



Civil Resolution Tribunal

Date Issued: October 11, 2022

File: SC-2022-001523

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Butz v. MacIver*, 2022 BCCRT 1114

BETWEEN:

LINDSAY ELAINE BUTZ

APPLICANT

AND:

VICTORIA MACIVER

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. This dispute is about a private used vehicle sale.
2. The applicant, Lindsay Elaine Butz, bought a 2004 Nissan Pathfinder from the respondent, Victoria MacIver. Ms. Butz says the vehicle began to break down within

2 hours and 2.5 km of driving. She says Ms. MacIver misrepresented the vehicle by having the check engine light turned off before the test drive. Ms. Butz originally claimed \$1,522.61 for repair costs and later amended her claim to add \$2,329.70 in additional repair costs. In total, she claims \$3,852.31 for repairs.

3. Ms. MacIver says Ms. Butz conducted a test drive and could have had the vehicle inspected before buying it but chose not to. She says she sold the vehicle “as described” and disclosed all known issues. Ms. MacIver also says Ms. Butz’s claimed repair costs are for issues that transpired after the sale or were elective repairs.
4. Both parties are 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, the parties in this dispute call into question each other’s credibility. Credibility of 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. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. In the circumstances of this dispute, I find that I am able to assess and weigh the evidence and submissions before me. Bearing in mind the CRT’s mandate that includes proportionality and prompt 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 Ms. MacIver misrepresent the vehicle?
 - b. If so, is Ms. Butz entitled to any of the claimed \$3,852.31 in repair costs, or some other measure of damages?

EVIDENCE AND ANALYSIS

10. As the applicant in this civil proceeding, Ms. Butz must prove her claims on a balance of probabilities, meaning more likely than not. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision.
11. Ms. Butz found Ms. MacIver's vehicle on Facebook Marketplace. The online ad said, among other things, "all regular maintenance completed on schedule," "no rust – except on hitch," and "no accidents." The vehicle had winter tires on but came with a set of all-season tires.
12. On February 10, 2022, Ms. Butz purchased the vehicle from Ms. MacIver for \$6,000. The vehicle had approximately 214,000 km on the odometer. The day before, Ms. Butz test-drove the vehicle for 15 minutes, including some highway driving. She did not have the vehicle inspected by a mechanic before purchase.

13. In the parties' pre-purchase text messages, Ms. MacIver disclosed that the vehicle needed a "shift lock repair" and she was bringing it to a mechanic "to ensure everything is ready to go before the sale." She also said she would not sell the vehicle with outstanding issues.
14. Before the purchase, Ms. MacIver gave Ms. Butz copies of 6 service records from AJ Transmissions & Automotive Repairs Ltd. (AJT). The records were for service between August 29, 2019, and June 24, 2021.
15. Ms. Butz says she encountered problems immediately after the sale. She says she drove the vehicle 2.5 km to her volunteer coaching job. When she started the vehicle 2 hours later, the check engine light came on. The windows did not roll down and the interior lighting system was not illuminating. Ms. Butz advised Ms. MacIver about these issues that night by text message. Ms. MacIver acknowledged that the check engine light had been on but was cleared before the test drive. She said it was likely a "P0420 code" about the catalytic converter efficiency, an issue that did not affect the vehicle's performance. She said, presumably referring to her mechanic, "they look at it now but clear the code because it's nothing to be concerned with." She said she had not experienced the electrical issues before.
16. On February 11, 2022, Ms. Butz took the vehicle to Tremblay Motors to inspect the electrical failure and read the error codes that led to the check engine status. The error codes were as follows:
 - a. P1131 SWIRL CONTROL SOLENOID VALVE FUNCTION
 - b. P0430 CATALYST EFF BELOW B2
 - c. P1491 VC CUT / VALVE BYPASS VALVE FAULT
17. Tremblay Motors replaced a fuse, which initially worked to address the windows and lighting. Tremblay Motors cleared the error codes but did not address any underlying issues causing the error codes. By February 14, the fuse failed again. Ms. Butz also

says when merging on the highway that day, the vehicle began to shake violently and would not exceed 2,500 rpm or go into the proper gear.

