



Civil Resolution Tribunal

Date Issued: March 18, 2022

File: SC-2021-007531

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lim v. Dignan*, 2022 BCCRT 306

BETWEEN:

VANESSA EAM KHUN LIM and ANTONY SOULIVONG

APPLICANTS

AND:

STEPHANIE MARIA DIGNAN and CHRISTOPHER BRIAN DIGNAN

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about the private sale of a used car. The applicants, Vanessa Eam Khun Lim and Antony Soulivong, bought a 2008 BMW 323i from the respondents, Stephanie Maria Dignan and Christopher Brian Dignan, for \$6,900. The applicants say that after the purchase they discovered the vehicle needed various repairs. They

say the Dignans misrepresented the vehicle's condition and that it was not reasonably durable. The applicants claim \$5,000 in repair costs.

2. The respondents deny that they misrepresented anything about the vehicle. They say "the car ran great" and that the applicants drove it extensively after the purchase. The respondents say they are not responsible for any alleged repair costs.
3. Mrs. Lim represents the applicants, and Mrs. Dignan 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). 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 parties to this dispute call into question the credibility, or truthfulness, of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 28, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I 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 do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

ISSUES

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

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities (meaning "more likely than not"). I have read all the parties' evidence and submissions, but I refer only to what I find is necessary to explain my decision.
10. The Dignans advertised the vehicle on Facebook Marketplace in August 2021. The copy of the ad in evidence said the vehicle had 129,000 kilometres and stated: "no accidents, no mechanical problems and everything is in perfect working condition". It also said there had been a recent oil change in June 2021. The ad shows the initial price was \$7,600, but it had been reduced to \$6,900.
11. Mr. Soulivong texted Mrs. Dignan through the Facebook app on August 7, 2021. He asked her several questions, including: "Any issue? When was filled AC? When did you change break pad? Rotor? No fault lights displayed on the dashboard? Any dents on the car body or bumper? Did you change oil for transmission too?" (quote reproduced as written).
12. Mrs. Dignan replied that there were "no mechanical issues and no lights on the display to indicate any errors". She also advised that the brake pads and rotors were

last changed in August 2019, but the car had only been used for pleasure since then, so there were about 3,000 kilometres on the brakes. Mrs. Dignan also stated that when the oil change was done in June 2021, the mechanic had also done a “complete inspection” and reported no issues. I find a reasonable person would interpret this to mean that a licensed or certified mechanic had done a relatively thorough mechanical inspection and found no obvious defects requiring repair.

13. Mrs. Dignan also provided Mr. Soulivong with a link to the vehicle’s Carfax report. The Dignans say the maintenance history section on this report shows the vehicle’s maintenance history as they always took the car to either a certified dealership or mechanic for servicing. I note there is no mention of the alleged June 2021 service on the Carfax report. More on this below.
14. Mr. Soulivong arranged to test drive the vehicle on August 10, 2021, where he agreed to buy the car for the listed \$6,900 price. The applicants paid a \$900 deposit for the vehicle that day. The parties then met on August 12, 2021 to complete the transfer papers, and the applicants e-transferred the \$6,000 balance to Mrs. Dignan.
15. The applicants say that about a week after the purchase, when the radio and air conditioning were off, they heard an “abnormal” noise coming from the car. The applicants say they first took the car to an auto body repair shop on August 25, the first available appointment they could get. They say the shop provided a preliminary diagnosis that the vehicle’s rear differential was the issue, but it referred them to a transmission specialist for confirmation. The applicants say they next took the car to Stan’s Transmission Centre (Stan’s) the following day, and a mechanic confirmed the rear differential had to be replaced. The applicants provided an August 31, 2021 email from Stan’s quoting \$2,000 plus tax to rebuild the vehicle’s rear differential.
16. The evidence shows the applicants sent an August 27, 2021 email to the Dignans explaining what the 2 shops had told them about the rear differential. They also advised the Dignans that they would not have bought the car for \$6,900 had they known repairs would be required so soon. There is no evidence before me that the Dignans responded to the applicants’ email.

17. The applicants then took the car to King's Autoguard, LTD. (King's) on September 1, 2021 for a full vehicle inspection. The King's invoice in evidence shows the inspection revealed that in addition to the damaged rear differential, the oil pan gasket was leaking, and front brake sensor codes were present. I infer that the brake sensor codes did not result in any indicator light on the dashboard, as there is no evidence to that effect on the invoice or in the parties' evidence.
18. I also note the King's invoice says the oil change service light was on, but the parties do not address this in their submissions, so I find it unlikely the light was on during Mr. Soulivong's test drive. In any event, I find nothing turns on the oil change light as the applicants do not claim anything for an oil change.
19. Ultimately, the applicants took the vehicle to Nixon Automotive Ltd. (Nixon), which they say specializes in BMW service and repairs. Nixon's September 21, 2021 invoice in evidence shows it also performed diagnostic work on the vehicle about the "light noise" coming from the rear of the vehicle. The invoice shows Nixon concluded the vehicle's rear differential required replacement, the front brake pad and rotors needed replacement, and the leaky oil pan gasket needed replacement. Nixon's invoice set out the cost for that work totaling \$5,177.98, though the repairs were not completed at that time. I infer that the applicants claimed only \$5,000 in this dispute to bring it within the CRT's \$5,000 small claims monetary limit. Therefore, I find the applicants have abandoned the amount of their claim above \$5,000.
20. The applicants say that had they known the car had "such serious flaws", they would not have bought it at all. They argue the Dignans should be responsible for the claimed \$5,000 in repair costs, based on their misrepresentations about the car's condition and because the car was not reasonably durable as required under the *Sale of Goods Act*.
21. I turn first to the misrepresentation claim.

