



# Civil Resolution Tribunal

Date Issued: April 26, 2022

File: SC-2021-007681

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Harvey v. Nichols*, 2022 BCCRT 484

BETWEEN:

KENNETH HARVEY

**APPLICANT**

AND:

ALBERT NICHOLS

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kristin Gardner

## INTRODUCTION

1. This dispute is about a private sale of a used motorhome. The respondent, Albert Nichols, sold the applicant, Kenneth Harvey, a motorhome in September 2021. Mr. Harvey says Mr. Nichols agreed to help him replace the water pump and a flat tire as part of their agreement. Mr. Harvey alleges that Mr. Nichols failed to provide the promised assistance with repairs, and that Mr. Nichols misrepresented the complexity

of the water pump replacement. As a result, Mr. Harvey says he has been unable to remove the motorhome from Mr. Nichols' property. Mr. Harvey says he would like Mr. Nichols to buy back the motorhome for its \$4,500 purchase price.

2. Mr. Nichols says that he sold the motorhome to Mr. Harvey "as is". He says he offered to help with the water pump and tire work, but that Mr. Harvey never arranged to complete the work. Mr. Nichols believes that Mr. Harvey simply changed his mind about buying the motorhome. Mr. Nichols seeks an order that Mr. Harvey remove the motorhome from Mr. Nichols' property.
3. The parties are each self-represented.

## **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. 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. 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.
8. In his final reply submissions, Mr. Harvey suggested he had further evidence to clarify Mr. Nichols' submissions. Parties are told during the CRT's facilitation process to submit all relevant evidence. Mr. Harvey did not identify what part of Mr. Nichols' argument the new evidence related to or explain why he did not provide this evidence at the outset. Considering the CRT's mandate includes the speedy and economical resolution of disputes, I decided not to ask Mr. Harvey to provide additional evidence, as it is not clear that it is relevant and it would delay the adjudication of this dispute.

## **ISSUES**

9. The issues in this dispute are:
  - a. Did Mr. Nichols breach the parties' agreement by failing to assist with repairs?
  - b. Did Mr. Nichols misrepresent the complexity of the water pump replacement?
  - c. What remedy, if any, is appropriate?

## **EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, the applicant Mr. Harvey must prove his 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.

11. It is undisputed that Mr. Harvey purchased a 34-foot 1988 Ford “A Class” motorhome from Mr. Nichols on September 7, 2021, for \$4,500. The parties agree that Mr. Nichols advertised the motorhome as needing a new water pump, and that Mr. Harvey was responsible for buying the new pump. They also agree that the motorhome had one flat tire at the time of the sale, and that Mr. Nichols agreed to provide a replacement tire as part of the purchase agreement.
12. The parties also agree that Mr. Nichols said he would help Mr. Harvey replace the flat tire and install the new water pump. I find the parties also agreed that the motorhome could initially remain at Mr. Nichols’ property while the above-noted and other repair work was being completed.
13. Mr. Harvey says Mr. Nichols provided him with “strong assurances” that he had a good spare tire they could use to replace the flat with, and that he would provide “assistance and cooperation” to fix the water pump so Mr. Harvey could drive the motorhome off Mr. Nichols’ property. Mr. Harvey says he was completely reliant on Mr. Nichols’ promised assistance with the repairs, as he says he had nobody else to help him. Mr. Harvey says that Mr. Nichols failed to provide him with the promised help to repair the motorhome, and then gave him an unreasonable amount of time to remove the motorhome from his property. It is undisputed that the motorhome remains on Mr. Nichols’ property.
14. I find Mr. Harvey is alleging that Mr. Nichols breached their agreement that he would assist with the motorhome repairs. The following timeline of the parties’ interactions following the sale is relevant to this analysis. I find that between September 9 and September 27, Mr. Harvey went to Mr. Nichols’ property on several occasions to work on the motorhome, which undisputedly needed various other repairs unrelated to its drivability, including to the roof, skylight, exterior fiberglass, and a window. I find the parties’ text messages show Mr. Nichols accommodated Mr. Harvey’s requests to work on the motorhome at any time during this period.

15. The only reference to the tire or water pump replacement work during this period is a September 20, 2021 text, where Mr. Harvey said he would like to change the tire “in the next couple of days”. Mr. Nichols replied that Mr. Harvey should just let him know when. I find that Mr. Harvey continued to work on the motorhome in the following days, though it is unclear on the evidence whether the parties discussed replacing the tire during those visits. There is no evidence before me that Mr. Harvey also raised the water pump replacement work with Mr. Nichols during this period.
16. On October 1, 2021, Mr. Nichols texted Mr. Harvey that he needed the motorhome moved by October 10. Mr. Harvey replied: “Okay Need to change the tire today or tomorrow and I would like to move the motorhome back a bit so I can work on the engine from the front. Can you help with the tire?” (reproduced as written). The parties agreed to change the flat tire together on October 2. I find the evidence suggests that Mr. Nichols thought he had a good spare tire to use as the replacement, and only discovered on October 2 that the spare had a hole in it. So, the parties were unable to replace the tire that day.
17. On October 4, Mr. Harvey expressed to Mr. Nichols by text that he thought he would have more time to work on the motorhome. Mr. Nichols responded by asking Mr. Harvey to give him a date that he could complete the repairs, and Mr. Harvey replied that Mr. Nichols was not honoring his agreement to help with the tire and water pump repairs. Mr. Harvey told Mr. Nichols to “just change the tire”, and he would get the motorhome out in 10 days, so long as the water pump was the only thing wrong.
18. It is undisputed that Mr. Nichols bought a new tire, which was ready to be mounted onto the motorhome on October 6. However, Mr. Harvey also started this CRT dispute on October 6 and advised Mr. Nichols that he was taking legal action for Mr. Nichols’ alleged breach of his commitment to help get the motorhome “fixed and roadworthy”. In an October 11 text, Mr. Harvey stated it was now “too late” for Mr. Nichols to provide the time and help he promised, and that it was best to leave the motorhome “where it is” until the outcome of this dispute.

