



Civil Resolution Tribunal

Date Issued: March 1, 2022

File: SC-2021-006375

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ketchum v. Nordblad*, 2022 BCCRT 223

BETWEEN:

LEE KETCHUM

APPLICANT

AND:

MICHELLE NORDBLAD

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. This is a dispute about a used car sale. Lee Ketchum bought a used Toyota Rav4 from Michelle Nordblad for \$1,500. Mr. Ketchum claims the Rav4 started overheating 20 minutes after he bought it. He claims a \$1,500 refund.

2. Ms. Nordblad says she had never had an overheating problem with the Rav4. She says she is not responsible for any mechanical problems after the sale. She asks me to dismiss Mr. Ketchum's claim.
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). 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. In some respects, both sides to this dispute call into question the credibility, or truthfulness, of the other. However, in the circumstances of this dispute, I find that it is not necessary for me to resolve the credibility issues that the parties raised. I therefore decided to hear this dispute through written submissions.
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 pay money or to do or stop doing something. The CRT's order may include any terms or conditions the CRT considers appropriate.

ISSUES

8. The issues in this dispute are:
 - a. Did Ms. Nordblad misrepresent the Rav4's condition?
 - b. Was the Rav4 reasonably durable?
 - c. What remedy, if any, is appropriate?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, Mr. Ketchum as the applicant must prove his case on a balance of probabilities, which means "more likely than not". While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision. I note that CRT staff told both parties about the importance of evidence but neither party provided much evidence to support their position.
10. Ms. Nordblad advertised the Rav4 on Facebook Marketplace on June 27, 2021. In the ad, Ms. Nordblad said the Rav4 "runs and drives great", except it needed a new air conditioner compressor. She also disclosed it had a new water pump and thermostat. Mr. Ketchum paid \$1,500 for the Rav4 by e-transfer. None of this is disputed.
11. Mr. Ketchum says he took the Rav4 on a short test drive before buying it. He says there were no apparent issues. Ms. Nordblad denies Mr. Ketchum test drove the Rav4, but I find nothing ultimately turns on whether he did or not. The parties agree that Mr. Ketchum did not get a professional inspection before buying the Rav4.
12. Mr. Ketchum says that after purchasing the Rav4, he drove it from Ms. Nordblad's home in Penticton to his home in Okanagan Falls, which is a 20-minute highway drive. He says that when he got home, it was "obvious" that the Rav4 had overheating issues.

13. It is well-established that in the sale of used vehicles, the general rule is “buyer beware”. This means that a buyer is not entitled to damages, such as a refund, just because the vehicle breaks down shortly after the sale. Rather, the buyer generally assumes the risk that a vehicle might be defective or might not last long. In order to receive compensation, the buyer must prove either that the seller misrepresented the vehicle or breached a warranty. There is no suggestion of any express warranty, so I find that Mr. Ketchum must either prove that Ms. Nordblad misrepresented the Rav4’s condition or breached an implied warranty in the *Sale of Goods Act* (SGA).

Misrepresentation

14. Mr. Ketchum argues that Ms. Nordblad’s statement in the ad that the Rav4 “runs and drives great” was a misrepresentation. While Mr. Ketchum does not use these terms, his submissions raise both negligent and fraudulent misrepresentations. A negligent misrepresentation occurs when:

- The seller makes a representation to the purchaser that is untrue, inaccurate, or misleading,
- The seller breaches the standard of care in making the misrepresentation, and
- The purchaser reasonably relies on the misrepresentation to their detriment.

15. A fraudulent misrepresentation occurs when:

- The seller makes a statement of fact to the purchaser,
- The seller knows the statement was false, or is reckless about whether it is true or false, and
- The misrepresentation induces the purchaser into buying the good.

16. Mr. Ketchum says that the Rav4’s head gasket likely needs to be replaced. He argues that Ms. Nordblad knew this. He relies on 2 photos, which show copper-

coloured particles on the radiator cap and inside the radiator. Mr. Ketchum argues that these particles are likely the residue from a temporary fix of the Rav4's head gasket. He says this proves Ms. Nordblad knew about the overheating problem and had tried to fix it herself at some point.

17. Mr. Ketchum admits that he did not have a mechanic inspect the Rav4. He says it would have been uneconomical for him to do so. Mr. Ketchum says that his theory is based on his own experience troubleshooting mechanical issues and cooling systems as a heavy equipment operator.
18. I find that the overheating problem's cause and what the copper particles say about possible past repairs must be proven with expert evidence. This is because these issues are both outside the common knowledge of an ordinary person. See *Bergen v. Guliker*, 2015 BCCA 283.
19. Under CRT rule 8.3(7), the role of an expert is to help the CRT understand technical issues, not to advocate for a party. This requires an expert to be neutral. This means that Mr. Ketchum cannot be an expert in his own case. I therefore have not put any weight on Mr. Ketchum's opinion about the head gasket or prior repairs.
20. I find that the other evidence before me supports Ms. Nordblad's evidence that she did not know the Rav4 was prone to overheating. I say this for 2 reasons. First, the Rav4 only overheated after Mr. Nordblad drove it from Penticton to Okanagan Falls, which as mentioned above is a 20-minute highway drive. I therefore find it plausible that Ms. Nordblad could have driven the Rav4 locally without noticing any overheating issues. Also, the Facebook ad disclosed that she had recently replaced the Rav4's water pump and thermostat and that it needed a new air conditioner compressor. I find that this suggests that Ms. Nordblad attempted to be upfront with what she knew about the Rav4, including its existing issues and recent repairs.
21. Therefore, I find that Ms. Nordblad did not breach the standard of a reasonable person because she could not disclose something she did not know about. I also

find that she did not know that the statement was false. I therefore find that she did not negligently or fraudulently misrepresent the Rav4's condition.

Sale of Goods Act

22. Section 18 of the SGA sets out several implied warranties. I find that the only applicable and relevant implied warranty in a private used vehicle sale is in section 18(c). That section implies a warranty that goods will be durable for a reasonable period of time, considering their normal use and the surrounding circumstances.
23. In *Sugiyama v. Pilsen*, 2006 BCPC 265, the court applied this warranty to a used car sale. The court found that the seller of a used car cannot guarantee the car's future performance, and that a buyer must expect problems at some point. The court found that the older the car, the more likely it will break down. For older cars, the court found that if it is "roadworthy" when purchased, it is likely to be considered reasonably durable, even if it breaks down shortly afterwards. For example, in *Bleiler v. Sawhney*, 2022 BCCRT 213, another CRT member found that a 15-year-old vehicle with 245,000 kilometers was reasonably durable even though the battery died 10 minutes after the purchaser bought it, which revealed that it had a broken alternator.
24. Ms. Nordblad's ad did not say much about the Rav4. There is no evidence before me about its age or mileage. Given the low sale price, I find that it was likely an older vehicle with high mileage. With that context in mind, I find that the Rav4 was roadworthy because it could be driven modest distances without overheating. I therefore find that the Rav4 was reasonably durable. I find that Ms. Nordblad did not breach the implied warranty in section 18(c) of the SGA.
25. With that, Mr. Ketchum has not proven a misrepresentation or a breach of a warranty. I therefore find that "buyer beware" applies and he is not entitled to a refund or any other compensation. I dismiss his claim.

26. 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. Mr. Ketchum was unsuccessful, so I dismiss his claim for CRT fees and dispute-related expenses. Ms. Nordblad did not claim any dispute-related expenses or pay any CRT fees.

ORDER

27. I dismiss Mr. Ketchum's claims, and this dispute.

Eric Regehr, Tribunal Member