Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Ashley v. Ray Contracting Ltd.*, 2022 BCCRT 999

B E T W E E N :

FRED ASHLEY and JUSTINE MARY SMOKE

APPLICANTS

A N D :

RAY CONTRACTING LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Eric Regehr

INTRODUCTION

1. The applicants, Fred Ashley and Justine Mary Smoke, bought a used truck from the respondent, Ray Contracting Ltd. The applicants say that the transmission failed on their drive home immediately after the purchase. They claim $3,500, which they say is the cost to repair the transmission. Mr. Ashley represents the applicants.

2. Ray Contracting says that the truck was sold as is, where is. It also says that it was unaware of any transmission issue. Ray Contracting asks me to dismiss the applicants' claims. Ray Contracting is represented by its owner, Darren Burr.

JURISDICTION AND PROCEDURE

3. 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.

4. 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 of 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 *Yas v. Pope*, 2018 BCSC 282, 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.

5. 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.

6. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to pay money or to do or stop doing something. The CRT's order may include any terms or conditions the CRT considers appropriate.

ISSUES

7. The issues in this dispute are:

    a. Was the truck reasonably durable?

    b. Did Ray Contracting misrepresent the truck?

    c. What remedy, if any, is appropriate?

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, the applicants must prove their case on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.

9. The applicants give the following account of the truck's purchase and subsequent breakdown. Ray Contracting does not dispute any of the details I set out below, so I accept that they are true. The applicants found the truck advertised on Craigslist. There is no copy of the ad in evidence. It was a 2001 GMC 2500HD with just over 200,000 kilometers on it. The applicants were interested, so on February 25, 2021, Mr. Ashley went to Ray Contracting's yard to inspect it.

10. When Mr. Ashley arrived, the truck's battery was dead and the truck was uninsured. Mr. Ashley asked Mr. Burr if he could jump the truck so Mr. Ashley could inspect it, but Mr. Burr declined. Instead, Mr. Burr offered to have his own on-site mechanics inspect it and get it running. Mr. Ashley agreed and returned home to pick up Ms. Smoke.

11. The applicants returned to the yard together just as Ray Contracting's mechanics got the truck running. Mr. Ashley cycled through the truck's gears while moving back and forth in small area in Ray Contracting's commercial yard. He noticed that the truck had a "whirring" sound but thought it was probably because it had a heavier duty transmission than he was used to driving. Mr. Burr told the applicants the truck had some "minor issues". When Mr. Ashley asked specifically about the

transmission, Mr. Burr said there were no problems. The applicants bought the truck. Neither party says how much they paid, but I infer it was around $3,500 because the applicants say that the transmission repair "was equal to if not greater than the current value of the truck".

12. After leaving Ray Contracting in North Vancouver, the applicants drove towards their home in Burnaby. Ms. Smoke followed Mr. Ashley, who drove the truck. In Burnaby, Ms. Smoke saw the truck start "smoking excessively". Mr. Ashley also noticed that the transmission was slipping and "not moving" the truck. Mr. Ashley pulled over at a nearby friend's house. When they told Mr. Burr about the issue, he told them that he was "sorry for their luck". The transmission needed to be rebuilt, which cost $3,579.53. I address these repairs in more detail below.

13. Again, for the most part, Ray Contracting does not contradict the applicants' account of the purchase process. The parties disagree about whether Mr. Burr did anything to rush the applicants into a decision, but I find that nothing turns on this detail.

14. It is well-established that in the sale of used vehicles, the general rule is "buyer beware". This means that a buyer is not entitled to damages, such as repair costs, just because the vehicle breaks down shortly after the sale. Rather, the buyer generally assumes the risk that a vehicle might be defective or might not last long. To receive compensation, the buyer must prove either that the seller breached a warranty or misrepresented the vehicle. There is no suggestion of any express warranty in this dispute, so I find that the applicants must prove either that Ray Contracting breached an implied warranty in the *Sale of Goods Act* (SGA) or misrepresented the truck's condition.

Sale of Goods Act

15. Section 18 of the SGA sets out several implied warranties that apply to all contracts of sale. I find that the only applicable and relevant implied warranty in this dispute is found in section 18(c). I say this because the other relevant warranty, found in

section 18(a) of the SGA, only applies if the sale is part of the seller's ordinary business. There is no suggestion that Ray Contracting is in the business of selling used vehicles. Section 18(c) of the SGA implies a warranty that goods will be durable for a reasonable period of time, considering their normal use and the surrounding circumstances. The applicants expressly rely on this implied warranty in their submissions. They did not even make it from North Vancouver to their home in Burnaby. They say that given the truck's age, it should have reasonably lasted at least 30 days.

