



# Civil Resolution Tribunal

Date Issued: January 25, 2022

Date of Amended Decision: January 27, 2022

File: SC-2021-005867

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Mann v. Gona*, 2022 BCCRT 95

BETWEEN:

COLETTE MANN

**APPLICANT**

AND:

DONALD GONA

**RESPONDENT**

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**AMENDED REASONS FOR DECISION**

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Tribunal Member:

Shelley Lopez, Vice Chair

## INTRODUCTION

1. This dispute is about a private used car sale. The applicant, Colette Mann, bought a used 1993 Pontiac Sunbird convertible car from the respondent, Donald Gona. Ms. Mann says that soon after purchase the car had “knocking” noises and a mechanic told her it was not safe to drive and required \$4,000 in repairs. Ms. Mann says Mr. Gona misrepresented the car. She also says that it was not durable, contrary to the implied warranty in the *Sale of Goods Act (SGA)*. She claims a \$1,600 refund for the car’s purchase price.
2. Mr. Gona denies he advertised the car with any warranties and says he sold the car “as is”. He says to his knowledge the car was running fine apart from a brake noise and noisy exhaust that he undisputedly told Ms. Mann about during the test drive.
3. The 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)*. 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 parties to a dispute that will likely continue after the dispute resolution process has ended.
5. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Bearing in mind the CRT’s mandate that includes proportionality and a speedy resolution of disputes, I find I can fairly hear this dispute based on the submitted evidence and through written submissions.
6. Under CRTA section 42, 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 CRTA section 118, in resolving this dispute the CRT may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.

## **ISSUES**

8. The issues are:
  - a. Whether Mr. Gona misrepresented the car,
  - b. Whether the car was not reasonably durable, and
  - c. To what extent, if any, is Ms. Mann entitled to the claimed refund.

## **EVIDENCE AND ANALYSIS**

9. In a civil claim like this one, as the applicant Ms. Mann has the burden of proving her claims, on a balance of probabilities (meaning “more likely than not”). I have only referenced below what I find is necessary to give context to my decision.
10. Ms. Mann bought the car from Mr. Gona on June 26, 2021. Mr. Gona’s advertisement (in the form of a sign placed on the car) showed the 1993 car had 94,525 km and that it “runs good, needs new canvas top”. His list price was reduced from \$2,250 to \$1,850. The ad did not say it was being sold “as is”. As noted, Ms. Mann paid \$1,600 for the car, without a professional inspection.
11. Ms. Mann agrees that during her test drive (in Mr. Gona’s field as the car was not insured), she heard a noise and asked Mr. Gona about it. She agrees he told her that the car needed an oil change and probably new brake pads. Ms. Mann also says Mr. Gona told her the car needed a new convertible roof. Mr. Gona says he also said the exhaust was noisy and should be checked for leaks, which she denies.

12. Ms. Mann did not drive the car for 10 days due to extreme weather conditions. She then heard knocking noises took the car to a shop on July 12, 2021.
13. As noted above, Ms. Mann says the mechanic told her the car was unsafe to drive and required \$4,000 in repairs. She submitted in evidence a July 22, 2021 invoice from Bart's Minute Muffler & Maintenance (Bart's). Bart's invoice noted the concern was "squealing noise coming from the brakes". Bart's diagnosis was the front brakes were "metal on metal" and had been for a long time. Bart's wrote the car needed front brake pads and rotors, and that the car was dangerous to drive until the brakes were replaced. Bart's noted a steering system issue that required repairs, based on Ms. Mann's concern about a "rotational metallic noise". Bart's also charged for a new muffler system, noting the catalytic converter was coming apart and the muffler was leaking. Ms. Mann paid Bart's total invoice for \$1,998.63. Ms. Mann does not explain the discrepancy between this figure and the \$4,000 figure.

