



Civil Resolution Tribunal

Date Issued: March 3, 2023

File: SC-2021-009559

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Le Gall v. MacDonald*,

2023-BCCRT 177

B E T W E E N :

JULIE LE GALL

APPLICANT

A N D :

SCOTT ANGUS MACDONALD

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. The applicant, Julie Le Gall, bought a 2009 Volkswagen Tiguan (car) from the respondent, Scott Angus MacDonald. Ms. Le Gall says Mr. MacDonald

misrepresented the car's condition and service history. Ms. Le Gall claims \$5,000 based on estimated repair costs.

2. Mr. MacDonald denies Ms. Le Gall's claims. He says the car was in great shape for its age and Ms. Le Gall should have purchased a Carfax report. He says he knew about an oil leak before the sale but chose not to repair it because it was minor.
3. Each party is self-represented.

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.

ISSUES

8. The issues in this dispute are:
 - a. Did Mr. MacDonald misrepresent the car's condition or service history?
 - b. What remedy, if any, is appropriate?

EVIDENCE AND ANALYSIS

9. As the applicant in this civil proceeding, Ms. Le Gall must prove her claims on a balance of probabilities, meaning more likely than not. While I have considered all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
10. Mr. MacDonald advertised the car for sale on Facebook Marketplace for \$9,800. He described the car as a "great little suv, in great shape, super reliable, runs great and great in the snow."
11. Ms. Le Gall saw the advertisement and after some online discussion with Mr. MacDonald, took the car for a test drive. On July 23, 2021, Ms. Le Gall bought the car for \$9,000.
12. As shown in a July 29 message to Mr. MacDonald, Ms. Le Gall discovered an oil leak that day. Ms. Le Gall had the car inspected by Elite Auto Centre (Elite), where Mr. MacDonald had purchased the car and had it serviced.

13. Elite reported multiple oil leaks coming from the engine. Ms. Le Gall paid Elite \$654.10 to replace the vacuum pump. Elite suggested replacing the engine timing cover gasket and valve cover gaskets for around \$2,000, which Ms. Le Gall deferred.
14. Ms. Le Gall says oil continued to leak. She took the car to Vernon Volkswagen (VV) on November 10, 2021 and paid \$166.33 for an inspection. VV gave her an estimate to address leaks by replacing various parts. The estimated total was \$6,241.10, although this included around \$1,700 for non-engine leak related repairs, such as brake rotors and pads.
15. In spring 2022, intending to drive the car on a longer trip, Ms. Le Gall asked VV to advise about the oil leaks. VV said all engine seals were leaking and getting worse. VV advised Ms. Le Gall not to drive the car on the highway as a stall or engine damage may result.
16. In March 2022, Ms. Le Gall had VV remove the engine for repair or replacement of various gaskets, timing covers, plugs and seals. She paid \$4,161.51 for that work.
17. At some point, Ms. Le Gall found out that Elite had replaced the car's engine with a different engine in January 2021. She discovered this when she asked Elite to service a leaking gasket under warranty. Elite advised that because the engine had been entirely replaced there was no warranty on any engine component. Mr. MacDonald does not dispute that Elite replaced the car's engine with a different engine in January 2021.

Misrepresentation

18. The principal of "buyer beware" generally applies to private purchases of used vehicles (see *Cheema v. Mario Motors Ltd.*, 2003 BCPC 416). This means that buyers assume the risk that a vehicle might have significant defects. There is no common law duty for a seller to disclose known defects, but they cannot actively conceal or misrepresent them (see *Rushak v. Henneken* [1986] B.C.J. No. 3072 (B.C.S.C.), affirmed 1991 CanLII 178 (BC CA)). In short, a buyer who fails to have the vehicle

inspected is subject to the risk that they did not get what they thought they were getting and made a bad bargain.

19. However, if a seller misrepresents a used car's condition, the buyer may be entitled to compensation for losses arising from that misrepresentation. Misrepresentations may be fraudulent or negligent. As I explain below, I find that Mr. MacDonald made a fraudulent misrepresentation. A fraudulent misrepresentation occurs when:
 - a. The seller makes a false statement of fact,
 - b. The seller knows the statement was false, or was reckless about whether it was true or false, and
 - c. The misrepresentation induces the purchaser to buy the car.
20. Ms. Le Gall says Mr. MacDonald misrepresented the service work performed on the engine, the presence of an oil leak from the engine, the fact that the engine had been entirely replaced in January 2021, and the number of kilometres the engine had been driven.
21. Ms. Le Gall says when she took the car for a test drive she looked at the engine with Mr. MacDonald. She says she asked about the January 2021 engine work that she had seen on the CarFax report. The CarFax report noted several engine gaskets were replaced but did not say the engine was replaced. She remembers saying, "I see that there was a lot of maintenance done in January 2021, so there are no issues with the engine?" She says Mr. MacDonald replied, "No."
22. In contrast, Mr. MacDonald says he was "not questioned much at all" about the car's history. He says he told Ms. Le Gall that he bought the car from Elite, and Elite had done all its service work except 1 oil change.
23. Faced with conflicting evidence from the parties, it is impossible to know with certainty what happened. I must assess the parties' credibility. Credibility is about whether a person is being fully truthful in their evidence.

