



# Civil Resolution Tribunal

Date Issued: February 28, 2022

File: SC-2021-003872

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Bleiler v. Sawhney*, 2022 BCCRT 213

BETWEEN:

TALIA BLEILER

**APPLICANT**

AND:

NISHANT SAWHNEY also known as NISHANT SAHNI

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

David Jiang

## INTRODUCTION

1. This dispute is about the private sale of a used vehicle. The applicant, Talia Bleiler, purchased a 2005 Nissan Murano (Murano) from the respondent, Nishant Sawhney also known as Nishant Sahni. Ms. Bleiler says that the Murano broke down after 10 minutes of driving. She says Mr. Sawhney agreed to buy back the car but breached their agreement to do so. She also says Mr. Sawhney breached the implied warranty

of durability under section 18(c) of the *Sale of Goods Act* (SGA), misrepresented the Murano, and breached an obligation to disclose latent defects. In particular, Ms. Bleiler says Mr. Sawhney knew the alternator was defective. She claims for a refund of \$2,500 and reimbursement for the following: \$300 for sales tax, \$60 for short-term car insurance, and \$893.30 for a mechanic to examine the Murano.

2. Mr. Sawhney disagrees. He says the Murano was sold “as is” without any warranties. He denies agreeing to buy back the Murano, misrepresenting it, or knowing that the alternator was defective at the time of sale.
3. A family member represents Ms. Bleiler. Mr. Sawhney represents himself.
4. For the reasons that follow, I dismiss Ms. Bleiler’s claims.

## **JURISDICTION AND PROCEDURE**

5. 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.
6. 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. Some of the evidence in this dispute amounts to a “she said, he said” scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.

7. 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.
8. 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**

9. The issues in this dispute are as follows:
  - a. Did Mr. Sawhney agree to buy back the Murano?
  - b. Did Mr. Sawhney breach the implied warranty of durability under section 18(c) of the *Sale of Goods Act*?
  - c. Did Mr. Sawhney negligently or fraudulently misrepresent the Murano?
  - d. Did Mr. Sawhney fail to disclose a latent defect in the Murano?

## **BACKGROUND, EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, the applicant Ms. Bleiler must prove her claims on a balance of probabilities. This means more likely than not. I have read all the parties' submissions, including cited case law, but refer only to the evidence and arguments that I find relevant to provide context for my decision.

11. I begin with the largely undisputed facts. Ms. Bleiler saw Mr. Sawhney's online ad for the Murano. He asked for \$2,500 or best offers. I find the ad's representations about the Murano were limited to the following: the make and model, including its 2005 year, the mileage of 245,000 kilometers, and that the Murano had a new battery and usable snow tires. It is undisputed that these representations were accurate.
12. Mr. Sawhney says he sold the car "as is" but I find the ad and other evidence do not support this. I elaborate on this finding below.
13. On March 22, 2021, Ms. Bleiler messaged Mr. Sawhney about the Murano. They met that same evening at a parking lot. Ms. Bleiler was accompanied by her husband, CW. Ms. Bleiler submitted CW's September 24, 2021 statement which I find to be largely accurate, with an exception about the existence of a verbal agreement noted below.
14. As stated in CW's evidence, Ms. Bleiler inspected the Murano. Both she and CW drove the Murano around the parking lot prior to purchase. I infer this took a few minutes. Save for minor squeaking of the brakes, it ran without issue. The parties also discussed the Murano's condition. Ms. Bleiler noted that the muffler was hanging low and appeared broken. Mr. Sawhney acknowledged that it needed repairs. Ms. Bleiler was unable to open the hatchback door. Mr. Sawhney said this was due to a child lock that needed to be deactivated. Mr. Sawhney also advised there were some issues with the driver side and passenger doors that had to be fixed. Ms. Bleiler asked if there were any other problems with the Murano. Mr. Sawhney said no, though he noted that older vehicles require maintenance.
15. Ms. Bleiler decided to buy the Murano that same night, without having it professionally inspected. Mr. Sawhney drove the Murano to a nearby Superstore to complete the transfer paperwork. The parties' submissions indicate it was about 4 kilometers away. Ms. Bleiler and CW drove their own vehicle and met Mr. Sawhney there. Ms. Bleiler purchased short-term insurance for the Murano. All 3 individuals took the Murano back to where they had met Mr. Sawhney so that Mr. Sawhney could take a separate

vehicle home. By this time, Mr. Sawhney had received Ms. Bleiler's \$2,500 electronic payment.

