



Civil Resolution Tribunal

Date Issued: April 11, 2022

File: SC-2021-005182

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Rudyuk v. Scomazzon*, 2022 BCCRT 415

BETWEEN:

SERHIY RUDYUK

APPLICANT

AND:

WALTER SCOMAZZON

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about the private sale of a used 1996 motorboat with outboard motor and trailer. The applicant, Serhiy Rudyuk, bought it from the respondent, Walter Scomazzon. Mr. Rudyuk says Mr. Scomazzon misrepresented the motor's condition. Mr. Rudyuk says it is irreparable and seeks \$5,000 as compensation.

2. Mr. Scomazzon denies misrepresenting the motor. He says Mr. Rudyuk's mechanic inspected and tested the motor before purchase and confirmed it was in good working order. He also says the motor was sold "as is" under their written contract.
3. The parties are self-represented.
4. For the reasons that follow, I dismiss Mr. Rudyuk's claims.

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. Some of the evidence in this dispute amounts to a "he said, he said" scenario. The credibility of interested 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. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.

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.

ISSUES

9. The issues in this dispute are as follows:
 - a. Did Mr. Scomazzon sell the motor free of any warranties?
 - b. Did Mr. Scomazzon negligently or fraudulently misrepresent the motor?

BACKGROUND, EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant Mr. Rudyuk must prove his claims on a balance of probabilities. This means 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.
11. I begin with the undisputed background. In May 2020 Mr. Rudyuk saw Mr. Scomazzon's online ad for a 1995 Duroboat-brand 15' aluminum motorboat, outboard motor, and trailer. Mr. Scomazzon advertised that the motor's 1995 engine block was rebuilt in 2005 and had been used for only 60 hours since then. Mr. Scomazzon agreed to sell the motorboat, motor, and trailer to Mr. Rudyuk for \$8,700. The parties documented their agreement by signing a June 5, 2020 contract.
12. Prior to purchase, Mr. Rudyuk brought a mechanic with him to inspect the motorboat. There is no evidence from the mechanic about the inspection. However, it is

undisputed that Mr. Scomazzon ran the motor, removed its cover for inspection, and the mechanic said the motor was in good working order.

13. After the purchase, Mr. Scomazzon accompanied Mr. Rudyuk on June 26, 2020 to drive the motorboat on the ocean for about an hour. This was because Mr. Rudyuk was a first-time boat owner and Mr. Scomazzon wished to show him how the motorboat worked. The motor worked at the time.
14. The next time Mr. Rudyuk used the motorboat in August 2020 the motor kept stalling and the power trim ceased working. He took the motorboat and motor to a mechanic, M&P Mercury Sales Ltd. (Mercury). Mercury's August 17, 2020 quote recommended, among other things, replacing the battery connectors, spark plugs, fuel diaphragm, water pump, and power trim. Mr. Rudyuk paid for the diagnostic but decided to do the recommended repairs on his own. He says this fixed some issues, but the motor continued to have problems with idling and starting roughly.
15. On March 31, 2021, Mr. Rudyuk returned to Mercury with the motorboat and motor. Mercury first said that the bottom crank seal had failed. However, in a June 22, 2021 quote, Mercury wrote that the motor still had problems after doing the recommended repairs. It found the reed block had failed. This allowed water into the engine block to damage the motor's internals. Mercury recommended replacing the motor entirely and other repairs for a total of \$9,806.21. Mercury's emails to Mr. Rudyuk indicate that it disassembled the motor to do its work, and the motor is not worth reassembling.

Issue #1. Did Mr. Scomazzon sell the motor free of any warranties?

16. The parties used a template from Service Canada for their June 5, 2020 contract. The written terms had a field titled warranty period. Mr. Scomazzon wrote in, "0 NONE". He also wrote under this, "ALL AS IS".
17. Given the clear wording, I find the parties agreed that no conditions or warranties applied to the motorboat, motor, or trailer. Consistent with my conclusion, Mr. Rudyuk submitted that he completed Mercury's recommended repairs of August 2020 because his understanding was that they were not Mr. Scomazzon's responsibility.

18. I note that section 18(c) of the *Sale of Goods Act* (SGA) is an implied warranty that requires that goods sold be durable for a reasonable period, considering how the goods would be normally used and the sale's surrounding circumstances. However, a seller of used goods can exclude this implied warranty through a clear and unambiguous contract term. See *Conners v. McMillan*, 2020 BCPC 230 at paragraphs 63 to 65. Given the written contract, I find the parties agreed to exclude the implied warranty here.
19. For those reasons, I find Mr. Scomazzon did not breach any contract terms. I turn next to whether he misrepresented the motor.

