



Civil Resolution Tribunal

Date Issued: December 6, 2022

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Absalom v. Bennett*, 2022 BCCRT 1310

BETWEEN:

EMILY JANE ABSALOM

APPLICANT

AND:

DAVID BENNETT

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about a used vehicle purchase. The applicant, Emily Jane Absalom, purchased a used 2001 Pontiac Montana Sport minivan from the respondent, David Bennett. Ms. Absalom says Mr. Bennett assured her the vehicle was reliable and in good working condition, but she says it was not because it had undercarriage rust.

Ms. Absalom claims \$2,991.03, for a refund of the vehicle's purchase price and vehicle-related expenses.

2. Mr. Bennett says his description of the vehicle was consistent with his knowledge of it, and in any event Ms. Absalom test drove it twice and had an opportunity to inspect it before purchase. So, he says he owes nothing.
3. The parties are each 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. Although the parties' submissions each call into question the credibility of the other party to some extent, the credibility of interested witnesses cannot be determined solely by whose demeanour appears most truthful in a courtroom or tribunal proceeding. Determining the most likely account includes assessing its harmony with the rest of the evidence. Further, in the decision *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always needed where credibility is in issue. Here, I find I can properly assess and weigh the written evidence and submissions before me. Keeping in mind that the CRT's mandate includes proportional and speedy dispute resolution, I find that an oral hearing is not necessary in the interests of justice.

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. Did Mr. Bennett misrepresent the vehicle's condition?
 - b. Did Mr. Bennett breach an express or implied warranty about the vehicle?
 - c. If yes to either of the above, does Mr. Bennett owe Ms. Absalom \$2,991.03 in damages?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, Ms. Absalom must prove her claims on a balance of probabilities, meaning "more likely than not." I have read all the parties' submissions but refer only to the evidence and arguments that I find relevant to provide context for my decision.
10. I begin with some background and discussion of evidence. Ms. Absalom inquired about the minivan based on a "for sale" sign. She test drove it twice before purchase. She does not deny that she had an opportunity to have it professionally inspected and that she chose not to. Ms. Absalom asked Mr. Bennett about the minivan's condition because she was planning to take a long road trip. Based on the parties' submissions and 2 witness statements in evidence, I find Mr. Bennett said he had been using the van regularly, he thought it was in good condition, and he would not hesitate to take it on a road trip. Ms. Absalom says she knew repairs might be needed

because of the vehicle's age. Knowing this, she purchased the minivan for \$2,000 on March 20, 2022. A Transfer/Tax Form in evidence shows the vehicle's odometer read 213,000 kilometers on the purchase date. None of this is disputed.

11. Ms. Absalom says that the day after the purchase, she smelled gas and noticed fluid on the ground under the minivan. She says she took the vehicle to mechanics who allegedly identified various problems and said that the van was unsafe. However, there is no statement in evidence from those unidentified mechanics saying the van was unreliable or unsafe, although a submitted receipt shows Ms. Absalom had a fuel filter replaced on March 29, 2022. So, I place little weight on Ms. Absalom's unsupported submission about the alleged mechanics' safety opinions.
12. Ms. Absalom says after the purchase she noticed that panels had been installed on the narrow side portion of the minivan's body below its doors. However, she does not deny that the painted panels were plainly visible, as shown in submitted photographs. The panels undisputedly covered rust spots on the body that would have otherwise been visible when viewing the car from the side. Mr. Bennett says he installed the painted tin panels himself about one year before selling the vehicle. He says he did this to make the vehicle look nicer, and not to deceive anyone about the presence of rust. As further explained below, I find the panels did not cover more significant rust on the minivan's undercarriage.
13. A submitted invoice and "Pre-Purchase Vehicle Inspection" report show Ms. Absalom had the vehicle inspected at a BCAA service centre on April 7, 2022, when the odometer read 215,251 kilometres. This was 2.5 weeks after Ms. Absalom purchased the minivan. The inspection identified some issues that required immediate attention, including "extremely bad" rust on the underbody and frame. BCAA photos in evidence show rust under the minivan, including what appears to be significant rust deterioration on the vehicle's frame. I find that rust was plainly obvious, and was visible to anyone looking under the minivan without moving or removing any part of the vehicle, including the tin panels Mr. Bennett installed.

