



# Civil Resolution Tribunal

Date Issued: March 24, 2022

File: SC-2021-005441

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kabongo v. Martin*, 2022 BCCRT 335

BETWEEN:

KALONZO KABONGO

**APPLICANT**

AND:

ALEXANDER GREGORY MARTIN

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Micah Carmody

## INTRODUCTION

1. This dispute is about the private sale of a used motorcycle.
2. The applicant, Kalonzo Kabongo, bought a 1978 Yamaha XS650 SE (bike) from the respondent, Alexander Gregory Martin, for \$3,900.

3. Mr. Kabongo says Mr. Martin's Craigslist ad was fraudulent and Mr. Martin misrepresented the bike's condition. He says the bike developed an oil leak, battery issues and wheel-locking issues within days of the purchase. He says repairing the bike would cost more than the \$3,900 he paid. He seeks \$5,000 as a refund and reimbursement of repair cost.
4. Mr. Martin says there was no fraud in the Craigslist ad and everything he said about the bike was true. He says Mr. Kabongo test-drove the bike and was totally happy with it. He also says Mr. Kabongo could have addressed the battery issue by using the battery charger included in the sale, but Mr. Kabongo never picked it up. Mr. Martin says the claim should be dismissed.
5. Each party is self-represented in this dispute. For the reasons that follow, I find Mr. Kabongo has not proven his claim and I dismiss it.

## **JURISDICTION AND PROCEDURE**

6. 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.
7. 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, the parties in this dispute call into question each other's credibility. Credibility of 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. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. In the circumstances of this dispute, I find that I am able to assess and weigh

the evidence and submissions before me. Bearing in mind the CRT's mandate that includes proportionality and prompt resolution of disputes, I decided to hear this dispute through written submissions.

8. 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.
9. 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**

10. The issues in this dispute are:
  - a. Did Mr. Martin misrepresent the bike's condition?
  - b. Was the bike reasonably durable in the circumstances?
  - c. What remedy, if any, is appropriate?

## **EVIDENCE AND ANALYSIS**

11. As the applicant in this civil proceeding, Mr. Kabongo must prove his claim on a balance of probabilities, meaning more likely than not. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision.
12. In late June 2021, Mr. Kabongo responded to Mr. Martin's ad on Craigslist for the bike. The parties engaged in some pre-purchase discussions and texts that I consider below. On June 25, Mr. Martin sold Mr. Kabongo the bike for \$3,900. It is undisputed that Mr. Kabongo test-drove the bike before purchase, and did not ask to take it for a professional inspection.

13. When riding the bike hours after he purchased it, Mr. Kabongo noticed oil dripping and messaged Mr. Martin. Mr. Martin said it was a very hot day but with a fresh oil change and some thicker oil things would be “all good.”
14. On June 30, Mr. Kabongo asked Mr. Martin if he could pick up some additional parts that were included in the sale, including a battery charger. Mr. Martin said he could pick up the parts anytime. Apparently Mr. Kabongo never picked up the parts, but he makes no claim about the parts in this dispute, so I have not considered their value.
15. Mr. Kabongo says on June 30, he rode the bike for a short distance and parked it at a friend’s place. When he later tried to start the bike, it would not start. He bought a new battery, as confirmed by a June 30 receipt for \$314.72.
16. Mr. Kabongo says the next day he installed the new battery and successfully started the bike. On his ride home, he says the rear wheel locked twice before he decided to push the bike home for safety reasons.
17. On July 2, Mr. Kabongo left the bike with Windbell Motorcycle (Windbell). Windbell conducted an inspection, checked the battery charging system, replaced rear brake pads, repaired a rear brake caliper, and added brake fluid. The total cost was \$368.34. The invoice contains a section describing the mechanic’s recommendations, which I return to below.
18. As noted, Mr. Kabongo says the Craigslist ad was fraudulent. The Craigslist ad is not in evidence, and Mr. Kabongo does not say what the ad said about the bike. As a result, I find Mr. Kabongo’s claim that the ad itself contained misrepresentations cannot succeed.
19. Although he does not use these exact words, I find Mr. Kabongo claims that Mr. Martin verbally misrepresented the bike’s condition. He also says he expected the bike to be rideable for longer before requiring repairs. So, I consider the law of misrepresentation and warranties under the *Sale of Goods Act* (SGA) below.

