



Civil Resolution Tribunal

Date Issued: April 4, 2023

File: SC-2022-005132

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lapcevic v. Kurek*, 2023 BCCRT 277

BETWEEN:

PATRICIA LAPCEVIC

APPLICANT

AND:

MARLENA KUREK and EMILY CARSON-APSTEIN also known as
ZOE EMILY CARSON-APSTEIN

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Megan Stewart

INTRODUCTION

1. This dispute is about a private used car sale.
2. The applicant, Patricia Lapcevic, alleges the respondents, Marlena Kurek and Zoe Emily Carson-Apstein, misrepresented the condition of a 2003 Subaru Impreza they

sold her on May 5, 2022. Ms. Lapcevic also says the car was not durable as a week after she bought the car, one of its wheels fell off while her son was driving it. She says a mechanic advised her the car was unsafe to drive. Ms. Lapcevic claims \$2,613.75 in damages, including the car's \$2,200 purchase price, \$264 for taxes, and \$149.75 for the mechanic's service.

3. The respondents deny they misrepresented the car's condition and say the car was durable. They say they acted honestly and in good faith in the car's sale and say they disclosed its history and recent repairs to Ms. Lapcevic. The respondents say Ms. Lapcevic test-drove the car and decided to purchase it without an inspection. They say they are not responsible for what happened after they sold Ms. Lapcevic the car and owe her nothing.
4. Ms. Lapcevic is self-represented. Ms. Carson-Apstein represents the respondents.
5. The Dispute Notice identified Ms. Carson-Apstein as "Emily Carson-Apstein", but Ms. Carson-Apstein identified her name in her Dispute Response as "Zoe Emily Carson-Apstein". I have exercised my discretion to amend the style of cause above to reflect both names.

JURISDICTION AND PROCEDURE

6. These are the Civil Resolution Tribunal's (CRT) formal written reasons. 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.

ISSUES

10. The issues in this dispute are:
 - a. Did the respondents misrepresent the car's condition?
 - b. Was the car reasonably durable in the circumstances?
 - c. What remedy, if any, appropriate?

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, as the applicant Ms. Lapcevic must prove her claims on a balance of probabilities (meaning "more likely than not"). 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.

Background

12. It is undisputed Ms. Carson-Apstein posted a Facebook ad for a 2003 Subaru Impreza around April 28, 2022, offering it for \$2,400. The ad indicated the car had 127,000 kilometers on the odometer, "light scratches and dents", and "some rust". It also said the car had gotten the respondents "across the country no problem" and

that they had kept up to date with repairs. Finally, it noted the car was “inspected and insured in BC in 2020.”

13. Ms. Lapcevic responded to the ad asking if the car needed work and what shape the tires were in. Ms. Carson-Apstein replied that the tires were in good shape and the car was “running well right now.” She also said she had just gotten it back from the mechanic because “the front left control arm broke and was replaced.” Ms. Carson-Apstein said the car had needed a couple of repairs a year since 2020 due to its age.
14. Ms. Lapcevic and Ms. Carson-Apstein arranged for Ms. Lapcevic to view and test-drive the car on May 5, 2022, which she did. They then agreed a purchase price of \$2,200 and concluded the sale. It is undisputed Ms. Lapcevic did not have the car inspected before buying it, though she had the opportunity to do so.
15. It is also undisputed that a week later on May 11, the driver’s side wheel disengaged from the car while Ms. Lapcevic’s son was driving it. A photo in evidence confirms the car’s front left wheel came off. The car was towed to a mechanic for repairs, where Ms. Lapcevic says the technician discovered the car’s sub frame was “completely rusted out”.
16. A May 12, 2022 mechanic’s invoice in evidence confirmed the car “was deemed unsafe for road”. Ms. Lapcevic says the car was disposed of for parts. The respondents do not dispute this, so I accept this is what happened. Ms. Lapcevic says that as she only owned the car for 7 days and added 168 kilometers to the odometer before it was deemed unroadworthy, the respondents misrepresented the car’s true condition in advertising it as drivable. She also says she understands the risks involved in buying a used car and anticipated investing in repairs, but that in this case, the car was not durable.

