



Civil Resolution Tribunal

Date Issued: August 15, 2022

File: SC-2022-000353

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Wold v. Dean*, 2022 BCCRT 918

BETWEEN:

LEON WOLD

APPLICANT

AND:

SCOTT DEAN

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about a used commercial truck sale. The applicant, Leon Wold, sold his truck to the respondent, Scott Dean, for \$17,500 and \$4,500 of that price was paid

by cheque. Shortly after the sale had completed, Mr. Dean cancelled the \$4,500 cheque, concerned the truck needed more work than he expected. Mr. Wold says he never agreed to any refund and Mr. Dean examined the truck but chose not to have a mechanical inspection before purchase. Mr. Wold claims the \$4,500.

2. Mr. Dean says he believes Mr. Wold sold him the truck knowing it had “far more mechanical issues than he disclosed” to Mr. Dean. Mr. Dean says he owes nothing.
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). CRTA section 2 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. CRTA section 39 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 of this dispute call into question the credibility, or truthfulness, of the other. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. 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 in the interests of justice.
6. CRTA section 42 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.

ISSUES

8. The issues are whether Mr. Wold failed to disclose defects in the truck, whether Mr. Wold breached any warranty, and whether he is entitled to the claimed \$4,500 balance of the purchase price.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, as the applicant Mr. Wold must prove his claim on a balance of probabilities (meaning “more likely than not”). I have read all the submitted evidence and arguments but refer only to what I find relevant to provide context for my decision.
10. In December 2021, Mr. Wold advertised his commercial 2003 Freightliner FL 80 truck for sale. Mr. Dean submitted a copy of the ad, which says nothing about the truck’s condition. Mr. Wold’s asking price was \$20,000. On December 15, 2021, Mr. Wold sent Mr. Dean pictures of the truck, at Mr. Dean’s request. Mr. Dean later visually inspected the truck and found no defects (beyond the issues he says Mr. Wold disclosed, as discussed below). Mr. Dean chose not to have a commercial vehicle inspection completed, saying he did not have enough time given the holiday season. The parties agreed Mr. Dean would buy the truck for \$17,500. As noted, on December 31, 2021 Mr. Dean paid the final portion, the claimed \$4,500, by cheque. As part of the agreed price, Mr. Wold agreed to reinstall gears, the driveshaft, and brakes, which Mr. Wold had removed for Mr. Dean’s inspection. None of this is disputed.
11. On January 3, 2022, Mr. Dean had a commercial inspection done on the truck. Given the issues identified he then put a stop payment on the \$4,500 cheque. So, Mr. Wold has not received the final \$4,500 portion of the purchase price. Mr. Dean never asked

Mr. Wold to return the truck for a refund of what he had already paid. Again, none of this is disputed.

12. Mr. Dean admits Mr. Wold disclosed a number of issues about the truck: both batteries, all 6 tires, some lighting, and the “wooden deck” needed replacement and the roof’s wind deflector needed repair. Mr. Dean says Mr. Wold assured him there were no other problems with the truck, beyond the things Mr. Dean admits were disclosed to him. I note a text message in evidence shows Mr. Wold also told Mr. Dean that the driver’s side fuel tank was not useable. Given the parties’ text messages, I find any verbal assurance by Mr. Wold in context was that to the best of his knowledge there were no other issues. To the extent Mr. Dean argues it, I do not accept Mr. Wold offered any guarantee about the truck’s condition.
13. On arrival to pick up the truck, Mr. Dean says a number of new issues had arisen: the “air dryer” was freezing open, the headlights would not turn on, the signal lights were inoperable until Mr. Wold banged on the dash, and the truck was blowing a lot of unburnt diesel exhaust. However, Mr. Dean undisputedly accepted these issues, given he completed the sale and took the truck.
14. Mr. Dean submitted the Alberta commercial truck inspection report he obtained in January 2022. The truck failed for a variety of reasons, most of which were things Mr. Dean either knew or would have been readily visible on his own inspection, such as issues with a mud flap, side window, or sun visor. However, it also failed a number of the air brake criteria, which is Mr. Dean’s primary complaint in this dispute.
15. The principle of “buyer beware” generally applies to private purchases of used vehicles (see *Cheema v. Mario Motors Ltd.*, 2003 BCPC 416). It 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)). In *Conners*, 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 a good before buying it.

Misrepresentation

16. If a seller misrepresents a 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).
17. Mr. Dean says that as he drove the truck from Mr. Wold's home to Mr. Dean's shop (a distance of roughly 230 km), he noticed power issues with the motor, which later required some repair although it is unclear whether that was related to the known air dryer or fuel tank issues. Mr. Wold undisputedly never mentioned any engine issues. Mr. Dean further says that replacement brake parts were needed at a cost of over \$6,000. Mr. Dean argues Mr. Wold was deceptive and uncooperative.
18. I find no evidence that Mr. Wold knew about the engine issues before the sale completed, and the parties' texts in evidence indicate he did not know. I find no misrepresentation about the engine.
19. Mr. Dean further argues Mr. Wold told him that he had had a commercial vehicle inspection performed, though Mr. Dean does not say what, if anything, Mr. Wold said about the results of that inspection. Mr. Wold submitted in evidence a copy of the inspection report he received, dated October 18, 2019. At that point, the truck had 455,414 km on it. The truck passed inspection, with a "passed with caution" note about the power train. I note the truck had 456,582 km on it when Mr. Dean had it repaired in February 2022. I find the relatively small difference shows that Mr. Wold had not driven the truck much after his "passed" inspection in 2019. I find this does

not support Mr. Dean's assertion that Mr. Wold knew about the truck's undisclosed problems.

