms. Begg was likely aware that the car could have mechanical defects with its steering and transmission, and in other unknown areas.
19. Except for the implied warranty discussed below, I find Ms. Begg assumed the risk of purchasing a used car that was approximately 24 years old and had been driven approximately 139,000 kilometres, had no detailed service history or independent inspection, and possibly had ongoing steering and transmission issues. Other than the implied warranty discussed below, I find the principle of buyer beware applied to this car sale. Except for the oil leaks that Ms. Desmarteau said were not present, addressed below, I find the car’s condition when purchased was consistent with her description.

20. Ms. Begg does not say how far the third party drove the car before delivering it to her, but I infer that it was more than a minimal distance, because the parties live in different cities and ferry travel was involved. Ms. Begg says that after taking delivery of the car from the third party, she found the steering was stiff and got stiffer, and that the car would sometimes lurch forward when stopped. I find this is broadly consistent with the steering and transmission symptoms Ms. Desmarteau described to her. Ms. Begg says she drove the car to a mechanic, and she submitted copies of what appear to be repair and inspection receipts. There are no authors or dates visible on the receipt copies, and one of them appears to list an odometer reading that is lower than the odometer reading on the Transfer/Tax Form for Ms. Begg's car purchase, without explanation. Ms. Begg also submitted an August 15, 2021 letter from Fairfield Auto Repair (Fairfield), 4 months after the car's purchase, detailing the results of its car inspection. The author's title was "Service Advisor", but the author's name was cut off, and the author did not describe any of his professional qualifications, experience, or training, or say who had conducted the inspection.
21. I find that the receipts and Fairfield's letter are sufficient to show that the car had certain symptoms and shortcomings, as I find those topics were likely within the knowledge of ordinary auto repair shop staff, and are not directly disputed. So, I find no expert evidence is needed to prove those shortcomings. Those documents show that a power steering belt was replaced and transmission fluid was added, which I find Ms. Begg reasonably should have expected, given Ms. Desmarteau's disclosures about the steering and transmission. The evidence does not show whether those repairs fixed the steering and transmission symptoms. The documents also show the car had several deficiencies, including transmission leaks and "major oil leaks". However, apart from the oil leaks, I find Ms. Desmarteau's description did not deny the existence of those deficiencies and was consistent with them.
22. As for the oil leak, I find that expert evidence is needed to prove the causes of any of the car's identified symptoms or shortcomings, and whether they presented any durability or safety concerns, since I find those are topics outside of ordinary knowledge and experience (see *Bergen v. Guliker*, 2015 BCCA 283). I find no part of

the receipts and Fairfield letter qualify as expert evidence under CRT rules 8.3(2) or (3), although as noted I accept them as lay evidence that the listed car symptoms existed. I find there is no expert evidence before me in this dispute. So, I find the evidence does not show that the presence of oil leaks affected the car's operation or value, or that any oil leak repairs were necessary or recommended. Further, there is no evidence showing what the oil leaks would cost to repair, or that Ms. Begg paid to, or intended to, repair them.

23. Although Ms. Begg says the mechanical inspections found the oil leaks were long-standing issues, I find that the receipts and Fairfield letter do not say that. Further, those documents are not expert evidence, which I find would be required to provide a reliable opinion on the leaks' ages. I also find the evidence before me does not show whether there were any oil leaks at the time the third party picked up the car from Ms. Desmarteau, or whether they developed later during the third party's return trip or Ms. Desmarteau's subsequent use of the car.
24. So, I find Ms. Begg has not proven that she suffered any damage from the presence of oil leaks. I find she has not proven that the car had oil leaks when it was delivered to the third party at the time of purchase. I also find that she has not proven that the description of "no oil leaks" affected her decision to purchase the car, given that she purchased it sight unseen with other known steering and transmission symptoms and without the benefit of an inspection. So, I find Ms. Begg has not shown that Ms. Desmarteau's description of "no oil leaks" met the tests for either negligent or fraudulent misrepresentation.
25. For the above reasons, I find Ms. Desmarteau is not liable for misrepresenting the car's condition. I turn now to the alleged agreement to provide a refund.
26. Ms. Begg says Ms. Desmarteau told the third party who picked up the car that if anything was wrong with the car, or if she was not completely satisfied, Ms. Desmarteau would provide a full refund. Ms. Desmarteau denies saying that. Ms. Begg says the third party wrote a statement supporting this alleged refund agreement by Ms. Desmarteau, but did not submit that statement as evidence. So, I draw an

adverse inference against Ms. Begg, and I find there was no refund agreement. I find Ms. Begg is not entitled to a refund based on an agreement between the parties.

27. Turning to warranties, I find that even if Ms. Desmarteau's "no oil leaks" description could be considered a warranty, as noted she has not suffered any damages or loss from its breach. Overall, I find Ms. Desmarteau provided no explicit warranties about the car. In particular, I find the evidence does not show that Ms. Desmarteau gave any explicit guarantees about the car's safety, drivability, or durability. Ms. Begg says Ms. Desmarteau did not say the vehicle was sold "as is", but I find that Ms. Desmarteau did not have to use those words in order to provide no explicit warranties, or to have the general "buyer beware" principle apply.
28. However, Ms. Begg also says that the car breached implied warranties under the *Sale of Goods Act* (SGA). I find that the implied warranties under SGA section 18(a) (fitness for purpose) and 18(b) (merchantable quality) do not apply to a private used car sale like this one. However, SGA section 18(c) does apply 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 the car purchase.
29. 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 kilometres on the odometer when sold, and was approximately 9 years old.
30. Here, there is no evidence before me showing whether the \$5,500 paid for the car was significantly above or below the usual market value for similar vehicles. Ms.

Desmarteau says she had been driving the car and had no issues with it other than the steering and transmission symptoms she disclosed. I find it is unclear on the evidence whether the steering and transmission were unreasonably problematic at the time of purchase. As noted, I find the third party drove the car a more than minimal distance between the parties' cities. Further, I find it is unclear how far the car was driven after Ms. Begg received it from the third party before the problems became more objectionable and Ms. Begg took the car to a mechanic, although Ms. Begg says she drove it 3 times. I also place no weight on the Fairfield letter's statement that the car had safety issues and would fail a BC Provincial Inspection if it ever required one. The letter did not specifically identify the alleged safety issues, the car did not receive a BC Provincial Inspection, and the evidence does not show that the author was a qualified provincial inspector. I also find the evidence does not show that Ms. Desmarteau ceased driving the car after the mechanic visits, or that it was not roadworthy despite its identified shortcomings.

31. As noted, Ms. Begg knew about potential steering and transmission issues when she bought the car. Although she felt the steering and transmission symptoms were unsafe prior their repair, I find the evidence before me does not show that the car was unsafe or was not reasonably durable in all the sale's circumstances. I place particular weight on the car's advanced age and significant mileage, and insufficient evidence showing it was not roadworthy, despite its imperfect condition. On balance and in the circumstances, I find the evidence shows the car was reasonably durable when Ms. Begg purchased it. I find there was no breach of SPA section 18(c).
32. Overall, I find there is no basis in misrepresentation, or breach of an express or implied warranty or a contractual refund term, or otherwise, to conclude that Ms. Desmarteau is responsible for refunding the car's purchase price. I dismiss Ms. Desmarteau's claim for \$5,000.

CRT FEES AND EXPENSES

33. 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. Ms. Begg was unsuccessful in her claim, and Ms. Desmarteau paid no CRT fees and claims no CRT dispute-related expenses. So, I order no reimbursements.

ORDER

34. I dismiss Ms. Begg's claim, and this dispute.

Chad McCarthy, Tribunal Member