



Civil Resolution Tribunal

Date Issued: March 2, 2022

File: SC-2021-005892

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Wilkinson v. Mahovlic*, 2022 BCCRT 226

BETWEEN:

GARY WILKINSON

APPLICANT

AND:

KATIE MAHOVLIC and FRANK MAHOVLIC

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is over a paid deposit for a proposed private sale of a used motorhome owned by the respondents, Katie Mahovlic and Frank Mahovlic. The applicant Gary

Wilkinson was interested in buying the motorhome and before seeing it paid the Mahovlics a \$1,000 deposit that at the time the parties agreed would be non-refundable. Mr. Wilkinson says the Mahovlics misrepresented the motorhome's condition as "like new" and in "drive away" condition. Given the motorhome's issues discussed below, Mr. Wilkinson claims a refund of the \$1,000 deposit plus \$121.37 in fuel costs for his travel to inspect the motorhome before the failed purchase.

2. The Mahovlics deny misrepresenting the motorhome and say it looked like new and was well cared for.
3. Mr. Wilkinson is self-represented and Ms. Mahovlic represents the respondents.

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.

ISSUE

8. The issue in this dispute is whether the Mahovlics misrepresented the motorhome's condition, and if so, whether Mr. Wilkinson is entitled to a refund of his \$1,000 "non-refundable deposit" and \$121.37 in fuel costs.

EVIDENCE AND ANALYSIS

9. In a civil claim like this one, as the applicant Mr. Wilkinson has the burden of proving his 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 Mahovlics advertised the motorhome on Craigslist, for \$32,000. The copy of the ad in evidence described it as a 2003 model Seabreeze LX 8311, which was in "like new" condition. The copy of the ad shows only the motorhome's white exterior from a distance, with no interior photos. Given my conclusion below that the motorhome was not in "like new" condition, I do not need to address whether Ms. Mahovlic verbally assured Mr. Wilkinson that the motorhome was also in "drive away" condition.
11. On July 2, 2021, Mr. Wilkinson paid the Mahovlics a \$1,000 non-refundable deposit to hold the motorhome, after the Mahovlics told him someone else was interested in it. The parties agreed on a \$29,000 purchase price. None of this is disputed.
12. On July 15, 2021, Mr. Wilkinson emailed Ms. Mahovlic complaining about the motorhome's condition and saying that Ms. Mahovlic had misrepresented it. He requested the \$1,000 back. In particular, Mr. Wilkinson said and still submits:

- a. The motorhome's driver's seat is "badly damaged" with a "major tear",
 - b. Both "coach" batteries were dead, preventing Mr. Wilkinson from "trying essential functions" for the coach, such as the rear slide-out in the sleeping area,
 - c. The generator starts but will not keep running, and so Mr. Wilkinson was unable to test the microwave, refrigerator, or electrical converter,
 - d. The front headlight lens was badly glazed,
 - e. A prior windshield repair had not been mentioned,
 - f. The awnings and exhaust pipe were damaged, and
 - g. The windshield wipers were deteriorated and so the wipers could not work without damaging the glass.
13. In support, Mr. Wilkinson submitted a witness statement from Alex Fraser, who accompanied him to view the motorhome. Mr. Fraser says he has owned 5 motorhomes over the years and is familiar with the operation and systems common to most motorhomes. Mr. Fraser also added that he is a professional driver, including of passenger highway coaches, which is undisputed. Mr. Fraser says he found the Mahovlics' motorhome to be in poor condition and lacking in proper maintenance. He listed the same issues noted above. While Mr. Wilkinson relies on Mr. Fraser's evidence as expert evidence, I find expert evidence is not required. Rather, I find observations of the above defects fall within ordinary knowledge. So, I have considered Mr. Fraser's evidence but I find it unnecessary to admit it as expert evidence.
14. In support of their position the motorhome was in good condition, the Mahovlics submitted a brief handwritten October 2, 2021 statement from JK, who wrote only that "the motorhome was in good condition". The Mahovlics say JK bought the motorhome from them, after the sale to Mr. Wilkinson fell through. I place little weight on JK's statement because it lacks any detail and does not address the

specific issues listed above. Further, it is dated over 2 months after Mr. Wilkinson backed out of his purchase and I do not know what repairs, if any, the Mahovlics did to the motorhome before selling it to JK. If anything, JK's statement supports Mr. Wilkinson's position that the Mahovlics misrepresented the motorhome as being in "like new" condition, given JK only described it as being in "good condition".

