



Civil Resolution Tribunal

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Civil Resolution Tribunal

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B E T W E E N :

JADE ROBICHAUD and JASMINE ROBICHAUD

APPLICANTS

A N D :

NICHOLAS NEWSTEAD

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about the private sale of a used vehicle.
2. The applicants, Mr. Jade Robichaud and Ms. Jasmine Robichaud, bought a 1998 Subaru Forester from the respondent, Nicholas Newstead, for \$4,750. The Robichauds say that after owning the vehicle for less than 24 hours, it overheated.

The Robichauds say they took the vehicle for assessment and discovered it needed over \$8,000 in repairs, including new head gaskets. The Robichauds say Mr. Newstead misrepresented the vehicle's condition, and that it was not reasonably durable. The Robichauds claim \$4,750 for a full refund of the vehicle's purchase price, and an additional \$250 for expenses including tax, insurance costs, and the vehicle inspection.

3. Mr. Newstead denies that he misrepresented the vehicle. He says it was in good condition and operating smoothly when he sold it. Mr. Newstead also says he sold the vehicle "as is", and the Robichauds chose to purchase the vehicle without getting it inspected. Mr. Newstead says he is not responsible for the vehicle breaking down after the sale, and he owes the Robichauds nothing.
4. The parties are each self-represented.

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, 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.

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 Mr. Newstead misrepresent the vehicle?
 - 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 applicants must prove their claims on a balance of probabilities, which means "more likely than not". I have read all of the parties' evidence and submissions, but I refer only to what I find is necessary to explain my decision.
11. The evidence shows that Mr. Robichaud responded to Mr. Newstead's ad on Facebook Marketplace for the 1998 Subaru Forester vehicle. Neither party submitted

a copy of the ad nor provided any evidence about what the ad stated about the vehicle.

12. The evidence shows that Mr. Robichaud texted Mr. Newstead through the Facebook app on October 15, 2021. He asked if the vehicle needed any work, had clean title, or any previous damage or accident claims. Mr. Robichaud also asked if Mr. Newstead knew when the timing belt, water pump, or head gasket were last serviced.
13. Mr. Newstead replied that “the vehicle doesn’t need any work”, the cylinder heads and valve covers were dry, the oil pan had “some residual” on it, and the timing belt kit was done “around 100,000km”. Mr. Newstead also stated the vehicle was clean, with no accidents, though it had some dings and scratches.
14. Mr. Robichaud arranged to meet Mr. Newstead and test drive the vehicle on October 16, 2021. Mr. Robichaud says that his test drive was restricted to driving on Mr. Newstead’s property because the vehicle was uninsured, which Mr. Newstead does not dispute.
15. After the test drive, Mr. Robichaud texted Mr. Newstead to ask if he would sell the vehicle for \$4,500. Mr. Newstead replied that he had been hoping to get \$5,000 but said he would sell it for \$4,750, which Mr. Robichaud accepted. The Robichauds paid Mr. Newstead in cash, completed the vehicle transfer forms, and took possession of the vehicle later that day.
16. While Mr. Robichaud was driving the vehicle the next morning, he says it started “smoking”. The parties’ text messages show that Mr. Robichaud immediately contacted Mr. Newstead to say the vehicle was overheating, steam was coming from the hood, and the coolant overflow was full. Mr. Newstead advised that he had checked the fluids before the sale and the car had never overheated before. Mr. Robichaud decided to take the vehicle to an auto mechanic shop for assessment.
17. The Robichauds say the mechanic shop diagnosed a number of issues, including blown head gaskets. They provided an October 21, 2021 quote from Marigold Service Ltd. (Marigold) for repairs totalling \$8,762.33.

18. The Robichauds allege that Mr. Newstead specifically misrepresented the condition of the head gaskets, water pump, and timing belt, which they say together will cost about \$6,000 to repair. They also argue that the car was not “as described” and was not reasonably durable, as required under the *Sale of Goods Act* (SGA).
19. I turn first to the misrepresentation claim.

Misrepresentation

20. The principle of “buyer beware” generally applies to used vehicle purchases: 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.
21. 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.
22. 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 vehicle.
23. 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.
24. It is undisputed that the Robichauds did not get the vehicle inspected before buying it. Mr. Robichaud says he decided not to get an inspection because Mr. Newstead advised him during their October 16 meeting that he was a Red Seal certified

mechanic. So, Mr. Robichaud says he trusted Mr. Newstead's representations about the vehicle.

25. While Mr. Newstead admits he is a mechanic by trade, he denies that he identified himself as one to influence the sale or to dissuade the Robichauds from getting their own independent inspection. In fact, Mr. Newstead says he repeatedly recommended that the Robichauds get the vehicle inspected, but they declined to do so. Notably, the Robichauds do not dispute this, so I find that Mr. Newstead likely did suggest the Robichauds get a vehicle inspection.
26. In any event, the question is whether Mr. Newstead made any misrepresentations about the vehicle that influenced the Robichauds' decision to purchase it. The Robichauds argue that Mr. Newstead made specific statements about the head gaskets, water pump, and timing belt that they later discovered were untrue.
27. As noted above, during their pre-sale communications, in response to Mr. Robichaud's inquiry about the head gaskets, Mr. Newstead stated that the cylinder heads and valves "were dry". Mr. Robichaud says that Mr. Newstead also verbally stated that he had inspected the head gaskets and found "no issues", which Mr. Newstead does not particularly deny.
28. As for the timing belt and water pump, Mr. Robichaud submits that Mr. Newstead told him verbally that the timing belt and water pump had been serviced in the last 10,000 kilometres. However, I find that alleged statement is inconsistent with Mr. Newstead's earlier written message that they were serviced at about 100,000 kilometres. It is undisputed that the vehicle had over 177,000 kilometres on the odometer at the time of sale. On balance, I find Mr. Newstead's written statement is more reliable evidence of his representation about the condition of the timing belt and water pump.
29. The difficulty for the Robichauds is that while Marigold's quote suggests that the head gaskets, timing belt, and water pump need replacement, it does not provide any further information about their condition or the reason that the vehicle broke down. In particular, the quote does not state when these parts failed or should have been

serviced, or whether Mr. Newstead should have known these parts needed replacement.

