Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ewing v. Smith*, 2022 BCCRT 506

B E T W E E N :

HANNAH EWING

APPLICANT

A N D :

MARY SMITH and NATHAN KEATING LINDHOUT

RESPONDENTS

REASONS FOR DECISION

Tribunal Member: Kristin Gardner

INTRODUCTION

1. This dispute is about the private sale of a used vehicle.

2. The applicant, Hannah Ewing, bought a 2005 Mazda 3 from the respondents, Mary Smith and Nathan Keating Lindhout, for $4,250. Ms. Ewing says that after owning the car for about one month, she discovered multiple issues that required repair and

maintenance. Ms. Ewing says the respondents mispresented the vehicle's condition both verbally and in their advertisement. She also says the vehicle was not reasonably durable. Ms. Ewing claims $4,714.95 for vehicle repairs.

3. The respondents deny that they misrepresented the vehicle. They say Ms. Ewing had the opportunity to test drive the vehicle and they provided her with maintenance records. The respondents say Ms. Ewing chose to buy the vehicle without first getting a mechanical inspection, and so they are not responsible for her claimed repair costs.

4. Ms. Ewing is self-represented. Mrs. Smith represents both herself and Mr. Lindhout.

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. In some respects, the parties in this dispute call into question each other's credibility or truthfulness. 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.

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:

    a. Did the respondents misrepresent the vehicle's condition?

    b. Was the vehicle reasonably durable in the circumstances?

    c. What remedy, if any, is appropriate?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant Ms. Ewing must prove her 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. Ms. Ewing responded to the respondents' ad on Facebook Marketplace for the vehicle. The ad stated that the vehicle had "newer tires" and "regular maintenance & oil changes". The list price was $4,800. The ad did not say it was being sold "as is". I note that the parties agree the ad mistakenly read that it had 169,000 kilometres, but the car had only 166,000 kilometres on the odometer at the time of the sale.

12. The parties agree that Ms. Ewing took the vehicle for a test drive, though there is no evidence before me about the duration or extent of it. The respondents also say Ms. Ewing had the opportunity take the car for a mechanical inspection, but she declined to do so. Ms. Ewing says she felt that asking for an inspection may result in her losing out on the vehicle due to the "very hot" market for used cars at the time. I note Ms. Ewing does not suggest that the respondents specifically rushed the sale or imposed any time pressure to discourage Ms. Ewing from having the vehicle inspected.

13. The parties' text messages show that they negotiated on the price after Ms. Ewing's test drive. In an October 3, 2021 text, Ms. Ewing agreed to pay $4,250. She also asked the respondents in her text to inflate the right front tire "to see if there's a hole", and to find maintenance records for her. It is undisputed that the respondents inflated the tire and provided Ms. Ewing with hard copies of their records, as requested. The parties completed the vehicle sale on October 4, 2021.

14. Ms. Ewing says that after owning the vehicle for about a month, she noticed the front tire was "repeatedly" flat, so she took the car to Your Neighbourhood Automotive Repair Shop (Neighbourhood Automotive) for a check-up on November 10, 2021. The evidence shows that Ms. Ewing initially paid $470.59 for an oil change and new battery. The November 10, 2021 invoice also set out a number of notes with recommendations for additional repair work, including a handwritten note that stated "needs tires ASAP!".

15. A November 16, 2021 Neighbourhood Automotive invoice shows Ms. Ewing paid a further $4,424.36 to install 4 new tires, replace the rear trailing arms and bushings, replace the front lower control arm and ball joint assembly, replace the rear lateral arm, and replace the front brake pads. The invoice also noted that the valve cover gasket and spark plugs still needed replacement, and the rear rotors were not in good condition, though no cost estimate was provided for this work.

16. I note that the November 10 and November 16 invoices total $4,896.95. Ms. Ewing did not explain the discrepancy between that number and the claimed $4,714.95.

17. It is unclear on the evidence exactly how far Ms. Ewing had driven the vehicle in the approximate 5 weeks she owned it before taking it for an inspection. Ms. Ewing says she had driven only about 45 kilometres, though the evidence in support of this is limited. The evidence shows the odometer read 166,280 kilometres on November 14, 2021. So, given the parties agree the vehicle had about 166,000 on it at the time of the sale, I find at most Ms. Ewing drove the vehicle 280 kilometres.

