



# Civil Resolution Tribunal

Date Issued: August 22, 2022

File: SC-2022-001035

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hill v. Wahlers*, 2022 BCCRT 939

**B E T W E E N :**

JENNIFER LEIGH HILL

**APPLICANT**

**A N D :**

EMILY WAHLERS, JOHN PETER GORDON,  
and RUBY MARTHA GORDON

**RESPONDENTS**

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## **REASONS FOR DECISION**

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Tribunal Member:

Kristin Gardner

## **INTRODUCTION**

1. The applicant, Jennifer Leigh Hill, bought a used 2002 Dodge Pleasure Way motorhome van from the respondents, Emily Wahlers, John Peter Gordon, and Ruby Martha Gordon. Mr. and Mrs. Gordon were the van's owners, and Ms. Wahlers assisted the Gordons with the sale. Ms. Hill says the respondents misrepresented

both that the van had been taken care of and that recent work had been done to it. Ms. Hill says that after the purchase she realized various repairs were required to make the van fully operational. Ms. Hill claims \$2,246.18 for the repairs.

2. The respondents say that Ms. Hill bought the van without doing a test drive or obtaining an inspection. They say the van was in great shape for its age with regular wear and tear. The respondents deny that they are responsible for any of the claimed repairs.
3. Ms. Hill is self-represented. Ms. Wahlers is represented by LR, who is referred to as Ms. Wahlers' mother. More on this below. Mr. and Mrs. Gordon are each self-represented, though they adopted the submissions provided on Ms. Wahlers' behalf.

## **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. 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.

## **ISSUES**

8. The issues in this dispute are:
  - a. Whether the respondents misrepresented the van,
  - b. Whether the van was not reasonably durable, and
  - c. To what extent, if any, Ms. Hill is entitled to the claimed \$2,246.18 for repairs.

## **EVIDENCE AND ANALYSIS**

9. In a civil proceeding like this one, the applicant Ms. Hill must prove her claims on a balance of probabilities (meaning “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.
10. It is undisputed that Ms. Wahlers posted an ad for the van on the Kijiji website, which Ms. Hill responded to on December 8, 2021. Ms. Hill provided a screenshot showing the ad’s top portion. The ad’s title states: “No Longer Available – 2002 Dodge Pleasure Way \$42,000.00”. Underneath the title the ad states that the van “has been taken great care of in its life”, and that the seller has a full 136-point inspection on the van and paperwork for recent work done. Ms. Hill provided evidence from Kijiji that the seller deleted the ad after the sale, so she could no longer access the full ad.

11. In any event, the respondents do not dispute the accuracy of Ms. Hill's screenshot showing the ad excerpt. It is also undisputed that Ms. Hill offered to pay \$35,000 for the van, which the respondents accepted.
12. What is unusual about this private used vehicle purchase is that Ms. Hill was the van's previous owner. Ms. Hill owned the van from 2012 to 2018, when she sold it to a dealership because she decided to purchase a larger RV. I infer that the Gordons purchased the van from the dealership, though there is no evidence before me about when the purchase occurred.
13. When Ms. Hill responded to the Kijiji ad, she advised Ms. Wahlers that she was the van's previous owner and missed its smaller size. Ms. Hill also told Ms. Wahlers she did not need to see the van before buying it, but she wanted to know how it had been used and to see copies of maintenance records since 2018. Ms. Wahlers offered to text photos of the records to Ms. Hill, but Ms. Hill said her phone would not accept texts, so she suggested Ms. Wahlers email her the records. While the evidence shows the parties later exchanged email addresses, there is no indication they communicated further about the maintenance records.
14. Ms. Hill says that she and Ms. Wahlers then spoke several times over the phone, and Ms. Wahlers said she was selling the van for her grandparents. Ms. Hill says Ms. Wahlers told her that Mr. Gordon had properly serviced the van while he owned it and that everything had been in working order. Ms. Hill also says Ms. Wahlers told her the van had been taken on only 2 trips before Mrs. Gordon was no longer able to travel.
15. Ms. Hill paid a \$5,000 deposit and arranged to complete the purchase and pick up the van on December 16, 2021. Ms. Hill drove the van 108 kilometres home before she reviewed the maintenance records the respondents had given to her during the purchase. It was then that Ms. Hill discovered that all the records were from 2018. Ms. Hill says there were no records showing any regular maintenance, or even an oil change, while the Gordons owned it. Ms. Hill emailed Ms. Wahlers to that effect later that evening, but Ms. Wahlers did not respond.

16. Ms. Hill says she noticed while driving the van home that it needed new windshield wipers and that she heard a noise coming from under the hood. She did not drive the van again for 23 days, and then took it for an oil change and a thorough inspection before going on a lengthy trip. Ms. Hill says she then discovered several issues, including that the oil change was overdue, a front wheel bearing needed replacing, the furnace was not functioning, the hot water tank and water pump needed repair, the fridge did not function on the propane setting, an exterior shower tap was broken, the battery door was broken, and the smoke detector was missing. Ms. Hill says the required repairs cost the claimed \$2,246.18.
17. Ms. Hill argues that Ms. Wahlers misrepresented both her relationship to the Gordons and the van's condition. Ms. Hill also says the van was not reasonably durable, given its normal use as an RV, as required by the *Sale of Goods Act* (SGA).
18. I first consider the misrepresentation claim.

### ***Misrepresentation***

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 the buyer assumes the risk that the purchased vehicle might be either defective or unsuitable to their needs: see *Connors 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. So, a buyer is generally responsible for failing to adequately inspect a vehicle before buying it.
20. If a seller misrepresents the vehicle, either fraudulently or negligently, the buyer may be entitled to compensation for losses arising from that misrepresentation. A “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. A “negligent

misrepresentation” occurs when the seller carelessly or negligently makes a representation that is untrue, inaccurate, or misleading, and the purchaser reasonably relied on the misrepresentation, which reliance resulted in damages.

