



Civil Resolution Tribunal

Date Issued: June 15, 2023

File: SC-2022-008483

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Crosby v. Zimmer Wheaton GMC Buick Ltd.*, 2023 BCCRT 506

BETWEEN:

MEGAN MARIE CROSBY

APPLICANT

AND:

ZIMMER WHEATON GMC BUICK LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about the purchase of a used truck. The applicant, Megan Marie Crosby, purchased a 2018 Dodge Ram 3500 truck from the respondent, Zimmer Wheaton GMC Buick Ltd. (Zimmer Wheaton).
2. Nearly a year after purchase, Ms. Crosby was informed the truck was modified such that it was illegal to drive. Zimmer Wheaton undisputedly paid for the truck's repairs

to bring it into a legally drivable state. Ms. Crosby seeks \$4,888.60, which is the amount she paid on her vehicle loan while the truck was not usable.

3. Zimmer Wheaton says it already paid over \$17,000 to repair the truck, and should not have to pay anything more.
4. Ms. Crosby represents herself. Zimmer Wheaton is represented by an employee or principal.

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 parties to a dispute that will likely continue after the dispute resolution process has ended.
6. Section 39 of the CRTA says that 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.
7. Section 42 of the CRTA says that 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 to what extent, if any, Zimmer Wheaton should reimburse Ms. Crosby for vehicle loan payments.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant Ms. Crosby must prove her claims on a balance of probabilities (meaning “more likely than not”). While I have read all of the parties’ submitted evidence and arguments, I have only addressed those necessary to explain my decision. I note Zimmer Wheaton chose not to provide any documentary evidence, despite the opportunity to do so.
11. The background facts are not in dispute. On July 26, 2021, Ms. Crosby purchased the truck from Zimmer Wheaton for a total cost of \$78,001.64. She was scheduled to make biweekly payments of \$488.86 starting August 9, 2021.
12. At the time of purchase, Zimmer Wheaton notified Ms. Crosby that there were several after-market modifications to the truck, which Ms. Crosby accepted. However, Zimmer Wheaton also represented that the truck was suitable for transportation under the *Motor Vehicle Act* (MVA). None of this is disputed.
13. On June 4, 2022, the RCMP notified Ms. Crosby that the truck required a “Box 2 Safety Inspection”. Neither of the parties explained what this means. However, it is undisputed that the truck’s modifications made it unsuitable for transportation and that the RCMP informed Ms. Crosby the truck was illegal to drive as modified.
14. After some investigation, the parties discovered the truck’s prior owner was supposed to have the truck inspected by June 27, 2021. Zimmer Wheaton says it was unaware of this required inspection when it sold the truck to Ms. Crosby, which Ms. Crosby does not particularly dispute. However, Ms. Crosby says Zimmer Wheaton should have known about the required inspection and the fact the truck would fail due to the modifications because Zimmer Wheaton is in the business of buying and selling cars.

15. Zimmer Wheaton arranged for the truck to be towed to a service centre to complete the inspection and repairs to bring the truck into compliance with the MVA. Ms. Crosby was undisputedly unable to use the truck from June 4 to October 20, 2022. She says during this time her partner lost his job and was unable to find a new one due to his lack of transportation by not being able to use the vehicle. Additionally, she says their family had to cancel preplanned vacations that summer that required the truck's use. Ms. Crosby did not provide any evidence of a monetary loss for those items.
16. In any event, Ms. Crosby says Zimmer Wheaton should pay for the loan payments she made between June 4 and October 20, 2022 when the truck was being repaired, for a total of \$4,888.60. She says she would not have purchased the truck had she known it was not suitable for transportation.
17. Zimmer Wheaton says it has already paid for the repairs and that the delay in repairing the vehicle was not its fault, but due to supply chain issues.
18. Although the parties did not specifically mention it, I find the *Sale of Goods Act* (SGA) applied to this sale. Since Zimmer Wheaton is in the business of selling cars, the implied conditions in SGA sections 18(a), 18(b), and 18(c) apply. These provisions say that goods must be reasonably fit for their express or implied purpose, they are of merchantable quality, and they will be durable for a reasonable period with normal use.
19. Here, it is undisputed the truck was not legally suitable for transportation, despite Zimmer Wheaton representing it was. Zimmer Wheaton does not particularly dispute this fact, and it is consistent with a letter from Bryan Reid, a Compliance Officer at the Vehicle Sales Authority of British Columbia (VSA). In the October 28, 2022 letter, Mr. Reid explains that because Zimmer Wheaton knew about the truck's modifications, it would have known that the modified truck would not pass inspection, and that Zimmer Wheaton's declaration that the truck met the requirements under the MVA was a misrepresentation. Although Mr. Reid's specific credentials are not before

me, given his title and role within the VSA, I accept his opinion as expert opinion under the CRT's rules.

20. So, I find Zimmer Wheaton breached section 18(a) of the SGA because the truck was not reasonably fit for its purpose as a transportation vehicle. Which, again, is not particularly disputed.
21. Although Ms. Crosby offered to return the truck to Zimmer Wheaton during the repairs, she undisputedly still has possession of it. Under SGA section 15(4), once a purchaser accepts the goods, the implied conditions under the SGA become implied warranties. This distinction matters because SGA section 56 sets out remedies for a breach of warranty. Section 56(2) says the measure of damages is the estimated loss directly and naturally resulting, in the ordinary course of events, from the breach of warranty. As noted, in the Dispute Notice Ms. Crosby only claims the monthly payments she made on the truck's loan from June to October 2022. Although she submits her family suffered other monetary losses by not being able to use the truck, as noted above, she did claim any compensation for those losses, or provide any documentary evidence in support. So, I will only deal with her claim for reimbursement of her vehicle's loan payments.
22. Section 56(1) of the SGA says a buyer may make a claim for a reduction in the purchase price. Here, there is no evidence before me about whether the truck is worth any less given the repairs. However, I accept that Zimmer Wheaton's breach of the SGA means Ms. Crosby is entitled to a reduction in the truck's purchase price.
23. The question is how much of a price reduction is appropriate here. As noted, the truck's total purchase price was \$78,001.64. The requested reimbursement of \$4,888.60 for not using the truck for over 5 months is approximately 6% of the truck's purchase price. On a judgment basis, I find this is reasonable in the circumstances. I find Zimmer Wheaton must reimburse Ms. Crosby \$4,888.60.

24. Ms. Crosby is entitled to pre-judgment interest under the *Court Order Interest Act*. Calculated from October 20, 2022, the date the truck was returned to her, this totals \$115.56.
25. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. Ms. Crosby was successful, so I find Zimmer Wheaton must reimburse her \$175 in tribunal fees. She did not claim any dispute-related expenses.
26. I note that pre-judgment interest under the *Court Order Interest Act* and CRT fees are exclusive of the CRT's small claims \$5,000 monetary limit.

ORDERS

27. Within 21 days of the date of this decision, I order Zimmer Wheaton to pay Ms. Crosby a total of \$5,179.16, broken down as follows:
 - a. \$4,888.60 in damages,
 - b. \$115.56 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$175 in tribunal fees.
28. Ms. Crosby is also entitled to post-judgment interest, as applicable.

29. 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.

Andrea Ritchie, Vice Chair