20. Next, Mr. Wold says it is not his responsibility that the brakes turned out to require replacement and denies being aware of any issues with them in the short time he drove the truck. As noted above, Mr. Wold removed the brakes for Mr. Dean's inspection and as per the parties' agreement reinstalled them. There is no evidence before me, including nothing in the mechanic or inspection report Mr. Dean obtained, to show Mr. Wold likely knew there was a brake issue. As noted, the brakes passed the 2019 inspection and Mr. Wold did not drive the truck much after that.
21. Further, Mr. Dean's January 3, 2022 text message asked Mr. Wold not to deposit the \$4,500 cheque, saying that he was not trying to "jam out" on Mr. Wold but that the truck "might have more serious issues [than] both of us realized". I find this exchange does not support Mr. Dean's assertion Mr. Wold knowingly made false assurances about the brakes or otherwise. Again, there is no expert evidence before me, such as from a mechanic, that says Mr. Wold likely would have known about the brakes or engine problems.
22. Next, Mr. Dean says Mr. Wold misrepresented the truck as running well. I find this unproven. I say this because the ad does not say this and because Mr. Dean admittedly was told about a number of things wrong with the truck. The parties' pre-sale text messages in evidence also do not show Mr. Wold represented the truck "ran well". Given all the above, I find no misrepresentation.

Warranties and the *Sale of Goods Act*

23. Mr. Dean essentially argues that Mr. Wold breached the parties' sales agreement because the brakes and other components failed the inspection test and because the truck overall required significant repair. One text message refers to the parties' undisputed agreement that Mr. Wold would return the brakes to "working order", along with the front differential operational for 4-wheel drive.

24. While he does not use these words, Mr. Dean effectively argues that the “working order” aspect of the parties’ agreement was an express warranty.
25. The difficulty for Mr. Dean is that the brakes undisputedly worked at the time of sale, given he drove the truck for about 230km before the truck was inspected. Mr. Wold only reinstalled the brakes he had removed for Mr. Dean’s inspection, which I find was the context of the parties’ agreement. I find the fact the brakes later failed a commercial inspection is not determinative. Further, contrary to Mr. Dean’s assertion, even if Mr. Wold did know what replacement brakes would cost, he had no obligation to spontaneously disclose that cost. Again, I find the evidence does not show Mr. Wold knew the brakes required replacement. I find Mr. Wold did not breach any express warranty under the parties’ agreement.
26. Next, while Mr. Dean did not expressly argue it, I have considered the *Sale of Goods Act* (SGA) section 18, which sets out three implied warranties: saleability or merchantability (quality), fitness for purpose, and reasonable durability. Given Mr. Wold was not in the business of selling vehicles, I find only the implied warranty of durability in SGA section 18(c) applies to this private used vehicle sale.
27. Section 18(c) says that goods sold be durable for a reasonable period with normal use, considering the sale’s context and surrounding circumstances (see *Drover v. West Country Auto Sales Inc.*, 2004 BCPC 454).
28. On January 8, 2022, Mr. Dean texted Mr. Wold that the \$4,500 cheque was “on hold” until he understood what was wrong with the motor and the air compressor. As noted above, Mr. Wold told Mr. Dean about the passenger fuel tank and the air dryer before the sale completed. I am unable to conclude the engine’s and air compressor’s later issues on inspection were unrelated to those known concerns. Notably, the mechanic’s invoice in evidence does not explain this. So, I find no implied warranty about the motor and air compressor.
29. 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 km. After driving it for only 616 km, the car broke down. Even though the car broke down after little driving, the court found that it was reasonably durable.

30. 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. Here, the commercial truck was over 17 years old with significant mileage and a number of known issues at the time of sale. Mr. Dean drove it around 230km home. The truck did not break down. In these circumstances, I find the truck was reasonably durable. Given all the above, I find Mr. Dean must pay Mr. Wold the claimed \$4,500, which is the balance outstanding on the agreed purchase price.
31. Given my conclusion above, I do not need to address Mr. Dean's decision to keep the truck and unilaterally deduct \$4,500 from the total payment, rather than seeking to return the truck for a refund.
32. The *Court Order Interest Act* (COIA) applies to the CRT. I find Mr. Wold is entitled to pre-judgment COIA interest on the \$4,500. Calculated from December 31, 2021 to the date of this decision, this interest equals \$19.08.
33. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. As Mr. Wold was successful, I allow his claim for reimbursement of \$175 in paid CRT fees. No dispute-related expenses were claimed.

ORDERS

34. Within 21 days of this decision, I order Mr. Dean to pay Mr. Wold a total of \$4,694.08, broken down as follows:
 - a. \$4,500 in debt,

- b. \$19.08 in pre-judgment interest under the COIA, and
- c. \$175 in CRT fees.

35. Mr. Wold is entitled to post-judgment interest, as applicable.

36. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Shelley Lopez, Vice Chair