



# Civil Resolution Tribunal

Date Issued: October 24, 2022

File: SC-2021-009728

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Antinuk v. Scargall*, 2022 BCCRT 1160

BETWEEN:

GARRY ANTINUK

**APPLICANT**

AND:

MATHEW SCARGALL

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Nav Shukla

## INTRODUCTION

1. This dispute is about a private used camper sale. The applicant, Garry Antinuk, bought a camper from the respondent, Mathew Scargall. Mr. Antinuk says Mr. Scargall misrepresented the camper's condition. He says the camper is damaged beyond repair due to rot and mold and seeks a \$2,000 refund from Mr. Scargall. He also seeks \$400 in anticipated costs for disposing of the damaged camper.

2. Mr. Scargall says he was not aware of any damage when he sold the camper. He does not deny Mr. Antinuk discovered rot and mold after purchasing the camper but disputes that the camper was damaged to the extent Mr. Antinuk alleges.
3. Both parties are self-represented in this dispute.

## **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, 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.
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.

### ***Preliminary Issues***

8. In his Dispute Notice, Mr. Antinuk says that in addition to paying Mr. Scargall \$2,000 for the camper, he also offered Mr. Scargall a piece of original artwork worth \$300. Mr. Antinuk now says that he wants to cancel that part of the offer. It is unclear from the parties' submissions whether this artwork offer was accepted by Mr. Scargall when Mr. Antinuk purchased the camper.
9. The CRT's small claims jurisdiction set out in section 118 of the CRTA does not include declaratory relief. Section 10(1) of the CRTA says that the CRT must refuse to resolve a claim that it considers is not within its jurisdiction. So, to the extent that Mr. Antinuk seeks a declaration that he does not need to give a piece of original artwork to Mr. Scargall, I refuse to resolve this claim.
10. Further, in his submissions, Mr. Antinuk says that he will waive the disposal costs he seeks if Mr. Scargall takes the camper at his own expense within 14 days from this CRT decision. An order requiring someone to do something is known as "injunctive relief". Injunctive relief is outside the CRT's small claims jurisdiction, except where expressly permitted by section 118 of the CRTA. There is no relevant CRTA provision here that would permit me to grant the injunctive relief sought by Mr. Antinuk. So, I decline to grant this remedy. Nothing turns on this, given my decision to dismiss Mr. Antinuk's claims, as discussed below.

### **ISSUES**

11. The issues in this dispute are:
  - a. Did Mr. Scargall misrepresent the camper's condition?
  - b. Was the camper reasonably durable?

- c. If Mr. Scargall misrepresented the camper or the camper was not reasonably durable what remedy, if any, is Mr. Antinuk entitled to?

## **EVIDENCE AND ANALYSIS**

12. In a civil proceeding like this one, as the applicant, Mr. Antinuk must prove his claims on a balance of probabilities (meaning “more likely than not”). I have read all the parties’ submitted evidence and argument but refer only to what I find relevant to provide context for my decision.
13. Mr. Antinuk found Mr. Scargall’s camper on Facebook Marketplace. In the online advertisement, Mr. Scargall listed the camper for \$2,300 and said that it was in good used condition. The advertisement further stated that Mr. Scargall had owned the camper for almost 4 years and that it was always stored under cover with no leaks.
14. On November 20, 2021, Mr. Antinuk, his wife, and his daughter, went to see Mr. Scargall’s camper. On November 28, 2021, Mr. Antinuk returned and purchased the camper from Mr. Scargall for \$2,000. None of this is disputed.
15. On December 1, 2021, Mr. Antinuk messaged Mr. Scargall and said that he was disappointed because he saw buckling in a wall when he removed the upper mattress in the camper. He said that he took a test piece out from the wall and found rotting wood and black mold. Mr. Antinuk told Mr. Scargall that he had counted on the camper having no leaks. Mr. Scargall responded saying that he had no idea there was an issue with water damage or mold and that he believed the camper was water-tight. He said that he had never had any moisture problems, wet mattresses, wet spots or condensation build up.
16. Following these messages, Mr. Antinuk unsuccessfully tried to negotiate a partial refund from Mr. Scargall. Pictures in evidence show that Mr. Antinuk removed the left and right front bunk interior walls and lower bed structure when investigating the rot and mold. Mr. Antinuk says that there was so much rot and mold that the front corner plywood “just flaked off and had no structural integrity remaining”. Mr. Scargall says

that Mr. Antinuk has destroyed the camper with his investigations. He says that had Mr. Antinuk left the camper intact, a refund could have been worked out.