Issue #2. Did Mr. Scomazzon negligently or fraudulently misrepresent the motor?

20. To show negligent misrepresentation, Mr. Rudyuk must establish the following: 1) there must be a duty of care, 2) the representation must be untrue, inaccurate, or misleading, 3) Mr. Scomazzon must have breached the standard of care in making the misrepresentation, 4) Mr. Rudyuk must have reasonably relied on the misrepresentation, and 5) the reliance resulted in damages. The applicable standard of care in a used car sale is to take "reasonable care" to not mislead the buyer about the vehicle's condition. See *Daniel v. Watkinson*, 2019 BCPC 319 at paragraphs 51 and 57. I find this same standard applies to this motorboat sale.
21. To show fraudulent misrepresentation, Ms. Rudyuk must establish the following: 1) Mr. Scomazzon made a representation of fact to Mr. Rudyuk, 2) the representation was false, 3) Mr. Scomazzon knew that the representation was false or was reckless about whether it was true or false, 4) Mr. Scomazzon intended for Mr. Rudyuk to act on the representation, and 5) Mr. Rudyuk was induced to enter into the contract in reliance upon the false representation and suffered a detriment. See *Ban v. Keleher*, 2017 BCSC 1132 at paragraph 16.
22. In the online ad, Mr. Scomazzon represented that the motor's engine block was rebuilt in 2005 and had only 60 hours of use since then. He also wrote, "EVERYTHING IS

IN GOOD WORKING ORDER". Mr. Rudyuk says these statements were compensable misrepresentations. For the reasons that follow, I find it unproven that Mr. Scomazzon breached the applicable standard of care or knowingly or recklessly made a false representation.

23. As documented in an August 2, 2005 invoice, Mr. Scomazzon paid a mechanic \$3,413.19 to rebuild the motor's engine block. So, I find the representations about rebuilding the engine block were true.
24. Mr. Rudyuk and his mechanic inspected the motor prior to purchase. It operated during the inspection and again on June 26, 2020, when Mr. Scomazzon accompanied Mr. Rudyuk on open water. I find these facts consistent with Mr. Scomazzon's submission that he thought the motor worked. Mr. Rudyuk also sold a relatively old motorboat and motor on an "as is" basis so I find he was not required to do more to verify the motor's status.
25. Mr. Scomazzon also provided signed witness statements from friends and family that support his submission that he rarely used the motorboat. He provided a May 2012 physician's note showing he had back problems. He says these issues dissuaded him from using the motorboat. He also provided photos of wall calendars from 2005 onwards. He says he marked all his outings on the calendars, and I find they support his submission that he used the motor for only up to 60 hours after the 2005 rebuild. Mr. Rudyuk accurately points out that calendar entries have some discrepancies, but I do not find this enough to conclude they were largely wrong or fabricated.
26. I also put significance on a June 22, 2021 email from Mercury, in which its representative said Mercury could not make a statement on whether the rebuilt engine block had more than 60 hours of use on it. Given all the above, I find the weight of evidence supports the conclusion that Mr. Scomazzon did not use the motor for more than 60 hours after the rebuild.
27. Mr. Rudyuk says that Mr. Scomazzon's representations cannot be true because the rebuilt engine block should have lasted much longer. He relies on the expert opinion

of Dariush Sayeghan, a marine mechanic with 25 years' experience. The expert wrote that the engine block of an outboard motor cannot wear out in 60 hours and that the life expectancy of an engine block is 2,500 hours under normal circumstances.

28. While I find the opinion qualifies as expert evidence under CRT rule 8.3, I put little weight on it. This is because the opinion is only 2 sentences long and provides no analysis or comments about the motor in this dispute. It does not comment on whether Mr. Rudyuk's repairs or use of the motor could have impacted its durability.
29. Mr. Rudyuk also provided forum posts from users that were of the view that the rebuilt engine block should have lasted longer. However, I put little weight on these posts as they were made by anonymous posters.
30. Mr. Rudyuk also points out that Mr. Scomazzon continued to pay boat insurance until 2015. He says this means that Mr. Scomazzon continued boating for a significant period of time. He also says Mr. Scomazzon wrongly said the mechanic that rebuilt the engine block in 2005 was dead, when in fact a witness statement says the mechanic is alive. He also notes the motor smoked for approximately 2 minutes during the inspection. However, I find these facts do not directly address whether Mr. Rudyuk misrepresented the motor. So, I dismiss Mr. Rudyuk's claims.
31. 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. I see no reason in this case not to follow that general rule. I dismiss Mr. Rudyuk's claims for reimbursement.

ORDER

32. I dismiss Mr. Rudyuk's claims and this dispute.

David Jiang, Tribunal Member