Civil Resolution Tribunal

Date Issued: March 8, 2022

File: SC-2021-003193

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *SW v. Smith*, 2022 BCCRT 252

B E T W E E N :

SW, SW as Litigation Guardian of KW, minor, and RH

APPLICANTS

A N D :

GREGORY SMITH

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Kristin Gardner

INTRODUCTION

1. This is a dispute about a used car sale. The applicants SW and RH bought a used Hyundai Santa Fe from the respondent, Gregory Smith, for $3,200. SW says she bought the car for her daughter, who is the minor applicant, KW. The applicants say that shortly after the purchase, they discovered the car would not drive over about 50 kilometres per hour. They claim a $3,200 refund.

2. Mr. Smith says the vehicle was over 18 years old, with more than 200,000 kilometres on it, and he sold it with "no warranties express or implied". I infer it is Mr. Smith's position that this dispute should be dismissed.

3. Because SW and KW share the same last name, I will refer to them by their first names in the decision sent to the parties, intending no disrespect. In the published version of this dispute, I have anonymized all the applicants' names to protect KW's identity because she is a minor.

4. SW represents the applicants. Mr. Smith is self-represented.

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. 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.

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.

9. The applicants asked to submit additional evidence, after the time for providing evidence and submissions had closed. The evidence consisted of a September 27, 2021 receipt for vehicle parts. I find this evidence would have been of marginal relevance to the appropriate remedy in this dispute, had the applicants been successful. However, given my findings below, there was no need to consider a remedy, so I decline to admit the late evidence. Bearing in mind the CRT's mandate that includes speed and efficiency, I did not provide the late evidence to Mr. Smith or ask the parties to provide submissions on it.

ISSUES

10. The issues in this dispute are:

    a. Did Mr. Smith misrepresent the vehicle's condition?

    b. Was the vehicle reasonably durable?

    c. What remedy, if any, is appropriate?

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities (meaning "more likely than not"). I note that Mr. Smith provided evidence but did not make any submissions in this dispute, despite having the opportunity to do so, including being provided several extensions. I have read all the parties' evidence and submissions, but I refer only to what I find is necessary to explain my decision.

12. SW says she responded to an advertisement for the vehicle on Facebook Marketplace. The advertisement in evidence said the 2003 vehicle had "219.K" and was in "nice condition" for $3,400.

13. SW says she and RH met with Mr. Smith on February 26, 2021. She says the vehicle did not have insurance, but RH started it and drove it in Mr. Smith's driveway, where it appeared to run okay at about 15 kilometres per hour. The applicants decided to purchase the vehicle and paid Mr. Smith $3,200. The applicants then towed the vehicle from Victoria, BC to Duncan, BC that evening. I infer they did so because the vehicle was for KW, and she was not present to insure it.

14. The applicants say that when KW insured and started driving the vehicle on February 28, 2021, she immediately noticed that the vehicle would not accelerate beyond 50 kilometres per hour. SW says she called Mr. Smith and he told her to take the vehicle to his mechanic at a Hyundai dealership.

15. Mr. Smith did not address any of the above background facts in his Dispute Response, and as noted, he did not provide any submissions in this dispute. Therefore, I accept that these events occurred as set out by the applicants.

16. A March 4, 2021 Hyundai service order in evidence shows KW brought the vehicle in to diagnose why it would not go over 50 kilometres per hour. The service order noted the vehicle had a "very hard start", there was extreme rubbing noise from the belt area, and "zero throttle response". It shows the dealership replaced all the vehicle's "worn out" spark plugs, which improved the vehicle's starts and idling. However, the service order noted the vehicle still had trouble with accelerating beyond 50-60 kilometres per hour, and it stated this suggested a "plugged cat", which I infer refers to a catalytic converter.

17. It is undisputed that Mr. Smith paid the $604.99 Hyundai service order invoice to replace the spark plugs, but he then told the applicants he was not responsible for anything further. When the applicants asked him for a refund of the vehicle's purchase price, Mr. Smith refused.

18. The applicants provided little further evidence or submissions about the vehicle's alleged problems or repair costs and say only that they are left with "a vehicle that does not run properly". They submitted in evidence a September 21, 2021 invoice from Supa's Mechanical (Supa's) for $123.20. The invoice described the work done as "remove plugged secondary cat and weld in new pipe". The applicants also provided a September 27, 2021 quote from Supa's to replace the starter assembly and ignition coil, but did not explain the nature of the problem or when it arose.

Misrepresentation

19. The applicants say the vehicle was advertised as working with no issues, but that it was actually "not in running condition" when purchased. While the applicants do not use this term, I find they are saying that Mr. Smith misrepresented the vehicle.

20. The principle of "buyer beware" generally applies to purchases of used vehicles (see *Cheema v. Mario Motors Ltd.*, 2003 BCPC 416). This 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 *Connors*, 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.