***Did Mr. Scargall misrepresent the camper?***

17. In a private sale of a used item, a buyer is expected to reasonably assess the used item's condition before purchase. This is because a seller is not obligated to tell a buyer about obvious defects. The applicable principle is referred to as the doctrine of *caveat emptor* or "buyer beware" (*Connors v. McMillan*, 2020 BCPC 230 at paragraphs 70 and 71). However, sellers cannot purposely conceal an otherwise obvious defect, and they cannot misrepresent the item to induce the buyer to purchase it.
18. A "misrepresentation" is a false statement of fact made during negotiations or in an advertisement. If a seller misrepresents the condition of an item, the buyer may be entitled to damages arising from that misrepresentation. However, the seller must have acted negligently or fraudulently in making the misrepresentation.
19. A fraudulent misrepresentation occurs when:
  - a. The seller makes a statement of fact to the buyer,
  - b. The seller knows the statement was false, or is reckless about whether it is true or false, and
  - c. The misrepresentation induces the buyer into purchasing the item.
20. A negligent misrepresentation occurs when:
  - a. The seller makes a representation to the buyer that is untrue, inaccurate, or misleading,
  - b. The seller breaches the standard of care in making the misrepresentation, and
  - c. The buyer reasonably relies on the misrepresentation to their detriment.

21. Mr. Scargall says that the buyer beware principle applies. He says that Mr. Antinuk failed to reasonably inspect the camper before buying it and so he is not responsible for any issues Mr. Antinuk later discovered. Based on the evidence before, it appears Mr. Antinuk did not get a professional inspection before purchasing the camper.
22. Mr. Antinuk says that the buyer beware principle does not apply here because Mr. Scargall negligently or fraudulently misrepresented the camper's condition both in the Facebook Marketplace advertisement and when Mr. Antinuk came to view the camper. He says that given the mold and rot he discovered, the camper was not in "used good condition" and clearly had leaks.
23. Mr. Antinuk alleges fraudulent misrepresentation based on the following. First, he says that the camper's exterior was dirty with bug debris which hid holes. Mr. Antinuk suggests that Mr. Scargall deliberately did not wash the camper in order to hide the holes with the bug debris. Mr. Antinuk further relies on a witness statement from his wife, CA. CA's evidence is that when she questioned Mr. Scargall about a musty smell in the camper, he told her that the camper needed to be aired out. Mr. Scargall denies this conversation took place. Lastly, Mr. Antinuk says that Mr. Scargall was extremely cautious when loading the camper on to Mr. Antinuk's truck, suggesting that Mr. Scargall knew about the rot and mold and did not trust the camper's structural integrity.
24. Mr. Scargall says that when he owned the camper, it was always stored undercover and resealed before each camping season if necessary. He further says that he would lift the mattress to check for moisture or hidden odours often. Mr. Scargall provided a witness statement from his wife, AS. In this statement, AS stated that to their knowledge, there had been no leaks and they did not know of any water damage. AS said that had they been aware of any water damage and mold, they would not have exposed their young children to such conditions. Mr. Scargall provided photographs from July 2021 showing his 2 children sleeping in the camper's top bunk.
25. Mr. Scargall did not address Mr. Antinuk's allegations about the holes on the camper's exterior. However, Mr. Antinuk's evidence includes photographs before and after he

washed the camper. Though Mr. Antinuk says the “after” photograph shows holes in the exterior which he says means the camper had leaks, I do not find this obvious from the photograph. I find it difficult to tell from the photograph whether it shows holes or scratches. In any event, I find the evidence does not establish that Mr. Scargall knew about the alleged holes, so I find it unproven that he deliberately tried to hide the alleged holes with the bug debris.