21. One of Ms. Hill’s main arguments is that Ms. Wahlers misrepresented her relationship to the Gordons. Ms. Hill says it was only at the end of the CRT’s facilitation phase that she learned Ms. Wahlers is a close family friend of the Gordons. Apparently, LR, who is the Gordons’ daughter, invited Ms. Wahlers to live with them at some point, but Ms. Wahlers is not legally related to the Gordons or LR.
22. The respondents did not directly address this part of Ms. Hill’s submissions. However, I find that just because LH did not legally adopt Ms. Wahlers does not necessarily mean that Ms. Wahlers’ reference to LH as her mother or the Gordons as her grandparents was untrue, inaccurate, or misleading. Families can take many forms, and I find the fact that Ms. Wahlers refers to LH and the Gordons as her family members suggests she considers them as such. Overall, I do not accept that Ms. Wahlers was attempting to mislead Ms. Hill by referring to the Gordons as her grandparents.
23. Further, contrary to Ms. Hill’s submissions, I do not find that Ms. Wahlers was any less knowledgeable about the van or that her representations about the van were less trustworthy than would have been the case if she had been legally related to the Gordons by blood or otherwise. That is, I find Ms. Hill has not established that she would have decided not to buy the van, or would have obtained an inspection of the van, had Ms. Wahlers told her she was the Gordons’ close family friend rather than their granddaughter. For these reasons, I find that Ms. Wahlers’ statement that she was the Gordons’ granddaughter was not a misrepresentation.
24. As noted, Ms. Hill also says the ad’s statements that the van had been taken care of and that the respondents had records about a recent inspection and other recent maintenance work were misleading. For the following reasons, I disagree.

25. First, when Ms. Wahlers placed the ad, she could not have known that its prior owner Ms. Hill would respond to it. I find the comments about the van being taken care of during its life and having recent maintenance records were relative to the van's overall age. In other words, I find there is nothing in the ad that suggests the comments related specifically to the 3 years that the Gordons owned the van. While Ms. Hill says she "assumed" the inspection noted in the ad was "recent" and not 3 years ago, given the van was almost 20 years old, I find the inspection was not particularly outdated.
26. Further, as noted, Ms. Wahlers offered to provide Ms. Hill with copies of the maintenance records she had for the van before the purchase. It is unclear why Ms. Hill did not follow up on her request to receive the records by email or look at the records before driving the van away. In any event, I find there is no evidence to suggest the respondents were attempting to conceal the maintenance records or mislead Ms. Hill about when the last maintenance was performed.
27. Finally, I find it unproven that Ms. Wahlers or the Gordons knew about any of the issues Ms. Hill claims needed repair at the time of the van's purchase. The respondents say that the fridge, water system, and heater were in working order, and that it drove well for them while they owned it. Ms. Hill does not dispute that she knew the Gordons had not used the van for about 2 years before she bought it. There is no evidence before me that the respondents made any representations that they had specifically tested the water system, the fridge, or the furnace, or that they had done a recent oil change before listing the van for sale.
28. Ms. Hill undisputedly did not have the van inspected before purchasing it. She argues that winter weather prevented her from travelling to the respondents' home earlier in the week. While arranging an inspection might have taken additional time or been inconvenient, I find that Ms. Hill was not forced to buy the van without one. She did not even do a test drive. Had she done an inspection and test drive, I find Ms. Hill likely would have discovered many, if not most of the issues she says needed repair. However, I find Ms. Hill has not established that the respondents misrepresented the vehicle.

## ***Sale of Goods Act***

29. Section 18 of the SGA sets out 3 implied warranties for the sale of goods: saleability or merchantability (quality), fitness for purpose, and reasonable durability. As the respondents were not in the business of selling cars or RVs, I find only the implied warranty of durability in SGA section 18(c) applies to this private used vehicle sale.
30. Section 18(c) says that goods sold must 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.
31. 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.
32. 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.
33. Here, the van did not "break down" such that it required any major repairs to make it roadworthy again. As noted, Ms. Hill drove the van over 100 kilometres home after purchasing it, and so I find it was roadworthy at the time of sale. While Ms. Hill says the van needed an oil change and a wheel bearing replaced, I find those repair and maintenance items were relatively minor and did not amount to the van being not reasonably durable.
34. Ms. Hill also argues that as an RV, normal use includes having a working fridge, furnace, and bathroom facilities. While I agree that normal use of the van would include using it for general living quarters, I find that does not mean every feature or accessory must be in perfect working order for the van to be considered reasonably durable. There is no indication that any of the claimed issues rendered the living



quarters dangerous or uninhabitable. Further, Ms. Hill's evidence is that she was able to drive the van from Vancouver Island to California before completing most of the repairs. Again, I find the claimed repairs appear to involve relatively minor issues, which, given the van's age, Ms. Hill should expect to arise at any time.

35. Under the circumstances, I find the van was reasonably durable and the respondents did not breach the implied warranty in the SGA. As I have also found misrepresentation unproven, I find that "buyer beware" applies and Ms. Hill is not entitled to any compensation for repair costs. I dismiss her claim.
36. 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 Ms. Hill was unsuccessful, I dismiss her claim for reimbursement of CRT fees and dispute-related expenses. The respondents did not pay CRT fees or claim dispute-related expenses.

## **ORDER**

37. I dismiss Ms. Hill's claims, and this dispute.

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Kristin Gardner, Tribunal Member