18. Ms. Butz asked Ms. MacIver for more service records, which Ms. MacIver obtained from AJT and delivered to Ms. Butz on February 16, 2022. The records were from February 7, 2017 to August 5, 2019.
19. On February 18, Ms. Butz took the vehicle to Tremblay Motors for a closer inspection of the electrical system. The vehicle remained at Tremblay Motors until February 25. Tremblay traced the electrical problem to a faulty “shifter solenoid,” which it replaced, addressing the electrical issues. The invoice says Tremblay Motors cleared all error codes, but there is no indication that it addressed the underlying issues. The same error codes later reappeared.
20. On February 24, 2022, Ms. Butz emailed Ms. MacIver to express her dissatisfaction with a number of issues with the vehicle. She noted she had paid over \$1,000 to repair the vehicle and still did not know the cause of the issues. She asked Ms. MacIver to either void the sale and provide a refund in exchange for return of the vehicle, or pay for the required repairs and provide the promised all-season tires. Ms. Butz did not originally obtain the all-season tires, but she later received them. The parties were unable to come to a resolution, and eventually Ms. MacIver stopped communicating with Ms. Butz.
21. Ms. Butz relies on opinion evidence from Brad Tremblay, service manager for Tremblay Motors. Mr. Tremblay is a Red Seal automotive service technician with 22 years of experience. I find Mr. Tremblay is qualified as an expert in automotive mechanics under the CRT’s rules, noting Ms. MacIver did not challenge his qualifications. Mr. Tremblay inspected, tested, and worked on the vehicle 4 times over a 3-month period in 2022.
22. Mr. Tremblay provided background information that I accept and summarize as follows. A check engine light comes on to warn the driver of a fault that requires attention or diagnosis. Clearing a check engine light can be done with a handheld

computer or scanner that gives a fault code a brief description of the fault. The check engine light can be cleared without fixing the problem. The check engine light cannot be cleared accidentally. The check engine light will illuminate again when the vehicle senses the fault, which could take minutes, hours or days depending on the system and severity of the fault.

23. As for this particular vehicle, Mr. Tremblay said it would not accelerate past 2,500 rpm due to the check engine light putting the vehicle into “limp mode”. Limp mode is a safety system that restricts a vehicle’s operation to prevent damage to the vehicle. Clearing the check engine light will disengage limp mode until the vehicle senses the fault again. When a vehicle is in limp mode, many systems can be unreliable until limp mode is disengaged.

Did Ms. Butz misrepresent the vehicle?

24. It is well-established that in the sale of used vehicles, the general rule is “buyer beware”. This means that a buyer assumes the risk that the purchased vehicle might be defective or might not last very long. There is no common law duty for a seller to disclose known defects, but they cannot actively conceal or misrepresent them. So, a buyer is generally responsible for failing to adequately inspect a vehicle before buying it (see *Conners v. McMillan*, 2020 BCPC 230).
25. 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 relies on the misrepresentation, resulting in damages.
26. The crux of Ms. Butz’s argument is that Ms. MacIver represented that the vehicle had no “outstanding issues” when she knew the check engine light was on, indicating

underlying issues. By having the errors cleared and the check engine reset before the test drive, she made the vehicle appear to have no issues.

27. It is undisputed that Ms. MacIver did not discuss with Ms. Butz the check engine light before the purchase. Ms. MacIver says Ms. Butz was or should have been aware of the check engine light coming on and needing to be cleared because Ms. MacIver provided service records. In other words, she says Ms. Butz's reliance on her verbal representation that the vehicle had no outstanding issues, and the test drive, was not reasonable. I disagree. Out of the 6 invoices provided to Ms. Butz, only the August 5, 2019 invoice referred to error codes arising from the check engine light. I find this record alone would not cause a reasonable person to make inquiries about the current status of the check engine light.
28. I agree with Ms. Butz that during the test drive, the vehicle did not go into limp mode because the errors had been cleared the day before. I find that Ms. MacIver had the errors cleared so that the check engine light would not illuminate during the test drive and the vehicle would appear to have "no issues" as Ms. MacIver represented.
29. It is difficult to reconcile Ms. MacIver's evidence that her mechanic advised her that the check engine light did not matter with her decision to reset the check engine light just before the test drive. If the check engine light did not affect performance, why bother having it reset? Although Ms. MacIver said she had the vehicle serviced the day before the sale to ensure there were no issues, she provided no service record, invoice, or statement from her mechanic in support. I find it more likely that either the final servicing disclosed errors that affected performance, or she did not bring the vehicle in for service and simply reset the check engine light herself, which the evidence shows can be done with a relatively inexpensive handheld device.
30. As stated by Mr. Tremblay, these issues with the vehicle would not have been detected in a pre-purchase inspection because they do not correspond to parts that can be visually inspected to discover issues. The issues would become apparent only once the check engine light returned and a diagnostic was run. So, the buyer beware

principle does not apply here because Ms. MacIver reset the check engine light just before the test drive.