26. In response to Mr. Antinuk’s allegation that Mr. Scargall was overly cautious when loading the camper, Mr. Scargall says that campers are most vulnerable while loading and unloading and caution should always be exercised. I find Mr. Scargall’s explanation reasonable. So, I find the caution he exercised when loading the camper does not prove that he knew of any alleged structural issues.
27. In *Anderson v. British Columbia (Securities Commission)*, 2004 BCCA 7 at paragraph 29, the court stated that because fraud is a very serious allegation, it is necessary to have clear and convincing evidence to prove the elements of fraud. I find Mr. Antinuk’s claims of fraudulent misrepresentation are speculative at best. I do not find that the available evidence establishes Mr. Scargall purposely or recklessly made false statements to induce Mr. Antinuk to purchase the camper.
28. Did Mr. Scargall make a negligent representation? In his submissions, Mr. Scargall says that he “unknowingly made a false statement that could have easily been discovered through the process of a reasonable inspection”. Mr. Scargall does not specify what statement he refers to. However, based on his submission that it is possible the camper had rot and mold but did not leak, I find Mr. Scargall admits that he unknowingly said the camper was in good used condition when it was not, given the rot and mold Mr. Antinuk found. However, and as detailed below, I find the evidence does not establish that Mr. Scargall’s representation that the camper had no leaks was false.
29. Mr. Antinuk says that he relied on Mr. Scargall’s representations that the camper was in good condition and had no leaks which Mr. Scargall undisputedly made in both the online listing and during Mr. Antinuk’s visit on November 20, 2021. I find it more likely

than not that Mr. Antinuk would not have purchased the camper but for Mr. Scargall making these representations.

30. So, the remaining question is whether Mr. Scargall breached the applicable standard of care in making the misrepresentation that the camper was in good used condition. In *Sutherland v. Ramsey*, 2021 BCCRT 363 at paragraph 25, the tribunal member noted that the standard of care in negligent misrepresentation cases is that the person making the misrepresentation must exercise reasonable care. What is “reasonable” is objective, taking into account the seller’s position. Though not binding on me, I find this is the standard of care that applies here.
31. I accept Mr. Antinuk’s evidence that the buckling in the wall was not visible until he removed the mattress from the top bunk but then was immediately obvious to him. In his submissions, Mr. Antinuk says that in the 4 years Mr. Scargall owned the camper, he must have moved the mattress at some point for cleaning or to replace bedding. However, what Mr. Antinuk does not establish is that the buckling was so obvious that it would have indicated to Mr. Scargall that the camper was not in good condition or had leaks. In other words, I find Mr. Antinuk has not proven that Mr. Antinuk failed to exercise reasonable care.
32. Mr. Antinuk also refers to a non-functioning window that he says contributed to the water damage. It is undisputed that Mr. Scargall told Mr. Antinuk that the window did not close at the November 20, 2021 meeting. Mr. Antinuk says that Mr. Scargall also said that the window never leaked and was easy to repair. More on the window below.
33. Mr. Antinuk relies on some “special comments” made by Bob and Jay Fennell from Fennell’s RV Repair Ltd. These special comments state that the mold and rotten wood will still be inside the camper where it was not pulled apart and that it is impossible to remove all the contaminated areas unless the camper is totally stripped and rebuilt. The special comments further note that because of the camper’s vintage and condition, a total rebuild is not possible. Lastly, the special comments stated that the existing rot had been in the camper for many years.



34. Mr. Antinuk refers to these special comments as expert evidence. CRT rule 8.3(2) requires an expert to state their qualifications in any written expert opinion. Here, the writers did not note their qualifications. However, Mr. Antinuk's evidence includes information from Fennell's RV Repair Ltd.'s website which says its staff has approximately 120 years of combined experience of RV related repair and service. Based on this, and since Mr. Scargall does not dispute the experts' qualifications, I find Bob and Jay Fennell are qualified to give expert opinion about the camper's condition and I accept their special comments as expert evidence under CRT rule 8.3.
35. However, while I accept this expert evidence, I find it does not address what caused the rot and mold in the camper and whether the camper had leaks. Other than Mr. Antinuk's assertions, there is no evidence that the non-functioning window leaked and caused water damage to the camper. Further, though the expert evidence says that the rot was existing for years, it does not say that Mr. Scargall likely would have been aware of it. On balance, I find the evidence falls short of proving on a balance of probabilities that Mr. Scargall had any reason to believe the camper had rot or mold and was not in good condition.
36. So, I find it unproven that Mr. Scargall failed to exercise reasonable care with respect to the non-functioning window and accept his evidence that he believed the camper was in good used condition.
37. Based on the above, I am not satisfied that Mr. Antinuk has proven on a balance of probabilities that Mr. Scargall fraudulently or negligently misrepresented the camper's condition.