16. Ms. Bleiler then drove the Murano with CW as a passenger back to Superstore, so that CW could drive his vehicle. Ms. Bleiler told CW that the Murano stopped responding to the accelerator while parking it. She estimates the problems started after driving about 10 minutes for a distance of about 4 kilometers. As noted above, this was the distance between where the parties originally met and to Superstore. After CW left, Ms. Bleiler drove the Murano by herself. While attempting to merge onto the highway, the Murano failed to respond to the accelerator. Ms. Bleiler pulled off the highway and parked at a nearby car dealership.
17. Ms. Bleiler was able to slowly drive the Murano to a mechanic to examine it on March 23, 2021. In a March 26, 2021 invoice, the mechanic reported the alternator had failed, so the vehicle had been running off the new battery alone. The parties agree that the faulty alternator explains why the Murano failed to accelerate. The mechanic said the alternator had been damaged by a "major" oil leak, and that the leak also had to be repaired. The mechanic did not comment on the timing of the leak or whether Mr. Sawhney would likely be aware of it.

***Issue #1. Did Mr. Sawhney agree to buy back the Murano?***

18. Shortly after the Murano failed to accelerate on the highway and before she took it to a mechanic, CW met with Ms. Bleiler. They took turns speaking to Mr. Sawhney on the phone. Ms. Bleiler says that while she was on the phone, Mr. Sawhney verbally agreed to buy back the Murano if there were major repairs amounting to \$1,000 or more. Mr. Sawhney disagrees.
19. I find the alleged verbal agreement to be unproven. CW refers to it, but his statement does not indicate that he could hear what Mr. Sawhney said to Ms. Bleiler during the phone call. I find the parties' text messages also do not support the alleged verbal agreement. On March 22, 2021, Mr. Sawhney wrote that if the Murano's transmission was faulty, he would reimburse Ms. Bleiler \$1,000. He did not write that he would buy

back the Murano. There is no evidence that the transmission is defective. On March 24, 2021, Ms. Bleiler texted Mr. Sawhney. She wrote that he had agreed to buy the vehicle back if there were major issues amounting to more than \$1,000 in repairs. Mr. Sawhney replied that he never said \$1,000, and “I don’t know from where you got that”.

20. I find this is essentially an evidentiary tie. As Ms. Bleiler bears the burden of proof, I find the existence of the verbal agreement is unproven.

***Issue #2. Did Mr. Sawhney breach the implied warranty of durability under section 18(c) of the Sale of Goods Act?***

21. I find the parties entered into a private sale which was subject to SGA section 18(c). Section 18(c) requires that the goods sold be durable for a reasonable period, considering how the goods would be normally used and the sale’s surrounding circumstances. The other implied warranties in section 18 of the SGA do not apply to private sales. A seller of used goods can exclude this implied warranty through a contract term, but the seller must do so in clear and unambiguous language: *Connors v. McMillan*, 2020 BCPC 230 at paragraphs 63 to 65.
22. In this dispute, I find Mr. Sawhney did not exclude the implied durability of warranty. The ad and text messages lack any wording that says the Murano was sold “as is” or without any warranties.
23. I next consider whether the car was durable for a reasonable period of time. In *Sugiyama v. Pilsen*, 2006 BCPC 265 at paragraph 45, the court discussed some of the principles applicable in the sale of a used car. The court noted that the seller is not a guarantor of the car’s future performance. The buyer knows that some problems will inevitably occur, and the greater the age and mileage of the car, the more likely it is that something will break down. The court also outlined factors affecting the extent of any implied warranty for a used car. These include age, mileage, price, the prior and intended use of the vehicle, and the reason for the breakdown.

24. In *Sugiyama* the claimant purchased a car that was 8 years old and had over 140,000 kilometers on it. The car broke down after the claimant drove it for 616 kilometers. The court found that the car was roadworthy and could be safely driven when purchased. The court concluded that the car was durable for a reasonable period of time.
25. In *Tremblay v. Lundquist*, 2021 BCCRT 1242, the seller sold a 17-year-old car with a mileage of 198,000 kilometers for \$2,850. The buyer's mechanic inspected the car 5 days after purchase and found it had a leaking head gasket. The CRT Vice Chair found that the seller did not breach the implied warranty of durability.
26. CRT decisions are not binding. However, I find the find the facts in this dispute are similar to those in *Tremblay*, and I find its reasoning persuasive. The Murano was about 16 years old, had a considerable mileage of 245,000 kilometers, and a relatively low cash value of \$2,500. The evidence shows it was drivable for short periods of time both before and after purchase. In the March 23, 2021 invoice, the mechanic refrained from commenting on when the alternator became damaged. So, I do not find it proven that the Murano was inoperable at the time of sale.
27. I acknowledge the Murano became undrivable almost immediately after purchase. However, as stated in *Wanless v. Graham*, 2009 BCSC 579, buyers of used cars, especially older models with substantial mileage like the Murano, must expect that defects in such cars will come to light at any time. In *Wanless*, the buyer purchased a 10-year-old car for \$2,000. The court dismissed the buyer's appeal and claims. The vehicle in this dispute is far older and has significant mileage.
28. Ms. Bleiler also says Mr. Sawhney breached an agreement to provide a second set of keys to her. Mr. Sawhney says he mailed the second set to Ms. Bleiler. Ms. Bleiler denies ever receiving it. I find it unproven that he provided any guarantees about receipt of the key. Ultimately, I find nothing turns on this as Ms. Bleiler requested no specific remedies about the keys, nor is there any evidence about how much they are worth.