24. Ms. Le Gall's evidence that she asked about the January 2021 maintenance is consistent with the July 22, 2021 CarFax report. In contrast, Mr. MacDonald submitted initially that Ms. Le Gall was to blame for not obtaining a CarFax report. I find it unlikely that Ms. Le Gall would spend the money on a CarFax report the day before purchasing the car and not ask any questions about it.
25. Next, Ms. Le Gall's evidence is more consistent with her messages to Mr. MacDonald. From the beginning she showed a serious interest in obtaining the maintenance records and receipts. She asked for these things a second time when Mr. MacDonald initially did not address her questions. I find it unlikely that Ms. Le Gall would not have asked any questions about the engine.
26. Further, Mr. MacDonald did not initially respond when Ms. Le Gall messaged him on July 29, 2021, about the car leaking oil, among other issues. He only responded after receiving a more formal letter in October 2021 requesting compensation for repair costs. While there may be any number of reasons why Mr. MacDonald did not respond, he does not provide any here. I find his non-response is consistent with an awareness that he had been untruthful when he said the engine had no issues.
27. For these reasons, I find Ms. Le Gall is a more credible witness. Where the parties' evidence conflicts, I accept Ms. Le Gall's evidence. This means I find Mr. MacDonald said that there were no issues with the engine, which was false given the known leak that Elite recommended be repaired. More significantly, I find Mr. MacDonald misled Ms. Le Gall by concealing, when specifically asked about Elite's January 2021 engine work, that the car's engine was replaced by a different engine. This is significant because Mr. MacDonald also represented the car to have 124,000km in the advertisement, and Ms. Le Gall confirmed the mileage on the odometer when she test-drove it. Those representations proved false. Because the engine was replaced, the car's odometer reading did not reflect the engine's mileage.
28. Mr. MacDonald says Elite installed a newer engine with fewer kilometres. Ms. Le Gall's photos show the engine's date stamp, which confirms it is 1 year newer than the car. However, I find that does not mean it has been driven for fewer kilometres.

The actual mileage is unknown. Mr. MacDonald provided no documentation of the replacement engine's mileage or service history, and no statement about the engine from Elite. He did not explain why he did not provide this information. I find he should have been able to obtain it, given that he described Elite's owner as a "close family friend" in messages to Ms. Le Gall. When a party fails to provide relevant evidence, the CRT may make an adverse inference. An adverse inference is when the CRT assumes that the reason a party did not provide evidence is that it would not help their case. I find that evidence about the replacement engine's mileage and service history is clearly relevant, and I find that an adverse inference is appropriate. This means I find the replacement engine likely had been driven more than the original engine and more than indicated on the odometer.

29. This inference is supported by other undisputed evidence. First, there are the persistent, significant oil leaks Ms. Le Gall experienced over the next 8 months, suggesting an engine in poor condition. Second, there is an audio recording of a voicemail Ms. Le Gall received from Elite after asking for engine replacement records. In the recording, an Elite employee or manager said Elite cannot provide the information she requested and cannot be involved. In the absence of any other explanation, I agree with Ms. Le Gall that Elite likely refused to provide the information because it would not help Mr. MacDonald, with whom Elite's owner had a close relationship.
30. Many court decisions have found that the accuracy of a figure recorded on an odometer is an important or material consideration to any vehicle purchase (see *Feng v. Yang*, 2012 BCPC 127, at paragraph 17). Ms. Le Gall's evidence indicates, and I find, that the mileage was important to her. Further, Ms. Le Gall says that had she known that the original engine had been replaced with an unknown used engine from another car, she would not have bought the car because she did not have any information about the engine's maintenance history. I accept that evidence. I find that if Mr. MacDonald had not misrepresented that the engine had no issues and that Elite's did not replace the engine with a different engine, Ms. Le Gall would have made further inquiries with Elite or another mechanic and likely would not have

bought the car. In short, I find Mr. MacDonald's representations about the engine induced Ms. Le Gall to buy the car.

31. When a misrepresentation is proven, the general rule about damages is that the buyer should be put in the position they would have been in had the misrepresentation not been made. In some cases involving car purchases, courts award damages to compensate the buyer for repair costs in addition to a purchase price refund, but order the party to return to vehicle (see *Casillan v. 565204 B.C. Ltd.*, 2009 BCSC 1335).
32. Ms. Le Gall does not ask for a refund. I find that Ms. Le Gall's damages include the \$4,161.51 she paid to have the car's engine repaired by VV. They also include \$654.10 she paid Elite for the vacuum pump replacement and \$166.33 she paid VV in November 2021 to check for oil leaks. This totals \$4,981.94. Although Ms. Le Gall says there were other issues with the car she had to address, such as a cracked windshield, worn wiper blades, and a broken strut mount, I find those issues were there to be seen and Mr. MacDonald did not make any misrepresentations about them.
33. The *Court Order Interest Act* applies to the CRT. Ms. Le Gall is entitled to pre-judgment interest on the \$4,981.94 damages from the July 23, 2021 purchase date to the date of this decision. This equals \$101.42.
34. 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. Le Gall was substantially successful, I find she is entitled to reimbursement of \$200 in CRT fees. She did not claim any dispute-related expenses. I dismiss Mr. MacDonald's claim for reimbursement of \$50 in CRT fees as he was unsuccessful.

ORDERS

35. Within 30 days of the date of this order, I order Mr. MacDonald to pay Ms. Le Gall a total of \$5,283.36, broken down as follows:

- a. \$4,981.94 in damages,
- b. \$101.42 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$200.00 in CRT fees.

36. Ms. Le Gall is entitled to post-judgment interest, as applicable.

37. 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