30. Further, while Mr. Robichaud alleges that Marigold verbally told him it did not appear the water pump or timing belt had ever been serviced, that opinion is not included in Marigold's quote. There is also no evidence before me about the expected timing for regular maintenance of the water pump and timing belt. Overall, I find there is insufficient evidence to conclude that Mr. Newstead misrepresented that the water pump and timing belt were serviced when there were about 100,000 kilometres on the vehicle's odometer.
31. Similarly, I find it unproven that Mr. Newstead misrepresented the head gaskets. Even if Mr. Newstead told Mr. Robichaud that his own inspection of the head gaskets revealed no issues, I find there is insufficient evidence to conclude this statement was untrue. Mr. Newstead says he had driven the vehicle to work regularly, and it had not previously overheated. There is no evidence before me to the contrary. In fact, Mr. Robichaud's own evidence is that he drove the vehicle home on the day of purchase without the vehicle overheating. I also find Mr. Newstead's status as a mechanic is insufficient to conclude that he knew or should have known the head gaskets would fail or needed replacement.
32. I find that expert evidence is required to prove that Mr. Newstead's inspection should have revealed an issue with the head gaskets because this is an issue that is outside the common knowledge of an ordinary person: see *Bergen v. Gulliker*, 2015 BCCA 283. The Robichauds have not provided any expert evidence here.
33. Finally, the Robichauds say Mr. Newstead misrepresented that the vehicle "doesn't need any work", as they say Marigold's quote proves otherwise. However, I find a reasonable person would interpret Mr. Newstead's statement to mean that he was not aware of any required repairs. Again, in the absence of expert evidence, I find Marigold's quote is insufficient to establish that Mr. Newstead knew or should have known the vehicle needed repairs.

34. Overall, I find the Robichauds have failed to establish that Mr. Newstead misrepresented the vehicle.

Sale of Goods Act

35. The Robichauds refer to section 17 of the SGA, which says that when goods are sold by description, there is an implied condition that the goods must correspond with the description. Courts have interpreted the word “description” in SGA section 17 to mean factors relevant to the definition or identification of the goods, rather than the attributes of the goods: see *Clayton v. North Short Driving School et al.*, 2017 BCPC 198. There is no dispute that the vehicle Mr. Newstead sold to the Robichauds was the vehicle described in the ad and in Mr. Newstead’s text messages (the 1998 Subaru Forester). So, I find no breach of section 17 of the SGA.

36. Section 18 of the SGA sets out several implied warranties contained in contracts for the sale of goods. Given Mr. Robichaud was 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 warrants 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.

37. However, a seller can exclude this implied warranty through a clear and unambiguous contract term: see *Connors* at paragraphs 63 to 65. Mr. Newstead says he “continuously” told Mr. Robichaud during their October 16 meeting that he was selling the vehicle in “as is” condition, which Mr. Robichaud denies. Because Mr. Newstead is the party alleging the implied warranty does not apply, I find he bears the burden to prove it. I find I am left with an evidentiary tie on this point, with Mr. Newstead saying the vehicle was sold “as is” and the Robichauds saying it was not. So, I find Mr. Newstead has not met his burden, and I find the implied warranty of durability applies.

38. In *Sugiyama v. Pilsen*, 2006 BCPC 265, the BC Provincial Court applied SGA 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. The court noted that for older cars, if it is "roadworthy" when purchased, it is likely to be considered reasonably durable, even if it breaks down shortly afterwards.

39. 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.
40. Previous CRT decisions have also found used vehicles reasonably durable even after breaking down almost immediately after purchase. For example, in *Bleiler v. Sawhney*, 2022 BCCRT 213, another CRT member found that a 15-year-old vehicle with 245,000 kilometres was reasonably durable even though the battery died 10 minutes after the purchaser bought it, which revealed that it had a broken alternator. In *Moldenhauer v. Merlo*, 2021 BCCRT 82, I found that a 15-year-old vehicle with 138,000 kilometres was reasonably durable even though the car leaked oil and overheated the day after the purchaser bought it, ultimately requiring multiple repairs.
41. Within the context of Mr. Newstead's sale of a 23-year-old car with relatively high mileage, I find the vehicle was roadworthy and reasonably durable at the time of sale, even though it appears to have overheated and required repairs the following day. Therefore, I find Mr. Newstead did not breach the implied warranty in section 18(c) of the SGA.
42. Given the Robichauds have not proven a misrepresentation or a breach of warranty, I find that "buyer beware" applies and the Robichauds are not entitled to a refund or any other compensation. I dismiss their claim.
43. 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 unsuccessful, I dismiss their claim for CRT fees. Mr. Newstead did not pay any CRT fees, and neither party claimed any dispute-related expenses.

ORDER

44. I dismiss the applicants' claims, and this dispute.

Kristin Gardner, Tribunal Member