### ***Misrepresentation***

14. In short, Ms. Mann says Mr. Gona misrepresented the car as "runs good" when it needed significant repair, as detailed in Bart's invoice. Ms. Mann also says a front tire was "macerated" and a photo in evidence shows some pitting on it.
15. The principle of "buyer beware" generally applies to private purchases of used vehicles (see *Cheema v. Mario Motors Ltd.*, 2003 BCPC 416). It means that the buyer assumes the risk that the purchased vehicle might be either defective or unsuitable to their needs (see *Conners v. McMillan*, 2020 BCPC 230, citing *Rushak v. Henneken* [1986] B.C.J. No. 3072 (BCSC) affirmed 1991 CanLII 178 (BCCA)). In *Conners*, citing *Floorco Flooring Inc. v. Blackwell*, [2014] B.C.J. No. 2632, the court concluded that there is no common law duty for a seller to disclose known defects, though they cannot actively conceal or misrepresent them. In short, a buyer is generally responsible for failing to adequately inspect a good before buying it.
16. If a seller misrepresents a vehicle's condition, the buyer may be entitled to compensation for losses arising from that misrepresentation. A "misrepresentation"

is a false statement of fact made during negotiations or in an advertisement that induces a reasonable person to enter into the contract. The seller must have acted negligently or fraudulently in making the misrepresentation, the buyer must have reasonably relied on the misrepresentation to enter into the contract, and the reliance “must have been detrimental in the sense that damages resulted” (see *Queen v. Cognos Inc.*, [1993] 1 SCR 87 at paragraph 110).

17. The difficulty for Ms. Mann is that before she bought the car, she heard the knocking noise and Mr. Gona told her the car likely needed new brake pads and an oil change. Based on the photos, the tire pitting was readily visible. Despite all these known issues, she chose to buy the car anyway. While Ms. Mann suggests Mr. Gona was a mechanic and likely knew the extent of the required repairs, there is no evidence to support this assertion. In any event, Bart’s invoice is for an oil change, new brakes and rotors, a new sway bar for the steering issue, and an exhaust and muffler system. I find it unproven these things were wrongfully concealed from Ms. Mann before she bought the car. Apart from the known brake issue and knocking sound, there is also no evidence before me that the car did not “run good” for a 28<sup>i</sup>-year-old car being sold for \$1,600. I find Mr. Gona did not misrepresent the car.

### ***Sale of Goods Act***

18. SGA section 18 sets out three implied warranties: saleability or merchantability (quality), fitness for purpose, and reasonable durability. Given Mr. Gona was not in the business of selling cars, I find only the implied warranty of durability in SGA section 18(c) applies to this private used car sale.
19. Section 18(c) says that goods sold be durable for a reasonable period with normal use, considering the sale’s context and surrounding circumstances (see *Drover v. West Country Auto Sales Inc.*, 2004 BCPC 454).
20. In *Sugiyama v. Pilsen*, 2006 BCPC 265, the BC Provincial Court applied section 18(c), and said there were a number of factors to consider when determining whether a vehicle is durable for a reasonable period of time, including the age,

mileage, price, the vehicle's use, and the reason for the breakdown. In *Sugiyama*, the claimant bought an 8-year-old car with over 140,000 kilometers. After driving it for only 616 kilometers, the car broke down. Even though the car broke down after little driving, the court found that it was reasonably durable.

21. Further, as the court held in *Wanless v. Graham*, 2009 BCSC 578, a case involving a 10-year-old car sold for \$2,000, people who buy old used vehicles must expect defects to come to light at any time. Within the context of Mr. Gona's sale of the 18-year-old car with relatively high mileage, I find the car was reasonably durable at the time of sale even though the car required repairs a couple weeks later.
22. Significantly, I also find that since Mr. Gona told Ms. Mann about the knocking noise and need for brake pads, there was no durability warranty about the brakes. In other words, as provided for under SGA section 18(e), I find the warranty "needs new brake pads" is inconsistent with a warranty that the brakes were reasonably durable. I dismiss Ms. Mann's claim for a \$1,600 refund.
23. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. As Ms. Mann was unsuccessful, I dismiss her claim for reimbursement of CRT fees and dispute-related expenses. Mr. Gona did not pay CRT fees or claim dispute-related expenses.

## ORDER

24. I dismiss Ms. Mann's claims and this dispute.

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Shelley Lopez, Vice Chair

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<sup>i</sup> Amendment Notes: Amended under CRTA section 64 to correct a typographical error in paragraph 17.