## ***Misrepresentation***

20. If a seller misrepresents the condition of a vehicle, 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.
21. A negligent misrepresentation 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.
22. A fraudulent misrepresentation occurs when:
- a. The seller makes a statement of fact to the purchaser,
  - b. The seller knows the statement was false, or is reckless about whether it is true or false, and
  - c. The misrepresentation induces the purchaser into buying the good.
23. It is undisputed that before the sale, Mr. Kabongo told Mr. Martin that he did not have time to fix a motorcycle and just wanted to enjoy the summer and obtain his motorcycle licence. The parties' messages show that Mr. Kabongo asked whether he needed any mechanical knowledge to own a 1978 motorcycle and whether he could use the bike daily for short drives. Mr. Martin responded that he had owned the bike for almost 2 years and it had not needed any mechanical attention.
24. Mr. Kabongo says just before purchasing the bike, Mr. Martin revealed that he had not serviced the bike. Mr. Kabongo also says Mr. Martin showed him a few bills for repairs done on the bike, so I gather that those bills were not for routine servicing. Again, none of this is disputed.

25. On review of the evidence, I agree with Mr. Martin that he did not make any false or even misleading statements of fact about the bike. There is no evidence to contradict Mr. Martin's statement that he had not had any mechanical issues in nearly 2 years. The fact that the bike leaked oil shortly after purchase does not make Mr. Martin's statement any less likely to be true. On the contrary, I find the post-purchase oil leak consistent with Mr. Martin's statement that he had not serviced the bike at all in his time as its owner.
26. Does it matter that Mr. Martin did not reveal that he had not serviced the bike until just before the purchase? I find that it does not, because there is no indication that Mr. Kabongo could not have walked away from the purchase at that point.
27. On balance, I find Mr. Kabongo has not proved that Mr. Martin misrepresented the bike's condition.

### ***Sale of Goods Act Warranties***

28. Section 18 of the SGA sets out several implied warranties. I find the only applicable and relevant implied warranty in this private used motorcycle 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.
29. In *Sugiyama v. Pilsen*, 2006 BCPC 265, the court applied that warranty to a used car sale. The court found that the seller of a used vehicle cannot guarantee the vehicle's future performance, and that a buyer must expect problems at some point. The court also found that the older the vehicle, the more likely it will break down. For an older vehicle, if it is "roadworthy" when purchased, it is likely to be considered reasonably durable, even if it breaks down shortly afterwards. I find these principles apply to the bike, which was 42 years old.
30. Unlike many of the used car cases, here there was not a total engine failure or complete breakdown. I find an oil leak and a battery replacement within the first few days do not establish that the 42-year-old bike was not reasonably durable. I find this is particularly true given Mr. Martin's undisputed evidence that he advised Mr.

Kabongo that the bike had been in storage over the winter and should undergo annual service.

31. While I accept Mr. Kabongo's evidence that the rear wheel locked, there is no explanation of what caused this issue. The Windbell inspection invoice does not specifically address it. I find that wheel locking and what that says about past repairs and the safety or condition of the bike must be proven with expert evidence. This is because these issues are outside the common knowledge of an ordinary person (see *Bergen v. Guliker*, 2005 BCCA 283). As there is no expert evidence before me, I find it unproven that the bike was not safe to drive and therefore not roadworthy.
32. The Windbell invoice includes several "mechanic's recommendations". As noted above, Windbell did some minor repairs on the bike at the time it made these recommendations. The recommendations are in point form and not all of them are legible or intelligible to an ordinary person. It is not apparent which recommendations, if any, need to be addressed to make the bike roadworthy. I find that Windbell likely made the most pressing repairs necessary to get the bike back on the road, given it released the bike to Mr. Kabongo and he does not say he could not drive it. There is also no evidence about what it may cost to address these repairs.
33. I conclude that Mr. Kabongo has not met his burden of proving that the bike was not reasonably durable. As noted in *Wanless v. Graham*, 2009 BCSC 578, buyers of older used cars "must expect defects in such cars will come to light at any time."
34. As Mr. Kabongo has failed to prove a misrepresentation or a breach of an implied warranty, I dismiss Mr. Kabongo's claims.
35. Under section 49 of the CRTA and CRT rules, a successful party is generally entitled to recover their CRT fees and reasonable dispute-related expenses. Mr. Martin was successful but did not pay CRT fees or claim expenses. I dismiss Mr. Kabongo's claim for reimbursement of CRT fees.

## **ORDER**

36. I dismiss Mr. Kabongo's claims and this dispute.

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Micah Carmody, Tribunal Member