15. The Mahovlics also submitted a black and white copy of a photo of the motorhome's interior. I find this photo does not assist me in determining whether the listed complaints above were valid concerns, and in particular I cannot see the driver's seat. The parties submitted no other evidence showing the motorhome's condition.
16. Mr. Wilkinson says he does not believe the Mahovlics tried to defraud him but rather were negligent in their representations about the motorhome. So, I turn to the law of negligent misrepresentation, which occurs when:
 - a. The seller makes a representation to the purchaser that is untrue, inaccurate, or misleading,
 - b. The seller breaches the standard of care in making the misrepresentation, and
 - c. The purchaser reasonably relies on the misrepresentation to their detriment.
17. The applicable standard of care in a used vehicle sale like this one is to take "reasonable care" not to mislead the buyer about the vehicle's condition (see *Daniel v. Watkinson*, 2019 BCPC 319).
18. As noted, Ms. Mahovlic submits the motorhome does look "like new" and was well cared for. She submits the motor ran "good" before she placed the advertisement, and that she had E and J, who appear to be her friends, come to test drive it. There are no witness statements from E or J in evidence. Ms. Mahovlic says E and J tested the generator and the slide-out and other things worked "fine". She says she bought the battery 3 years ago, and that when the motorhome is running all that is

required is to start the engine and it will charge the coach battery. She says when Mr. Wilkinson phoned her everything worked to the best of her knowledge.

19. However, Ms. Mahovlic does not dispute that when Mr. Wilkinson came to see the motorhome the generator would not keep running and so certain coach features were inoperable. Ms. Mahovlic also did not address the driver's seat, headlight lens, windshield repairs, damaged awnings and exhaust pipe, or windshield wipers. I accept the generator and other items were in poor condition as described above.
20. On balance, I find Mr. Wilkinson has proved Ms. Mahovlic negligently misrepresented the motorhome. I find the "like new" description was inaccurate and misleading given the issues described above. I find Ms. Mahovlic did not take reasonable care in describing the motorhome given those issues. I say this particularly because she undisputedly knew Mr. Wilkinson was driving from the province's interior to the lower mainland to see the motorhome.
21. Given my conclusions above, I find Mr. Wilkinson is entitled to a refund of his \$1,000 deposit, even though at the time he paid it he agreed it was non-refundable. This is because he paid the \$1,000 based on Ms. Mahovlic's representations that I find were inaccurate.
22. Mr. Wilkinson also claims \$121.37 in fuel costs for his 870 km travel from the interior to the lower mainland, which I find was undisputedly a wasted trip flowing from the misrepresentation. While Mr. Wilkinson did not submit any gas receipts, I find the claimed \$121.37 reasonable and I allow it.
23. The *Court Order Interest Act* (COIA) applies to the CRT. I find Mr. Wilkinson is entitled to pre-judgment COIA interest on the \$1,121.37, calculated from July 15, 2021 to the date of this decision. This interest equals \$3.18.

24. 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. Mr. Wilkinson was successful in his claim and so I find he is entitled to reimbursement of \$125 in paid CRT fees. I note Mr. Wilkinson claims \$125 in CRT fees and a separate \$50 in CRT fees, but CRT staff advise Mr. Wilkinson only paid a total of \$125 in CRT fees so that is all I allow. The Mahovlics were unsuccessful so I do not order any reimbursement for their paid CRT fees. No dispute-related expenses were claimed.

ORDERS

25. Within 30 days of this decision, I order the Mahovlics to pay Mr. Wilkinson a total of \$1,249.55, broken down as follows:

- a. \$1,000 in debt,
- b. \$121.37 in damages,
- c. \$3.18 in pre-judgment COIA interest, and
- d. \$125 in CRT fees.

26. Mr. Wilkinson is entitled to post-judgment interest, as applicable.

27. Under section 48 of the CRTA, the CRT will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the CRT's final decision.

28. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Shelley Lopez, Vice Chair