Buyer beware

17. It is well-established that in the sale of used vehicles, the general rule is “buyer beware”. This generally means that a buyer is not entitled to damages, such as repair or replacement costs, just because the vehicle breaks down shortly after the sale.

Rather, 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.

18. In *Mah Estate v. Lawrence*, 2023 BCSC 411, the court recently found that to be entitled to compensation, a buyer must prove fraud, negligent misrepresentation, breach of contract, breach of warranty, or known latent (hidden) defect. As the applicant, Ms. Lapcevic must show that “buyer beware” should not apply because at least one of these conditions exists. As noted above, she says the respondents misrepresented the car’s condition. I find she also argues breach of implied warranty under the *Sale of Goods Act* (SGA) because she says the car was not durable.

Misrepresentation

19. If a seller negligently or fraudulently misrepresents a vehicle, 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 has the effect of inducing a reasonable person to enter into the contract.
20. Fraudulent misrepresentation is when the seller makes a false statement of fact that the seller knew was false or was reckless about whether it was true or false, and the misrepresentation induces the purchaser into buying the vehicle.
21. Negligent misrepresentation is when the seller carelessly or negligently makes a representation to the purchaser that is untrue, inaccurate, or misleading, and the purchaser reasonably relies on the misrepresentation.
22. Ms. Lapcevic says the respondents misrepresented the car’s “true condition” by advertising it as drivable when it was not roadworthy. I find the Facebook ad implied the car was drivable. This is because it referred to the car getting the respondents “across the country no problem” and the respondents keeping up with repairs, and also because it did not say the car was being sold for parts.

23. I find the respondents included information about the car's drivability in the ad and in their messages with Ms. Lapcevic and that that information was supported by documentation they submitted in evidence. For instance, they provided a copy of an October 14, 2020 inspection report showing the car had passed. I acknowledge the report pre-dated the sale by about 19 months, but I find the respondents were transparent about this in the ad.
24. Ms. Carson-Apstein also told Ms. Lapcevic the car needed a couple of repairs a year due to its age and submitted April 2022 text messages between Ms. Carson-Apstein and a mechanic indicating repairs to the car totaling \$1,700. The mechanic also confirmed the "Subaru drives." When Ms. Lapcevic inquired about the car's condition, Ms. Carson-Apstein disclosed the control arm's recent replacement. In their Facebook message exchange, Ms. Carson-Apstein wrote the car was "running well right now" and I find the car was drivable when it was sold, as proven by the fact that Ms. Lapcevic drove it for about 165 kilometers after she bought it. So, I find the respondents did not act carelessly or negligently in providing information about the car to Ms. Lapcevic, nor did they make false or reckless statements about its condition.
25. I note Ms. Lapcevic sent Ms. Carson-Apstein a Facebook message after the May 11 accident in which she wrote "I appreciate that you believed that the car was safe to drive when you sold it." Ms. Lapcevic did not address this comment in her submissions. I find this shows that even after the May 11 incident, Ms. Lapcevic did not think the respondents misrepresented the car's condition as safe to drive when she bought it.
26. For these reasons, I find the respondents did not misrepresent the car's condition.

Implied warranty

27. Ms. Lapcevic says that for the agreed purchase price, it was reasonable for her to expect the car to last for more than 168 kilometers and that it was not durable. I find

she is alleging the respondents breached implied warranties under section 18 of the SGA.