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

38. The buyer beware principle discussed above is also limited by the warranties set out in section 18 of the *Sale of Goods Act* (SGA). Section 18(c) says that there is an implied condition the sold goods will be durable for a reasonable period, considering how the goods would normally be used and the sale's surrounding circumstances. In

a private sale like this one, the other warranties set out in the SGA do not apply. Mr. Antinuk says that when he bought the camper, he was expecting it to be road-worthy and usable.

39. The SGA does not define “durable”. In *Krotz v. Willis*, 2020 BCCRT 877 at paragraph 25, the tribunal member used the definition of durable from Collinsdictionary.com: “strong and lasts a long time without breaking or becoming weaker”. While *Krotz* is not binding on me, I find the reasoning persuasive and adopt it here to find that under section 18(c) of the SGA, goods sold must last without breaking or becoming weaker for a reasonable period with normal use and considering the sale’s surrounding circumstances.
40. In *Sugiyama v. Pilsen*, 2006 BCPC 265, the BC Provincial Court set out a number of factors to consider when assessing a used vehicle’s reasonable durability, including, age, mileage, nature of use, price paid, reasons for defects, and the parties’ expectations as shown by any express warranties. The claimant in *Sugiyama* had purchased a car and its engine broke down after driving it for a fairly short time due to an undetectable defect. The court determined that the car was still durable for a reasonable time because one had to consider its age (8 years old), mileage (over 140,000 km), and price of about \$5,000. I find similar factors as those considered by the court in *Sugiyama* must be considered here in determining whether the camper was durable.
41. In this case, neither party provided any details about the camper’s exact age or original purchase price. However, as mentioned above, Mr. Antinuk’s experts noted the camper’s vintage. I find this reference to the camper’s vintage likely means that the camper was aged. I find this is also reflected in the relatively low price Mr. Antinuk paid for the camper.
42. Though I accept that the camper had significant rot and mold, other than Mr. Antinuk’s assertions, there is no evidence that the rot and mold rendered the camper unsafe or uninhabitable. In particular, I note that although the expert opinion Mr. Antinuk relies on said it was not possible to do a total rebuild of the camper because of its vintage

and condition, there is no expert evidence about the camper's structural integrity or anything else confirming that the camper was unsafe and not road-worthy due to the rot and mold at the time of purchase.

43. I find the evidence does not show that Mr. Antinuk encountered any issues with the camper's durability following his purchase. The camper may now be unusable but I find this is because of Mr. Antinuk's decision to investigate the buckling in the walls and tear down the camper's walls. Mr. Scargall's undisputed evidence is that he used the camper on a road trip in August 2021. So, I find the camper was road worthy at least as late as August 2021 and more likely than not still road worthy when Mr. Antinuk purchased it.
44. Here, Mr. Antinuk purchased a camper of a certain vintage for only \$2,000 and chose not to have a professional inspection done. Neither party provided evidence on whether \$2,000 was the market price for such a camper in its sold condition. I find there is no evidence that the camper became weaker or broke after Mr. Antinuk purchased it. Rather, I find the issues he complains of were present at the time of purchase. This is supported by the expert evidence, which as noted, says that the rot and mold had been present for years. In the absence of expert evidence addressing it, I find Mr. Antinuk has not proven the camper was structurally compromised, unsafe, or uninhabitable.
45. I find the implied warranty of durability was limited in the context of this sale. I find that Mr. Antinuk has not proven on a balance of probabilities that the camper was not reasonably durable in the circumstances. So, I find Mr. Scargall did not breach the implied warranty of durability in SGA section 18(c). I find the buyer beware principle applied to this sale and Mr. Antinuk took the risk by purchasing the camper without a professional inspection. As a result, I find that Mr. Antinuk is not entitled to any reimbursement for the camper's purchase price and I dismiss his claims.
46. 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 see no reason in this case not to follow that general rule.

I find Mr. Antinuk was unsuccessful so I dismiss his claims for tribunal fees and dispute-related expenses. Mr. Scargall did not pay any CRT fees or claim any dispute-related expenses, so I order no reimbursement.

## **ORDERS**

47. I dismiss Mr. Antinuk's claims and this dispute.

48. I also refuse to resolve Mr. Antinuk's claim for declaratory relief about the artwork offer.

49. 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.

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Nav Shukla, Tribunal Member