



Civil Resolution Tribunal

Date Issued: March 17, 2023

File: SC-2022-004401

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Cordero v. Sethi*, 2023 BCCRT 222

BETWEEN:

ELIZABETH CORDERO

APPLICANT

AND:

DAVINDER PAL SINGH SETHI

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Christopher C. Rivers

INTRODUCTION

1. This dispute is about the private sale of a used vehicle. The applicant, Elizabeth Cordero, purchased a 2009 Toyota Matrix from the respondent, Davinder Pal Singh Sethi, after seeing an ad on Facebook.

2. The applicant says they discovered the Matrix had an oil leak the day after they purchased it. They claim \$2,500: \$2,093.85 for repair cost and \$406.15 for the time they spent without a car.
3. The respondent says they provided no guarantees about the Matrix, and that the applicant knew everything about the car before purchase. The respondent says the car was not 'handled properly' after purchase. I infer they ask for me to dismiss the applicant's claim.
4. The parties are both self-represented.
5. For the reasons that follow, I allow the applicant's claim for \$2,093.85, which is the amount they spent repairing the oil leak.

JURISDICTION AND PROCEDURE

6. 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.
7. 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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.
8. 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.

9. 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.
10. In submissions, the applicant makes a number of arguments about the odometer. However, in the Dispute Notice, they specifically say they are not claiming anything for the odometer, so I do not need to address the odometer in my decision below.

ISSUES

11. The issues in this dispute are:
 - a. Did the respondent negligently or fraudulently misrepresent the Matrix?
 - b. If so, what is the applicant's remedy?

EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, the applicant must prove their claims on a balance of probabilities. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision. I note the respondent did not provide any documentary evidence despite being given the opportunity to do so.
13. It is undisputed that the respondent posted a Facebook ad selling a used 2009 Toyota Matrix with 158,000 kilometers. The ad described various features of the car and had statements about the car's condition. Most importantly, the ad included the phrases "ENGINE AND TRANSMISSION RUNS PERFECTLY" and "NO LEAKS" (reproduced as written).
14. On June 3, 2022, the applicant viewed the Matrix in person and paid the respondent a \$500 deposit. The next day, June 4, 2022, the parties met to complete the sale. The applicant paid the rest of the sale price, and the parties filled out and registered the sale documents.

15. The parties disagree on the price the applicant paid for the car. The respondent says the vehicle transfer form is correct, which shows the price was \$2,000. The applicant says she paid \$6,950. The ad sets a sale price of \$6,950 and includes the phrase “NO LOW BALLERS”. The applicant provided evidence of withdrawals of \$3,000 and \$3,500 at or around the time of purchase, along with evidence of the \$500 deposit. These amounts total \$7,000, which is approximately the price the applicant says they paid. Neither party provided any evidence of negotiation departing from the advertised price, and the respondent provided no explanation for why they accepted a lower price after saying “no low ballers”. While the applicant does not explain why the transfer form says \$2,000 if the price was \$6,900, I find it likely the form does not accurately reflect the final terms of sale. I note the seller is identified as a third party, RD, and not the respondent. This is despite the fact the respondent admits he sold the applicant the car, and he does not say he was doing so as agent for RD.
16. On whole, I find it more likely than not the applicant purchased the vehicle for \$6,950.
17. The applicant says the day after the sale, they saw the car’s oil level was low. They say they took the car to two mechanics and were told the oil level had dropped because of an oil leak from a broken timing cover. In support, the applicant provided a written estimate from a mechanic dated June 11, 2022. The mechanic diagnosed the problem as a crack in the timing cover due to over-torquing. The mechanic replaced the timing cover on June 30, 2022, and charged \$2,093.85 for labour, parts, and supplies.
18. The parties agree they communicated about the oil leak after the sale. The parties also agree the respondent offered to take the car to a mechanic. The respondent says this proves the applicant knew there was not a major problem, and they did not attend the mechanic in order to place ‘blame’ on the respondent. However, the parties’ submissions do not establish that they reached any agreements on using the respondent’s mechanic, how they would address the oil leak, or whether the leak existed before the sale, so I find nothing turns on their post-sale discussions.

19. The respondent says because the car was 13 years old, they did not provide any guarantees about it. They say that the applicant agreed to all terms and conditions, though they do not specify what terms or conditions those were. The respondent also says it is the buyer's responsibility to check everything before purchase, effectively arguing the principle of "buyer beware" as a defense to the applicant's claim.