Misrepresentation

22. 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)). So, a buyer is generally responsible for failing to adequately inspect a vehicle before buying it.
23. That said, a seller cannot misrepresent a vehicle’s condition. If a seller misrepresents the vehicle, either fraudulently or negligently, 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 has the effect of inducing a reasonable person to enter into the contract.
24. Fraudulent misrepresentation occurs when the seller makes a false statement of fact that the seller knew was false or was reckless about whether it was true or false, and the misrepresentation induced the purchaser into buying the car.
25. Negligent misrepresentation occurs when the seller carelessly or negligently makes a representation to the purchaser that is untrue, inaccurate, or misleading, and the purchaser reasonably relied on the misrepresentation.
26. It is undisputed that the applicants did not get the vehicle inspected before buying it. However, the applicants say they relied on Mrs. Dignan’s multiple statements both verbally during the test drive and in writing that the car had no mechanical issues and that a mechanic had recently done a complete inspection.
27. The Dignans argue that during the test drive, Mrs. Dignan “clarified” that the June 2021 oil change was done because the car had not been driven for a while. They also say Mrs. Dignan told Mr. Soulivong that because the car was uninsured, the service had been completed by a “private mechanic” in their home garage. So, while he checked fluid levels and “basic running parts”, he had been unable to perform a “full

inspection". She says she explained this was why the June 2021 service did not appear on the Carfax report.

28. The applicants deny that Mrs. Dignan advised them of any of this. The evidence shows that after the test drive and having paid the deposit, Mr. Soulivong texted Mrs. Dignan to request copies of all invoices and receipts for vehicle maintenance. Mrs. Dignan replied that she had no receipts, but that the Carfax report showed all previous service records other than the June 2021 service, which she stated in the text had been done by a private mechanic because the car was uninsured. Nevertheless, there is no mention in Mrs. Dignan's texts that the mechanic had not done a "complete inspection", as she had previously represented.
29. On balance, I find Mrs. Dignan did not tell the applicants that the car had not received a complete inspection in June 2021. The applicants' August 27 email to the Dignans stated that they had relied on Mrs. Dignan's representations that the vehicle had undergone a complete inspection. Had Mrs. Dignan previously told the applicants that the vehicle had not been so inspected, I would have expected her to correct them on that point. However, there is no evidence that she did so. I accept the applicants' evidence that the first time they learned the vehicle did not have a complete inspection in June 2021, was when they reviewed the Dignans' Dispute Responses.
30. The Dignans did not provide any evidence about the alleged June 2021 service, such as a report, invoice, or statement from the mechanic. So, there is no evidence before me about the mechanic's identity or qualifications, the extent of the alleged mechanic's inspection, or the mechanic's findings.
31. Where a party fails to provide relevant evidence without a reasonable explanation, the CRT may draw an adverse inference. An adverse inference is where the CRT assumes that a party failed to provide relevant evidence because the missing evidence would not have supported their case. I find that an adverse inference is appropriate here because whether the Dignans had the vehicle inspected or were aware of any mechanical issues with the vehicle at the time of the sale are clearly at issue. Based on the adverse inference, I find that either there was no mechanical

inspection by a mechanic or that a mechanic advised the Dignans that the inspection revealed issues with the rear differential, brakes, and oil pan gasket.

32. Either way, I find that Mrs. Dignan's August 7, 2021 text to Mr. Soulivong stating that a mechanic had done a complete inspection of the vehicle in June 2021 and found no issues was untrue, as was the ad that stated the vehicle had "no mechanical problems" and was in "perfect running condition". I find the Dignans knew these statements were false or they were reckless about their truth when they made them. I also find the applicants demonstrated the vehicle's mechanical condition was very important to them, given their many questions and request for maintenance records, and I find the Dignans' statements induced the applicants into buying the car, without getting their own inspection first. Therefore, I find the Dignans' statements constituted fraudulent misrepresentation about the vehicle.
33. Based on their fraudulent misrepresentation, I find the Dignans are responsible for the applicants' claimed vehicle repair costs. As noted, Nixon estimated the repair costs at \$5,177.98. I find there is no evidence to suggest that amount is unreasonable, and I order the Dignans to pay the applicants the claimed \$5,000.
34. Given my findings on misrepresentation, it is unnecessary to consider whether the vehicle was reasonably durable.
35. The *Court Order Interest Act* applies to the CRT. However, since there is no evidence before me that the applicants have paid for the repairs to date, I decline to award pre-judgment interest.
36. 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. As the applicants were successful, I find they are entitled to reimbursement of \$175 in paid CRT fees.
37. The applicants also claim \$35.48 for sending the Dignans a September 11, 2021 letter seeking their cooperation to pay for the vehicle repairs. However, this expense was

incurred before the Dispute Notice was issued on October 4, 2021, so I find this expense is not properly considered dispute-related, and I decline to allow it.

ORDERS

38. Within 21 days of the date of this decision, I order the Dignans to pay the applicants a total of \$5,175, broken down as follows:
 - a. \$5,000 in damages for vehicle repairs, and
 - b. \$175 in CRT fees.
39. The applicants are entitled to post-judgment interest, as applicable.
40. 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.
41. 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.

Kristin Gardner, Tribunal Member