21. That said, 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).

22. I do not accept that the vehicle was advertised as “working with no issues”, as alleged. I find the Facebook advertisement listed several features on the vehicle, such as power windows, locks and mirrors, air conditioning, leather, heated seats, and a CD stereo. It also stated: “no accidents”, “garage kept”, and “senior owned”. However, I find there is no specific reference in the advertisement to the vehicle’s running or mechanical condition.

23. As noted, the advertisement also said the vehicle was in “nice condition”. I find a reasonable person would likely interpret this statement as meaning the vehicle had no known significant issues, considering its age and mileage. It is undisputed that the vehicle did run up to 50 to 60 kilometres per hour, which is the typical city speed limit range, and I find there no evidence that Mr. Smith knew the car had any acceleration problems over that range. So, I find the advertisement did not contain any negligent misrepresentations.

24. I note the applicants do not allege that Mr. Smith made any specific verbal representations about the vehicle’s running condition during their negotiations. They also do not allege that Mr. Smith wrongfully concealed a known acceleration problem, though even if they had, I find there is insufficient evidence before me to show that was the case. While I acknowledge the applicants’ test drive was limited, I find they likely could have arranged for a more thorough test drive or professional inspection, had they chosen to do so, which likely would have revealed the acceleration issue.

25. In any event, it is undisputed that the vehicle was drivable, so I find it was in running condition, though not in perfect running condition. There is also no evidence before me that the vehicle was not otherwise in “nice condition” for an 18-year-old car with 219,000 kilometres on the odometer, being sold for $3,200. So, I find that Mr. Smith did not misrepresent the vehicle.

Sale of Goods Act

26. As noted, Mr. Smith says he sold the vehicle with no express or implied warranties. There is no evidence of any express warranties about the vehicle’s running condition,

and I find the sale did not include a term that the vehicle was sold "as is". However, section 18 of the *Sale of Goods Act* (SGA) sets out several implied warranties that apply to the sale of goods.

27. I note that in the Dispute Notice, the applicants say the Hyundai dealership told them Mr. Smith is a "wholesaler" with the business name Autowise. I infer they mean that Mr. Smith is in the business of selling used vehicles. I find this allegation is based on hearsay, as there is no statement from anyone at the Hyundai dealership setting out their knowledge of Mr. Smith's alleged business. While I considered whether to draw an adverse inference against Mr. Smith for his failure to address this allegation in evidence or submissions, I decided it would be inappropriate to do so. This is because on the applicants' own evidence, they say they understood Mr. Smith to be a private seller, and they did not learn of his alleged business until well after the sale was complete. So, in the context of this transaction, I find it was a private sale.

28. I find that the only applicable and relevant implied SGA 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 with normal use, considering the sale's context and surrounding circumstances (see *Drover v. West Country Auto Sales Inc.*, 2004 BCPC 454).

29. 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 kilometres. After driving it for only 616 kilometres, the car broke down. The court found that for an older car, if it is "roadworthy" when purchased, it is likely to be considered reasonably durable, even if it breaks down shortly afterwards.

30. Here, there is no evidence before me that the vehicle "broke down", just that it did not go faster than about 50 to 60 kilometres per hour. There is no evidence before me that there were any safety concerns with driving the vehicle with the suspected

"plugged cat". Therefore, I find the vehicle was roadworthy when the applicants bought it, as it could be driven at lower speeds.

31. Further, Mr. Smith provided a vehicle history report printout that shows the vehicle received a maintenance inspection and oil and filter change on July 22, 2021. The vehicle's odometer reading during that service showed it had been driven almost 3,000 kilometres between February and July. Yet, the Supa's invoice in evidence suggests the "plugged cat" was not fixed until September 2021.

32. So, even though the vehicle may have needed some work done when the applicants purchased it, I find the applicants continued to drive the vehicle and it was reasonably durable under the circumstances. I find Mr. Smith did not breach SGA section 18(c).

33. As the applicants have not proven a misrepresentation or a breach of warranty, I find that "buyer beware" applies, and they are not entitled to a refund or any other compensation. I dismiss the applicants' claim.

34. 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. The applicants were unsuccessful, so I dismiss their claim for CRT fees and dispute-related expenses.

35. As the successful party, I find Mr. Smith is entitled to reimbursement of $25 in paid CRT fees. He did not claim any dispute-related expenses.

ORDERS

36. Within 14 days of the date of this decision, I order the applicants to pay Mr. Smith a total of $25 for CRT fees.

37. Mr. Smith is also entitled to post-judgment interest under the *Court Order Interest Act*.

38. I dismiss the applicants' claims.

39. Under sections 57 and 58 of the CRTA, a validated copy of the CRT's order can be enforced through the Supreme Court of British Columbia or the Provincial Court of British Columbia if it is under $35,000. Once filed, a CRT order has the same force and effect as an order of the court that it is filed in.

Kristin Gardner, Tribunal Member