14. The BCAA invoice advised that due to “major rust” the vehicle “is unsafe to use for long road trips”, and said that was the reason Ms. Absalom purchased it. I find it is unclear who wrote that statement, and whether it was the inspecting technician or someone else without personal knowledge of the vehicle’s condition. In addition, the invoice does not explain why the rust would only create a safety issue for a “long road trip” and not other types of driving. The safety issue created by the rust was not identified. So, I place little weight on the BCAA statement that the vehicle was unsafe for long road trips. Further, and contrary to Ms. Absalom’s assertion that BCAA told her the vehicle was unsafe to drive, I find the invoice and report do not show that BCAA said the vehicle was unsafe for general use or that it should not be driven at all. I also note that Ms. Absalom does not explain why she undisputedly drove the vehicle away from BCAA after the inspection, despite the safety risks she alleges.
15. Ms. Absalom claims a total of \$2,991.03 for a refund of the minivan’s purchase price, a flat tire repair, a fuel filter replacement, insurance expenses, a BCAA inspection expense, a CarFax fee, and storage insurance.

Did Mr. Bennett misrepresent the vehicle’s condition?

16. Except for any express or implied warranties, addressed later in this decision, the “buyer beware” principle applies to used vehicle purchases (see *Cheema v. Mario Motors Ltd.*, 2003 BCPC 416 at paragraph 10). This principle means that the buyer assumes the risk that the purchased vehicle might be defective or unsuitable to their needs and is expected to assess the vehicle’s condition before purchasing it (see *Connors v. McMillan*, 2020 BCPC 230). However, a seller cannot misrepresent or actively conceal known defects.
17. Ms. Absalom says that Mr. Bennett’s description of the vehicle did not match its actual condition, which she says is a requirement under the *Sale of Goods Act* (SGA). I find she likely refers to SGA section 17, which says that in a contract for the sale of goods by description, there is an implied condition that the goods must correspond with the description. Although in response to Ms. Absalom’s inquiry Mr. Bennett said he would take the minivan on a long road trip, I find the evidence does not show that he offered

the minivan specifically as a “road trip” vehicle. Further, Ms. Absalom personally viewed and test drove the minivan before buying it. So, I find this was not a sale by description, and section 17 does not apply.

18. I find that Ms. Absalom alleges, essentially, that Mr. Bennett misrepresented the vehicle’s condition. Negligent misrepresentation is when a seller negligently makes an untrue, inaccurate, or misleading representation to a purchaser, who suffers damage from reasonably relying on the representation. Fraudulent misrepresentation is when a seller states a fact that it knows is false, or is reckless about whether it is true or false, to a purchaser, and the statement induces the purchaser to buy something.
19. Either negligent or fraudulent misrepresentation requires that a seller make a statement that is false, inaccurate, or misleading, and that the buyer reasonably rely on the representation. Here, Ms. Absalom says Mr. Bennett told her the vehicle was reliable and in good working condition, and that it was capable of a long road trip, when she says it was not. Specifically, she says that it was unreliable and unsafe due to the undercarriage rust. She also alleges that the rust issues were not repairable, but I find none of the mechanic evidence before me says that is the case.
20. First, I find the evidence before me shows the minivan was in working condition when purchased. It was undisputedly able to be driven during the test drives. I find the documentary evidence before me does not show that it is unsafe to drive now or that it is unreliable, although I further discuss its durability below.
21. Second, as noted Mr. Bennett undisputedly drove the minivan regularly, and expressed to Ms. Absalom his belief that the minivan was reliable and suitable for a long road trip. I accept that Mr. Bennett honestly believed the minivan was in adequately driveable condition. However, the standard of care in negligent misrepresentation disputes is that the person making the representation must exercise reasonable care. See *Queen v. Cognos Inc.*, [1993] S.C.R. 87. That reasonableness is objective, and considers the seller’s position.

22. Mr. Bennett is undisputedly not a vehicle mechanic. He says he took the minivan to his mechanic whenever there was a problem. A written statement from DH, the owner of My Place Auto, said that My Place Auto had serviced the minivan for many years, and despite some rust underneath the vehicle, it was always kept in running condition and was very sound and reliable. DH said it never thought the vehicle was not roadworthy or was a danger to operate.
23. Further, I find the evidence does not show that Mr. Bennett should have suspected the vehicle was unreliable or unsafe due to the significant undercarriage rust, which as noted was not covered by the side panels he installed. I find that even if Mr. Bennett knew about the undercarriage rust, the evidence does not show that he reasonably should have suspected it was a potential safety risk. Also, the evidence does not show that the body rust covered by the side panels was more than cosmetic, was unexpected in a 21-year-old vehicle, or affected safety or reliability. For the above reasons, I find that Mr. Bennett exercised reasonable care in telling Ms. Absalom that the minivan was in good condition and was reasonably reliable.
24. Upon weighing the parties' submissions, and the evidence including witness statements, I find that Mr. Bennett did not make an untrue or misleading representation about the minivan's condition. Further, Ms. Absalom does not adequately explain why it was reasonable to rely on Mr. Bennett's representations about the minivan, given the significant undercarriage rust that I find could be seen by looking under the vehicle, the visible homemade panel repairs, the 2 test drives she took, the inspection opportunity she declined, and her admitted knowledge that repairs might be needed. So, I find that Ms. Absalom did not reasonably rely on Mr. Bennett's representations and they did not reasonably induce her to purchase the vehicle. I find there was no misrepresentation by Mr. Bennett.
25. Ms. Absalom also says that Mr. Bennett actively concealed the patent defect of undercarriage rust by installing the tin side panels below the doors. I note the concept of patent or latent defects is usually applied to land purchases and not vehicle sales. See the non-binding but persuasive decision *Sutherland v. Ramsey*, 2021 BCCRT

