



Civil Resolution Tribunal

Date Issued: March 22, 2023

File: SC-2022-004460

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Wiebe v. Jett Auction Limited*, 2023 BCCRT 239

BETWEEN:

DAVE WIEBE

APPLICANT

AND:

JETT AUCTION LIMITED and JETT AUCTION LLP

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about alleged defects in a car sold at an online auction. The applicant, Dave Wiebe, bought the car through an auction operated by one or both of the

respondents, Jett Auction Limited (JAL) and Jett Auction LLP (JALLP), which I will refer to below collectively as Jett.

2. Mr. Wiebe says the photos Jett uploaded to the auction site failed to accurately reflect the car's condition. Specifically, he says Jett was required to disclose the car was leaking and had wet floorboards. Mr. Wiebe claims \$3,498.90, which is the amount he says will make him whole and will reflect the value he would have bid had Jett revealed the car's true condition. Mr. Wiebe is self-represented.
3. Jett denies that it improperly failed to disclose anything about the car. Jett also denies the car was ever flooded. Jett says Mr. Wiebe was warned there were no guarantees and that he had the opportunity to inspect the vehicle but chose not to do so. Jett is represented by one of its directors, Stuart Kuiken.
4. For the reasons that follow, I dismiss Mr. Wiebe's claim.

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). CRTA section 2 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. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. As the CRT's mandate includes proportional and speedy dispute resolution, I find I can fairly hear this dispute through written submissions.
7. CRTA section 42 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.

ISSUE

9. The issue in this dispute is whether Jett improperly failed to disclose alleged water damage in the car, and if so whether Mr. Wiebe is entitled to the claimed \$3,498.90 in damages.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, as the applicant Mr. Wiebe must prove his claim on a balance of probabilities (meaning “more likely than not”). I have read all the submitted evidence and arguments but refer only to what I find relevant to provide context for my decision.
11. Given I find Mr. Wiebe has not proven his claim, I find it unnecessary to decide whether only one or both of the respondents ran the auction. As noted, I will refer to both respondents collectively as Jett. The evidence shows that at least JAL acted as a “mutual agent” between the car’s buyer Mr. Wiebe and the car’s seller. The car’s seller is not a party to this CRT dispute.
12. In a Statement of Facts, the parties agree:
 - a. On June 11, 2022, Mr. Wiebe used Jett’s online service to purchase or bid to purchase a vehicle.
 - b. Before purchasing the vehicle, Mr. Wiebe viewed photos of the vehicle that Jett had provided.

- c. On June 14, 2022, Mr. Wiebe paid for the vehicle in full and picked it up from Jett's car lot.
 - d. After buying the vehicle, Mr. Wiebe emailed Jett about the vehicle's condition.
- 13. The car at issue was a 2003 Ford Mustang Convertible with 69,355 miles on it (it was from the USA). Mr. Wiebe bought it for \$7,111.30. At issue in this dispute is whether the photos Jett provided accurately reflected the vehicle's condition and specifically water damage that Mr. Wiebe alleges was present.
- 14. In particular, Mr. Wiebe says Jett was required to disclose water damage under a Canadian statute that he refers to as the Sellers Standards Act. However, there is no such federal or Canadian statute. The January 2017 document Mr. Wiebe uploaded is titled "Seller Disclosure Standards CANADA" (capitals in original), and is produced by the National Auto Auction Association. That Association's document is not legally binding on Jett and I note is undisputed that Jett is not a member of that Association. In other words, I do not accept that that Association's guidelines set the disclosure requirements for auctioneers in the province of BC. Rather, the *Sale of Goods Act* (SGA) in BC governs the sale of goods and sets out implied warranties in section 18. However, given my conclusions below I find I do not need to address the SGA in any detail, other than to say there is nothing in it that requires proactive disclosure of water damage.
- 15. Further, there is no common law duty for a seller to disclose known defects, but they cannot actively conceal or misrepresent them (see: *Conners v. McMillan*, 2020 BCPC 230 citing *Floorco Flooring Inc. v. Blackwell*, [2014] BCJ No 2632). In short, a buyer is generally responsible for failing to adequately inspect goods before buying them.
- 16. If a seller misrepresents a used item's condition, the buyer may be entitled to compensation for losses arising from that misrepresentation. A misrepresentation is a false statement of fact made during negotiations or in an advertisement that induces a reasonable person to enter into the contract. The seller must have acted negligently or fraudulently in making the misrepresentation, the buyer must have reasonably

relied on the misrepresentation to enter into the contract, and the reliance “must have been detrimental in the sense that damages resulted” (see: *Queen v. Cognos Inc.*, [1993] 1 SCR 87 at paragraph 110).

17. However, there is no evidence or argument that Jett said the car had no water damage. Rather, as noted Mr. Wiebe’s argument is that Jett said nothing about water damage and yet he says it was required to do so. I have rejected that argument above. On the evidence before me, I find Jett made no representation about water damage. I also find Jett did nothing to conceal any alleged water damage, which is supported by the fact Jett undisputedly provided 85 photos of the car to Mr. Wiebe and had the car available for Mr. Wiebe’s inspection before the sale. I also do not accept Mr. Wiebe’s assertion that “fresh vacuum marks” amount to an attempt to conceal alleged water damage. I find vacuuming a car equally consistent with a reasonable effort to have the car clean and ready for sale.
18. In any event, I find Mr. Wiebe has not proved the car had water damage. He submitted one somewhat blurry photo that shows the car’s rear window with rain spots on it. I cannot tell if this is just exterior rain or dirt. While the top of the car’s backseat is visible, I cannot tell that it has water damage nor can I tell that what is shown was not disclosed to Mr. Wiebe in the pre-sale photos. I say the same about Mr. Wiebe’s only other photo, which shows the car’s carpeted floor that could either be damp or recently vacuumed. Mr. Wiebe says these 2 photos were “missing” from Jett’s description of the car, in that Jett allegedly failed to provide photos of those areas of the car. Yet, based on my review of the photos I find it unlikely they show any water damage. So, I find even if those 2 photos were included they would not have altered Mr. Wiebe’s decision to buy the car based on alleged water damage.
19. Next, Mr. Wiebe alleges the water damage occurred due to a faulty convertible top, which he says he replaced. Yet, Mr. Wiebe submitted no report from a mechanic or any qualified professional who allegedly replaced the car’s convertible top. I find it unproven the car was sold with water damage. I also note Mr. Wiebe provided no

evidence in support of his \$3,498.90 claim value, such as quotes for other similar cars or his alleged repair invoices.

20. Given my conclusions above, I find I do not need to detail Jett's arguments and submitted documentation that under the auction's terms he essentially agreed to buy the car "as is".
21. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. Mr. Wiebe was unsuccessful so I find he is not entitled to reimbursement of paid CRT fees. Jett did not pay CRT fees and neither party claims dispute-related expenses.

ORDER

22. I dismiss Mr. Wiebe's claim and this dispute.

Shelley Lopez, Vice Chair