19. I find the evidence does not show Mr. Nichols was unwilling to help or accommodate the necessary motorhome repairs, even after Mr. Harvey advised him that he had started this CRT dispute. While Mr. Nichols asked Mr. Harvey to tell him in advance when he would be at his property, I find there is no evidence before me that Mr. Nichols stated he would no longer assist with replacing the tire or the water pump. When Mr. Nichols asked Mr. Harvey on October 13 what his plan was, Mr. Harvey responded that there was a registered letter at the post office for him, which I accept was a copy of the Dispute Notice.
20. On balance, I find Mr. Harvey has not established that Mr. Nichols breached the parties' agreement to assist with the specified tire replacement and water pump repairs.
21. Mr. Harvey also says that Mr. Nichols specifically told him there were only four bolts on the water pump and that Mr. Nichols "thought" the repair could be completed by accessing the pump through a hatch from inside the motorhome. Mr. Harvey says that he discovered after the purchase that the water pump replacement was a lot more complicated, as there are between 9 and 11 bolts, and the pump can only be accessed from the front or underneath the motorhome.
22. While he did not use these words, I find Mr. Harvey is saying that Mr. Nichols misrepresented the nature of the water pump repairs. 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 (see *O'Shaughnessy v. Sidhu*, 2016 BCPC 308).
23. Fraudulent misrepresentation occurs when a seller makes a false representation of fact and the seller knew it was false, or recklessly made it without knowing whether it was true or false. The misrepresentation must reasonably induce the purchaser to buy the item, causing them to suffer a detriment. Negligent misrepresentation occurs when a seller fails to exercise reasonable care to ensure representations are accurate and not misleading. The purchaser must rely on the misrepresentation, and the reliance must result in damages.

24. Mr. Nichols did not specifically respond to Mr. Harvey's submissions about the complexity of the water pump replacement, though he maintains that engine work is generally done from inside the motorhome. Even if Mr. Nichols did make the alleged statements about the simplicity of the water pump replacement work, I find they were not statements of fact, but of his opinion. On Mr. Harvey's own evidence, Mr. Nichols only "thought" the water pump could be accessed through the interior hatch.
25. Further, there is no evidence that Mr. Nichols presented himself as having any specific knowledge of motorhome mechanics. Mr. Harvey undisputedly took no steps to verify the information Mr. Nichols allegedly provided about how to replace the water pump before he completed the purchase. I find Mr. Harvey did not act reasonably in failing to do so. In other words, even if Mr. Nichols was negligent in representing the ease of replacing the water pump, I find Mr. Harvey did not reasonably rely on that representation in the circumstances.
26. I also find Mr. Harvey has not demonstrated that he suffered any damage from his reliance on the alleged misrepresentation. This is because Mr. Harvey admits he was prepared to proceed with the water pump replacement work, even though it was more complicated than he initially thought it would be. He says he was only unable to complete the work because the motorhome was parked too close to a fence, and he could not move it back because someone parked a van behind the motorhome. However, I find there is no evidence before me that Mr. Harvey asked Mr. Nichols to move the van, or to otherwise assist with moving the motorhome.
27. I note that Mr. Harvey says when Mr. Nichols advised him on October 1 that he had 10 days to remove the motorhome from Mr. Nichols' property, it placed him under "intense pressure" to complete the repairs. However, I find that Mr. Harvey has not established that Mr. Nichols would no longer assist him with the agreed repairs if he was unable to complete them within 10 days. Mr. Nichols asked him what his timeline was, but Mr. Harvey did not provide one. Given the delay in obtaining a replacement tire, I find Mr. Nichols likely would have extended the time for Mr. Harvey to complete

the water pump replacement, if Mr. Harvey had explained he needed more time. Instead, Mr. Harvey stopped all work on the motorhome and started this dispute.

28. Overall, I find Mr. Harvey has not established that Mr. Nichols induced him into buying the motorhome based on negligent or fraudulent misrepresentation.
29. As Mr. Harvey has not proven that Mr. Nichols breached their agreement or misrepresented the repairs, I find Mr. Harvey has not shown he is entitled to any compensation. I also note that Mr. Harvey knew when he purchased the motorhome that Mr. Nichols was moving away soon. I find it was an implied term of the parties' agreement that Mr. Nichols' obligation to assist with the repairs extended only until he moved. In the circumstances, I find Mr. Nichols is no longer required to assist Mr. Harvey with the motorhome repairs. For all these reasons, I dismiss Mr. Harvey's claims.
30. Given that Mr. Nichols did not file a counterclaim in this dispute, I find his requested order that Mr. Harvey remove the motorhome from his property (which the evidence show is occupied by tenants) is not properly before me. So, I decline to grant that order. However, nothing in this decision prevents Mr. Harvey from arranging with Mr. Nichols about how he will pick up his motorhome and remove it from Mr. Nichols' property within a reasonable time period.
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. Mr. Harvey was unsuccessful and so I dismiss his claim for CRT fees and dispute-related expenses. Mr. Nichols did not pay any fees or claim any expenses, so I make no order.

## **ORDER**

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

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Kristin Gardner, Tribunal Member