Misrepresentation

18. Ms. Ewing says the respondents misrepresented that the vehicle had "newer tires" and "regular maintenance & oil changes". She also says the respondents told her there was "nothing wrong" with the vehicle, when it obviously needed significant repair, as detailed in the Neighbourhood Automotive invoices.

19. The principle of "buyer beware" generally applies to private purchases of used vehicles (see *Cheema v. Mario Motors Ltd.*, 2003 BCPC 416). This means that buyers assume 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 goods before buying them.

20. If a seller misrepresents a used 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).

21. Here, Ms. Ewing knew that one of the front tires was low when she test drove the vehicle, hence her request for the respondents to inflate it, which they undisputedly did. Further, while there are no photographs of the tires before me, I find that if the tires were so worn that they required immediate replacement, this likely would have been readily apparent at the test drive. I note that “newer” does not mean “new”. However, even if the vehicle did not have “newer tires” as stated in the ad, under the circumstances, I find Ms. Ewing did not reasonably rely on that misrepresentation in deciding to purchase the vehicle given the tires’ condition was visible to her at the test drive.

22. Ms. Ewing also relies on a sticker in the vehicle showing the next oil change was due on June 2, 2021 or at 166,750 kilometres. I agree with the respondents that this does not mean an oil change was overdue, based on the vehicle’s mileage at the time of the sale. In any event, I find the sticker tends to establish that a relatively recent oil change had been done, which is confirmed by a March 4, 2021 Jiffy Lube invoice in evidence. I find the respondents did not misrepresent the vehicle had received regular oil changes.

23. As for the other issues Ms. Ewing had repaired, I find it unproven that the respondents were aware of them. I accept the respondents’ evidence that they drove the vehicle regularly, and that there were no obvious signs that the vehicle needed repair such as noises or warning lights on the dash, as Ms. Ewing did not suggest this was the case during the test drive. The respondents did not specifically address Ms. Ewing’s allegation that they told her there was “nothing wrong” with the vehicle. However, I find if they did make that statement, a reasonable person would interpret it to mean the respondents were not aware of anything wrong with the car.

24. Ms. Ewing provided a statement from the owner of Neighbourhood Automotive, Kate Stockford, who said they noticed “loud banging” sounds when driving the car. However, they did not say what caused the banging or how long it might have been present. Given Ms. Ewing did not report hearing these sounds herself, I find they were not likely present before the sale. Kate Stockford also stated that the car’s damage

was “so severe” that any mechanic would have noticed. Again, they did not say when the “damage” issues likely arose. In any event, there is no evidence before me that the respondents were mechanics or that they knew the vehicle needed repairs. Overall, I find the respondents did not misrepresent the vehicle.

Sale of Goods Act

25. Section 18 of the SGA sets out several implied warranties in the sale of goods. Given the respondents were not in the business of selling cars, I find only the implied warranty of durability in SGA section 18(c) applies to this private used car sale. That section warranties that goods will be durable for a reasonable period with normal use, considering the sale’s context and the surrounding circumstances (see *Drover v. West Country Auto Sales Inc.*, 2004 BCPC 454).

26. 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 kilometers. After driving it for only 616 kilometers, the car broke down. Even though the car broke down after little driving, the court found that it was reasonably durable.

27. Further, as the court held in *Wanless v. Graham*, 2009 BCSC 578, a case involving a 10-year-old car sold for $2,000, people who buy old used vehicles must expect defects to come to light at any time. Given Ms. Ewing purchased a 16-year-old vehicle with relatively high mileage, I find the car was reasonably durable at the time of sale, even though the car required maintenance and repairs a month later.

28. Given my conclusions above, I find Ms. Ewing has not established that the respondents are responsible for her claimed repair costs. I dismiss Ms. Ewing’s claim.

29. Under section 49 of the CRTA and CRT rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. As Ms. Ewing was unsuccessful, I dismiss her claim for CRT fees and dispute-related expenses. The respondents did not pay CRT fees or claim dispute-related expenses.

ORDER

30. I dismiss Ms. Ewing's claims and this dispute.

Kristin Gardner, Tribunal Member