29. In summary, I find the Murano was reasonably durable and so Mr. Sawhney did not breach SGA section 18.

***Issue #3. Did Mr. Sawhney negligently or fraudulently misrepresent the vehicle?***

30. To show negligent misrepresentation, Ms. Bleiler must establish the following: 1) there must be a duty of care, 2) the representation must be untrue, inaccurate, or misleading, 3) Mr. Sawhney must have breached the standard of care in making the misrepresentation, 4) Ms. Bleiler must have reasonably relied on the misrepresentation, and 5) the reliance resulted in damages. The applicable standard of care in a used car sale like this one is to take “reasonable care” to not mislead the buyer about the vehicle’s condition: *Daniel v. Watkinson*, 2019 BCPC 319 at paragraphs 51 and 57.

31. To show fraudulent misrepresentation, Ms. Bleiler must establish the following: 1) Mr. Sawhney made a representation of fact to Ms. Bleiler, 2) the representation was false, 3) Mr. Sawhney knew that the representation was false or was reckless about whether it was true or false, 4) Mr. Sawhney intended for Ms. Bleiler act on the representation, and 5) Ms. Bleiler was induced to enter into the contract in reliance upon the false representation and suffered a detriment. See *Ban v. Keleher*, 2017 BCSC 1132 at paragraph 16.

32. Ms. Bleiler alleges Mr. Sawhney knew that the alternator had failed and misrepresented the Murano had no other problems beyond what was discussed. She says he replaced the battery to mask the alternator’s failure. She also says Mr. Sawhney was suspiciously reluctant to let her test drive the Murano.

33. Overall, I find Mr. Sawhney’s behaviour was consistent with his submission that he was unaware of any defect in the alternator. He ultimately allowed both Ms. Bleiler and CW to test drive the Murano. He drove it to Superstore. He drove away in another car after the sale. He gave no indication that he regularly used the Murano. In text messages to Ms. Bleiler, he said he encountered a similar problem with the



accelerator. He said this stopped when he replaced the battery. I find it at least as likely as not that Mr. Sawhney replaced the battery because he thought it required a new one. So, I find it unproven that Mr. Sawhney fraudulently or negligently misrepresented the Murano's condition.

34. Ms. Bleiler also alleged that Mr. Sawhney insured the Murano as part of a plan of deception, but I find these allegations unproven by evidence.
35. Ms. Bleiler also says Mr. Sawhney misrepresented the hatchback door. She says he advised that it was not working because of a child lock, when in fact it was broken. I find this submission unsupported by evidence. For example, the mechanic does not mention the lock in the March 26, 2021 invoice.
36. Ms. Bleiler further says that Mr. Sawhney misrepresented the condition of the electronic locks and car alarm. However, there is no indication he represented that these worked. Contrary to this, Mr. Sawhney said the Murano's doors had to be fixed.
37. For those reasons, I find Mr. Sawhney did not misrepresent the Murano.

***Issue #4. Did Mr. Sawhney fail to disclose a latent defect in the vehicle?***

38. Ms. Bleiler says Mr. Sawhney knew that the alternator was defective and failed to disclose a latent defect. In law, defects can be either patent or latent. Patent defects can be discovered through inspection and ordinary vigilance. In contrast, latent defects cannot be revealed by any inquiry which a buyer is in a position to make before entering the contract.
39. I have previously noted that there are limited decisions that consider whether the legal concept of material latent defects applies to the sale of goods. See, for example, my decision of *Bourke v. Holbek*, 2021 BCCRT 515. I find it unproven in any event that Mr. Sawhney knew of any latent defects and failed to disclose them. This is because I have already found that Mr. Sawhney did not know the Murano's alternator was defective.

40. Given my conclusions above that the Murano was reasonably durable in the circumstances and that Mr. Sawhney did not misrepresent its condition, I find Ms. Bleiler's claims must be dismissed. I therefore do not need to discuss her specific damages or requested remedies.

41. 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. As she was unsuccessful, I dismiss Ms. Bleiler's claims for reimbursement. Mr. Sawhney did not pay CRT fees and neither party claimed dispute-related expenses.

## **ORDER**

42. I dismiss Ms. Bleiler's claims and this dispute.

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David Jiang, Tribunal Member