28. SGA section 18 sets out three implied warranties in contracts for the sale of goods. As there is no suggestion the respondents were in the business of selling cars, I find only the implied warranty of durability in section 18(c) applies here. That section warranties that goods will be durable for a reasonable period with normal use, considering the sale's context and the surrounding circumstances (see *Drover v. West Country Auto Sales Inc.*, 2004 BCPC 454).
29. In *Sugiyama v. Pilsen*, 2006 BCPC 265, the court applied the SGA section 18(c) warranty to a used car sale. The court described a number of factors to consider when determining whether a vehicle is reasonably durable including age, mileage, price, use of the vehicle, reason for the breakdown and parties' expectations as shown by any express warranties. The court found that the older the car, the more likely it will break down. For older cars, the court found that if it is "roadworthy" and can be safely driven when purchased, it is likely to be considered reasonably durable, even if it breaks down shortly afterwards. Along similar lines, in *Wanless v. Graham*, 2009 BCSC 578, the BC Supreme Court said that buyers of old used vehicles must reasonably expect that defects could arise at any time. In short, I find the implied warranty Ms. Lapcevic relies on is limited in the context of a 19-year-old car with over 125,000 kilometers on the odometer and given the respondents' disclosures about rust and repairs.
30. The CRT has considered many cases about used vehicles that break down shortly after purchase. Based on the principles from the above court cases, the CRT rarely concludes a seller has breached the implied warranty of reasonable durability, even if the vehicle breaks down shortly after being purchased.
31. For example, in *Bleiler v. Sawhney*, 2022 BCCRT 213, the CRT member found a 15-year-old vehicle with 245,000 kilometers was reasonably durable even though the alternator failed only 10 minutes after the purchase. There was no evidence the

alternator was broken at the time of the purchase. The CRT concluded the buyer had not proven the car was not roadworthy.

32. In contrast, in *Austin v. Godin*, 2021 BCCRT 415, the buyer bought a 17-year-old car with almost 300,000 kilometers on it. There were no apparent problems when the buyer took the car for a test drive. Three days later, a mechanic inspected the car and found it was not safe to be driven due to undercarriage rust. The CRT determined the car was unsafe to drive when it was sold, and so was not reasonably durable.
33. Other CRT disputes are not binding on me, but I find the above decisions persuasive. I find the key question to answer in deciding the car's durability is whether it was unsafe to drive when Ms. Lapcevic bought it. For the reasons below, I find it was not.
34. The May 12, 2022 mechanic's invoice described the car's sub frame as being "completely rusted out". I find that given this discovery by the mechanic only 7 days after Ms. Lapcevic purchased the vehicle, it likely pre-dated the May 5, 2022 sale. However, the mechanic's invoice did not say, nor do I find it implied, the rust was what caused the car to be unsafe for the road. After noting the rusted sub frame, the mechanic's invoice went on to say:

Looks like front driver side control arm was replaced recently. After replacing wheel studs and lug nuts technician started backing out of shop when the ball joint came apart from the control arm. Vehicle was deemed unsafe for road.

Based on this description, I find it likely the technician deemed the car unsafe to drive due to the control arm's ball joint coming apart and not necessarily due to the rust. I say this because it appears that even after getting the car onto the hoist and seeing the rust, the technician continued to replace the car's wheel studs and lug nuts. I find it unlikely the technician would have completed this repair had they determined the car was unsafe to drive due to rust.

35. As for the control arm replacement, that is something Ms. Carson-Apstein disclosed to Ms. Lapcevic when she asked about the car's condition. It is undisputed there were

no issues with the control arm or the wheel when Ms. Lapcevic test-drove the car. I note that in a message to Ms. Lapcevic following the May 11 incident, Ms. Carson-Apstein said her mechanic “did a bad job fixing the car and wasn’t honest about its condition.” I find this is no more proof the car was not reasonably durable when Ms. Lapcevic bought it than Ms. Lapcevic was unlucky the control arm repair failed and the wheel came off shortly after the purchase.

36. In these circumstances, I find Ms. Lapcevic has not proven the car was unsafe to drive when she bought it and the respondents breached the implied warranty in SGA section 18(c).
37. Since I find none of the *Mah* conditions existed, I find the principle of buyer beware applies. I dismiss Ms. Lapcevic’s claim for reimbursement of the car’s purchase price and repair costs.
38. Under CRTA section 49 and the CRT rules, a successful party is generally entitled to recover their CRT fees and reasonable dispute-related expenses. The respondents were successful but did not pay CRT fees, and neither party claimed dispute-related expenses. As Ms. Lapcevic was unsuccessful, I dismiss her claim for CRT fees.

ORDER

39. I dismiss Ms. Lapcevic’s claim and this dispute.

Megan Stewart, Tribunal Member