31. Based on Mr. Tremblay's evidence, I also find that until the errors are addressed, the engine will continue to revert to limp mode shortly after have the errors cleared. I agree that limp mode affects the vehicle's operation and is a safety concern. Ms. Butz says the check engine light is permanently on, and she must always have an "on board diagnostics reader" to check the status of the vehicle's computer weekly.
32. I find Ms. MacIver's statement that the vehicle had no outstanding issues was untrue, or at least misleading as it concealed 1 or more known issues causing the check engine light to illuminate. I find that if the check engine light had been on during the test drive, Ms. Butz likely would not have purchased the vehicle without making further inquiries, including taking it for an inspection. Had Ms. Butz investigated the check engine light, I am satisfied that the 3 error codes would have presented. I say this because she only drove the vehicle 2.5 km before the check engine light came on and those error codes presented.
33. I find Ms. Butz would not have entered into the contract to buy the vehicle for \$6,000 had the engine light been on during the test drive. Based on that, I accept that the misrepresentation induced Ms. Butz into buying the vehicle. So, I find Ms. Butz has established that Ms. MacIver negligently misrepresented that that the vehicle had no outstanding issues that would trigger the check engine light.
34. Ms. Butz alleges various other vehicle defects, but I find the buyer beware principle applies to those defects. I accept that the all-season tires were too bare to be safely used, but that is a defect that was there to be seen. Common sense also suggests the missing tailpipe and rodent nest were discoverable upon a reasonable inspection.
35. The malfunctioning shift interlock was undisputedly disclosed even if Ms. Butz was unaware of the danger it posed. The "no accident" statement in the Facebook ad was untrue based on the Car Fax report, but Ms. Butz obtained the Car Fax report before purchase, so she was aware of the accidents, which appear to have been minor.

36. Ms. Butz does not argue that the vehicle was not durable for a reasonable period of time as required by section 18(c) of the *Sale of Goods Act*. Given the vehicle's age and mileage, and given that it did not experience a complete breakdown, I would not have found a breach of the implied warranty of durability anyway.
37. As a result, I find Ms. Butz is only entitled to damages based on the misrepresentation that the vehicle had no outstanding issues that would trigger the check engine light.

Remedy

38. The remedy for a negligent misrepresentation may be rescission, damages, or a combination of both (see *Vavra v. Victoria Ford Alliance Ltd.*, 2003 BCSC 1297). Rescission is where the contract is set aside and the parties are restored to their original positions, as if the contract never existed. Ms. Butz does not seek rescission and given the work she has done to the car I find rescission is not an appropriate remedy. Damages are more appropriate.
39. Ms. Butz wants Ms. MacIver to reimburse her for repairs she has made to the vehicle. Most of those repairs were not directly connected to the misrepresentation. Damages for misrepresentation are based on the principle of putting the injured party in the position they would have been in had the other party not made the misrepresentation (see *Payne v. Eagle Ridge Pontiac GMC Ltd.*, 2010 BCSC 1085). I find the proper measure of such damages here is the difference between the \$6,000 Ms. Butz paid and the fair market value of the vehicle on the date of purchase.
40. I have little evidence of the vehicle's fair market value. In the circumstances, the expenses Ms. Butz incurred to address the issues underlying the error codes are relevant in that a buyer might reasonably factor these costs into their offer. It is not an exact calculation. Receipts show Ms. Butz paid for 2 hours labour to diagnose the fault codes (\$333.76 including tax) and \$349.43 to replace the swirl valve, for a total of \$683.19. She provided a quote for \$655.61 for additional work to address the other valve error. Taking these expenses and the inconvenience of repairs into account, I find a buyer would have paid \$4,500 for the vehicle. On that basis, I find \$1,500 is an

appropriate award to fairly compensate Ms. Butz. I have not factored into this award other repairs Ms. Butz completed or intends to complete that are unrelated to the misrepresentation.

41. The *Court Order Interest Act* applies to the CRT. Ms. Butz is entitled to pre-judgment interest on the \$1,500 in damages from February 10, 2022, the purchase date, to the date of this decision. This equals \$9.94.
42. 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. I find Ms. Butz is entitled to reimbursement of \$175 in CRT fees. Ms. Butz claimed \$334 for Mr. Tremblay's expert opinion evidence. That was supported by a statement from Mr. Tremblay explaining the time he spent reviewing documents and answering the questions Ms. Butz provided. I find Mr. Tremblay's evidence was necessary for Ms. Butz's claim, and therefore I find she is entitled to reimbursement of \$334 for that reasonably incurred expense.

ORDERS

43. Within 30 days of the date of this order, I order Ms. MacIver to pay Ms. Butz a total of \$2,018.94, broken down as follows:
 - a. \$1,500.00 in damages,
 - b. \$9.94 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$509.00, for \$175.00 in CRT fees and \$334.00 for dispute-related expenses.
44. Ms. Butz is entitled to post-judgment interest, as applicable.

45. 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.

Micah Carmody, Tribunal Member