Misrepresentation

20. In a consumer transaction for used goods, such as this one, the principle of "buyer beware" often applies. It means that the buyer assumes the risk that the purchased good might be either defective or unsuitable to their needs: see *Connors v. McMillan*, 2020 BCPC 230, citing *Rushak v. Henneken* [1986] B.C.J. No. 3072 (BCSC) affirmed 1991 CanLII 178 (BCCA). However, this principle has some exceptions, including fraudulent or negligent misrepresentation. A seller is not entitled to rely on the principle of "buyer beware" if they either fraudulently or negligently misrepresented the sold good.

21. While the applicant does not specifically use the word "misrepresentation" in their submission, they say when they viewed the car they were told it was in "perfect condition" before they purchased it. They also provide a copy of the Facebook ad describing the car. I infer the applicant is arguing they relied upon the respondent's representations when they chose to purchase the Matrix.

22. Fraudulent misrepresentation occurs when a seller makes a representation of fact, the representation is false, the seller knew it was false or recklessly made it without knowing it was true or false, and the buyer is induced by the false representation to buy the item.

23. Negligent misrepresentation occurs when a seller fails to exercise reasonable care to ensure representations are accurate and not misleading to the buyer.

24. To show negligent misrepresentation, the applicant must establish the following: 1) there must be a duty of care, 2) the representation must be untrue, inaccurate, or misleading, 3) the respondent must have breached the standard of care in making

the misrepresentation, 4) the applicant must have reasonably relied on the misrepresentation, and 5) the reliance resulted in damages. See, for example: *Daniel v. Watkinson*, 2019 BCPC 319 at paragraph 51.

25. The applicable standard of care in a used car sale is to take “reasonable care” to not mislead the buyer about the vehicle’s condition: *Daniel*, at paragraph 57.
26. While the applicant says the respondent said the car was in “perfect condition,” she has not proven that part of her claim. The vehicle transfer form says, in part, that the Matrix needs transmission repair and tires. This indicates there were certain issues with the vehicle that were brought to the applicant’s attention contrary to the advertisement, making it unlikely that she believed the Matrix was in “perfect condition.”
27. But, in the Facebook ad, the respondent also said the Matrix had “NO LEAKS”. While the respondent submits the car may not have been handled properly after purchase, implying the leak happened after the sale. I find this speculative, and given the timing of the leak, unlikely. The applicant provided written evidence of a cracked timing cover only one week after the sale, and I accept the applicant’s undisputed statement about discovering the low oil level the day after purchase. Given how quickly the applicant discovered the oil issue, and the relative speed with which they had it diagnosed by a mechanic, I find the Matrix likely had an oil leak at the time of sale. This means the Facebook ad was inaccurate.
28. The respondent made a firm declarative statement to induce potential buyers to purchase the car. I find doing so was a breach of the standard of ‘reasonable care’ not to mislead a purchaser – in this case, the applicant. I find the applicant relied on the clear, unambiguous, and specific statement about leaks in deciding to buy the Matrix. So, I find the applicant is entitled to damages for the oil leak.

What is the appropriate remedy?

29. 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. The applicant does not seek rescission and given the repairs they have paid for, I find rescission is not an appropriate remedy. Damages are more appropriate.
30. 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 representation. See: *Payne v. Eagle Ridge Pontiac GMS Ltd.*, 2010 BCSC 1085
31. The repair expense addressing the oil leak is relevant in that a buyer like the applicant might reasonably factor these costs into the price paid for the car. The oil leak was repaired for \$2,093.85. The respondent does not dispute the reasonableness of this amount. So, I award \$2,093.85 in damages for the repair cost of the oil leak.
32. Next, the applicant does not provide any evidence to support her claim for \$406.15 for time spent without her car, such as public transit receipts or similar. I dismiss this part of her claim.
33. The *Court Order Interest Act* applies to the CRT. However, the applicant expressly says they do not claim pre-judgement interest, and so I do not award any.
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. I see no reason in this case not to follow that general rule. I find the applicant was largely successful, so I find they are entitled to reimbursement of \$125 in CRT fees. Neither party claimed any dispute-related expenses.

ORDERS

35. Within 14 days of the date of this order, I order the respondent to pay the applicant a total of \$2,218.85, broken down as follows:
- a. \$2,093.85 as damages for the oil leak repair, and
 - b. \$125 in CRT fees.
36. The applicant is entitled to post-judgment interest, as applicable.
37. I dismiss the balance of the applicant's claims.
38. 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.

Christopher C. Rivers, Tribunal Member