16. In *Sugiyama v. Pilsen*, 2006 BCPC 265, the BC Provincial Court applied this implied warranty to a used car sale. The court found that the older the car, the more likely it will break down. For older cars, the court found that if it is "roadworthy" and can be safely driven when purchased, it is likely to be considered reasonably durable, even if it breaks down shortly afterwards. Along similar lines, in *Wanless v. Graham*, 2009 BCSC 578, the BC Supreme Court said that buyers of old used vehicles must reasonably expect that defects could arise at any time. In short, the implied warranty that the applicants rely on is extremely limited in the context of a 20-year-old truck with over 200,000 kilometers on it.

17. The CRT has considered many cases about used vehicles that break down shortly after they are bought. Based on the principles from the above court cases, the CRT rarely concludes that a seller has breached the implied warranty of reasonable durability, even if the vehicle breaks down shortly after being purchased. For example, in *Bleiler v. Sawhney*, 2022 BCCRT 213, the CRT member found that a 15-year-old vehicle with 245,000 kilometers was reasonably durable even though the alternator failed only 10 minutes after the purchase. There was no evidence that the alternator was broken at the time of the purchase. The CRT concluded that the buyer had not proven that the car was not roadworthy.

18. In contrast, in *Austin v. Godin*, 2021 BCCRT 415, the buyer bought a 20-year-old car with almost 300,000 kilometers on it. There were no apparent problems when the buyer took the car for a test drive. Three days later, the buyer had a mechanic

inspect the car, who determined it was not safe to be driven because of undercarriage rust. The CRT determined that the car was unsafe to drive when it was purchased, and therefore was not reasonably durable.

19. Other CRT disputes are not binding on me, but I find the above cases persuasive. I find that the key question is whether the truck's transmission was already broken when the applicants bought the truck, as the applicants say, or whether the applicants were simply unlucky that the transmission failed so soon after the purchase, as Ray Contracting says.

20. The applicants rely primarily on the mechanic's invoice. However, the details in the invoice are very limited. It only says that there was a broken snap ring inside the transmission, which caused internal damage. The applicants ask me to infer from this description that there must have already been internal damage when they bought it. That may be true, but I find that it is a technical question that is beyond the common knowledge of an ordinary person. Because of this, it requires expert evidence to prove, such as from the mechanic who repaired the transmission (see *Bergen v. Guliker*, 2015 BCCA 283). However, the mechanic's invoice does not say how long the transmission had likely been broken.

21. The only other evidence that there was any problem with the transmission at the time of purchase is that Mr. Ashley heard a "whirring" sound during his very short test drive. On its own, I find that this does not prove that the transmission was already broken when the applicants bought it.

22. I therefore find that the applicants have not proven that the truck was not roadworthy when they bought it. I find that Ray Contracting did not breach the implied warranty in section 18(c) of the SGA.

Misrepresentation

23. The applicants argue that Ray Contracting misrepresented the truck's condition because Mr. Burr must have known or suspected that the transmission had a problem. A negligent misrepresentation occurs when:

    a. The seller makes a representation to the purchaser that is untrue, inaccurate, or misleading,

    b. The seller breaches the standard of care in making the misrepresentation, and

    c. The purchaser reasonably relies on the misrepresentation to their detriment.

24. The applicants say that they specifically asked about transmission problems, and that Mr. Burr denied that there were any. Ray Contracting says that this statement was true as far as Mr. Burr knew.

25. There is no direct evidence that Mr. Burr (or anyone else at Ray Contracting) knew anything about the transmission potentially having problems. The applicants rely on indirect evidence. In particular, the applicants say that Mr. Burr's behaviour after the truck broke down proves he knew or suspected that the transmission was a problem. First, they rely on the fact that he offered some compensation towards the repairs, which they see as evidence of "Mr. Burr's consciousness of guilt". Ray Contracting admits that it made an offer but says that it only did so because it was "sympathetic to the situation". I find that offering partial compensation is not persuasive evidence that Ray Contracting knew anything about the transmission before the sale. There are many reasons a company in Ray Contracting's position might offer compensation that have nothing to do with "guilt", such as sympathy or a desire to avoid legal proceedings.

26. Second, the applicants say that Ray Contracting did not send anyone to inspect the truck after it broke down or express any "shock or surprise". The applicants say that if Ray Contracting truly knew nothing about the transmission, it would have

inspected the truck and immediately offered to pay for the repairs. I find this argument speculative. I do not agree that there is anything inherently suspicious in Ray Contracting's reaction to the news that the truck had broken down.

27. In summary, I find that there is no persuasive evidence that Ray Contracting knew that the truck had a transmission problem. I therefore find that it did not make a statement that was untrue, inaccurate, or misleading.

28. I dismiss the applicants' claim for reimbursement of their repair costs.

29. 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. The applicants were unsuccessful, so I dismiss their claim for CRT fees and dispute-related expenses. Ray Contracting did not claim any dispute-related expenses or pay any CRT fees.

ORDER

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

Eric Regehr, Tribunal Member