363. As in *Sutherland*, I find Ms. Absalom's submissions instead raise the issues of implied warranties under the SGA, discussed below, and misrepresentation. Further, although the installed panels undisputedly hid body rust when viewed from the side, as noted above I find they did not obscure the frame or undercarriage rust that Ms. Absalom alleges is a safety and reliability issue. So, I find that Mr. Bennett did not actively conceal the defects at issue in this dispute.

Did Mr. Bennett breach an express or implied warranty?

26. Mr. Bennett is not correct in saying that all used vehicles are sold in "as-is where-is" condition. Sellers may provide express warranties about used vehicles, and there may be implied warranties as well, both of which I address below.
27. I find Ms. Absalom alleges that Mr. Bennett's statements about the minivan being in good condition and reliable were express warranties under the parties' purchase agreement, and that she relied on those statements. As noted, the evidence shows Mr. Bennett's statements about the vehicle's general condition and reliability were simply his reasonable opinion. On the evidence before me, I find that Mr. Bennett's statements did not constitute a contractual warranty that the minivan had no defects.
28. Turning to implied warranties, I find Ms. Absalom's submissions allege that the minivan was not sufficiently durable. SGA section 18(c) says there is an implied contractual condition that goods will be durable for a reasonable period of time. I find there is no evidence that the parties contracted out of this implied condition, or that Ms. Absalom agreed to purchase the vehicle "as-is where-is" as Mr. Bennett alleges, so I find it applies to the sale. I note that the other implied conditions and warranties in section 18 of the SGA do not apply to private sales like this one.
29. The question of what is reasonably durable depends on the normal use of the goods and the sale's circumstances. In *Sugiyama v. Pilsen*, 2006 BCPC 265, the court found that a used car seller cannot guarantee a car's future performance, and that a buyer must expect problems at some point. The older the car, the more likely it will break down. For much older cars, the court found that if it is "roadworthy" when purchased,

it is likely to be considered reasonably durable. In *Sugiyama*, a car had 140,000 kilometres on it and was eight years old. The court found that car was reasonably durable even though the engine failed after only 616 kilometers of driving.

30. Here, the minivan was 21 years old, had in excess of 200,000 kilometres on it, and had visible homemade body repairs. I find the minivan was a much older vehicle as described in *Sugiyama*, and that it was durable if it was roadworthy when purchased.
31. The fuel filter undisputedly required replacement soon after purchase. However, there was undisputedly no gasoline smell or leak signs prior to purchase. So, I find the fuel filter failed after purchase, which does not mean the minivan was not roadworthy.
32. The odometer readings noted above show that the vehicle was driven approximately 2,000 kilometres between the date of purchase and the BCAA inspection 2.5 weeks later. Other than the fuel filter, Ms. Absalom noted no issues that physically prevented the vehicle from being driven during that time or afterward. Ms. Absalom says she has since chosen not to drive the minivan due to her safety concerns. However, as noted above, I find the evidence is not sufficient to show the minivan was not roadworthy or was unsafe when purchased, or at any time after that, despite the many flaws identified by the BCAA inspection.
33. In the sale's circumstances, I find the evidence shows that it was durable for a reasonable period of time. I find there was no breach of the SGA section 18(c) implied condition of durability.
34. Overall, I find Mr. Bennett did not misrepresent the minivan's condition, or breach an express or implied warranty. I dismiss Ms. Absalom's claim for \$2,991.03.

CRT Fees and Expenses

35. Under section 49 of the CRTA, and the 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.

Ms. Absalom was unsuccessful in her claim, but Mr. Bennett paid no CRT fees. Neither party claimed CRT dispute-related expenses. So, I order no reimbursements.

ORDER

36. I dismiss Ms. Absalom's claim, and this dispute.

Chad McCarthy, Tribunal Member