



# Civil Resolution Tribunal

Date Issued: April 28, 2023

File: SC-2022-006273

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Cheung v. Wong*, 2023 BCCRT 353

BETWEEN:

ARTHUR CHEUNG

**APPLICANT**

AND:

YUEN YEE WONG

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Leah Volkers

## INTRODUCTION

1. This dispute is about a private used car sale. The applicant, Arthur Cheung, purchased a 1997 Mercedes Benz E320 (car) from the respondent, Yuen Yee Wong, for \$200.

2. The applicant says the respondent told him the car had not been used for over 10 years but was running and only needed a new battery. The applicant says the car did not run after replacing the battery, and he spent time and money trying to fix it. The applicant collectively claims \$4,600.36 for a refund of the vehicle's purchase price, plus the costs for towing, a mobile mechanic and parts, and the applicant's labour. He also says if the respondent pays him the full amount of the claim, she can have the car back.
3. The respondent disputes the applicant's claims. She says she told the applicant that the car was not running, and made no guarantees that the car would work. She says the applicant agreed to purchase the non-running car for \$200 "as-is". She says she does not want the car back.
4. The parties are each self-represented.

## **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). 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.
6. 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, both parties in this dispute call into question the credibility, or truthfulness, of the other. The credibility of interested 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. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.

7. 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.
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 the respondent misrepresented the car's condition such that the respondent is entitled to the claimed \$4,600.36.

## **EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, the applicant must prove his claims on a balance of probabilities (meaning more likely than not). I have read all the parties' submissions and evidence but refer only to what I find relevant to provide context for my decision.
11. It is undisputed that the applicant agreed to purchase the car from the respondent "as is" for \$200. At the time of purchase, the car was not running, and the applicant paid to tow the car to his home. As noted, the applicant says the respondent misrepresented the car's condition by allegedly saying the car would run with a new battery installed. The applicant says he relied on this alleged misrepresentation

because the respondent is his sister's friend. It is undisputed that the car did not run when the applicant installed a new battery after purchasing the car.

### ***Buyer beware***

12. It is well-established that in the sale of used vehicles, the general rule is “buyer beware”. This means that a buyer is not entitled to damages, such as repair 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. To be entitled to compensation, the buyer must prove fraud, negligent misrepresentation, breach of contract, breach of warranty, or known latent defect. See *Mah Estate v. Lawrence*, 2023 BCSC 411. The applicant must show that “buyer beware” should not apply because one of these conditions exists. I find the applicant alleges misrepresentation and breach of warranty.

### ***Implied warranty***

13. The applicant says he did not waive his “legal warranty” on the car, and says the respondent did not ask for it to be waived. The applicant says that the car still has to be reasonably durable, and as described. I find he is referring to section 17 and 18 of the *Sale of Goods Act* (SGA). Section 18(c) of the SGA says that there is an implied warranty the goods sold will be durable for a reasonable period of time having regard to their normal use. The other warranties in section 18 of the SGA do not apply to private car sales.

14. The applicant undisputedly agreed to purchase the car from the respondent for \$200 “as is”. I find the “as is” sale condition is inconsistent with the SGA's durability warranty, and so SGA section 18(e) applies. Section 18(e) says an express warranty that is inconsistent with the SGA overrides the implied SGA warranties. So, I find none of the implied warranties apply.

### ***Previous repairs***

15. The applicant alleges that the respondent did not disclose previous car damage repairs in excess of \$2,000 until the parties went to execute the vehicle transfer form. However, based on the applicant's own submissions, I find the applicant knew about the previous repairs before executing the transfer. So, I find nothing turns on this allegation and have not addressed it further in this dispute.

### ***Misrepresentation***

16. A misrepresentation is a false statement of fact made during negotiations or in an advertisement. If a seller misrepresents a good's condition, the buyer may be entitled to compensation for losses arising from that misrepresentation. However, 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. While the applicant acknowledges the car was sold "as is", he says that does not give the respondent the right to provide misleading information. I agree, and so the issue here is whether the respondent misrepresented the car's condition by allegedly saying the car would run with a new battery installed, and whether the respondent reasonably relied on the alleged misrepresentation.

18. The respondent disputes making any such representation to the applicant prior to or at the time the applicant purchased the car. The respondent says she did not sell the car to the applicant in working condition. She says she made it clear that the car had not moved in "approximately 4 – 5 years", and made no guarantee that the car would be able to run at all. She says when the applicant arrived at her house to inspect the car, the only way to move the car was with a tow truck because of its "non-working condition". The respondent says that if the car had been in working condition, she would have sold it for more than \$200. She says the applicant's own submissions support this. I agree. Although not supported by any documentary evidence, the

applicant himself says that a used car of the same model and year in running condition “on the market” is around \$3,000 to \$4,000.

19. The respondent also provided a statement from SY. SY said the applicant is her brother, and the respondent has been her friend for over three decades. SY said the respondent told her about the car, which she understood had sat undriven for a few years. SY said the respondent indicated that she was unsure if the car was still running, and needed to get rid of it by selling it to a scrap car company. SY said she told the respondent that she would be interested in buying the car because her brother, the applicant, was looking to buy a used car. SY said she told her brother, the applicant, about the car, including that the car had been sitting in the respondent’s garage for over 3 years and that the respondent was not aware of the car’s working condition. SY said she gave her brother, the applicant, the respondent’s contact information and he ended up purchasing the car for \$200. SY said the respondent never indicated to her that the car was running.
20. The applicant disputes SY’s statement and says SY only told him the car was in excellent shape with very low kilometres. I do not accept this submission. Although SY was not present at the time of the sale, I accept SY’s evidence that she told the applicant that the respondent was unsure if the car was still running. Given that SY is the applicant’s sister, I find it unlikely that the respondent would provide inconsistent information about the car’s condition to SY and the applicant. I find this supports a finding that it is unlikely the respondent made any representation to the applicant that the car would run with a new battery installed.
21. Based on the available evidence, I find it unlikely that the respondent made any representation to the applicant that the car would run with a new battery installed. In making this finding, I place significant weight on the undisputed fact that the respondent sold the car for only \$200. As noted, the parties do not dispute that a car of the same model and year in running condition would sell for more. I find it unlikely that the respondent would have only asked \$200 for a car in excellent condition, with low kilometers, when all it needed was a new battery. I find it more likely than not that

the respondent told the applicant that the car was not running, and did not misrepresent the car's condition.

22. Further, even if I am wrong and the respondent did misrepresent the car's condition, I find it would be unreasonable for the applicant to rely on any such representation, given the car's low sale price and the fact that the car had undisputedly sat unused for several years.
23. Given all the above, I find buyer beware still applies to the car's sale, and I dismiss the applicant's claims.

### ***CRT fees and expenses***

24. 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 the applicant is unsuccessful, I dismiss his fee claim. The respondent did not pay any CRT fees, and neither party claimed any dispute-related expenses.

### **ORDER**

25. I dismiss the applicant's claims and this dispute.

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Leah Volkers, Tribunal Member