



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Safeside Traffic Control Ltd. v. 679796 BC Ltd.*, 2023 BCCRT 733

B E T W E E N :

SAFESIDE TRAFFIC CONTROL LTD.

APPLICANT

A N D :

679796 BC LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr, Vice Chair

INTRODUCTION

1. In June 2022, Safeside Traffic Control Ltd. bought a 2011 Ford F150 truck from 679796 BC Ltd., which does business as Cypress Auto Brokers. Safeside says that the truck's heater was broken when it bought the truck. It also says that Cypress intentionally hid this fact by erasing internal diagnostic codes. Safeside claims

\$2,180.66, the amount it says it paid to repair the heater. Safeside is represented by its owner, Angie May Lamb.

2. Cypress says that the heater worked when it sold the truck. It asks me to dismiss Safeside's claims. Cypress is represented by an authorized employee.

JURISDICTION AND PROCEDURE

3. 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.
4. 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 of this dispute call into question the credibility, or truthfulness, of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision *Yas v. Pope*, 2018 BCSC 282, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.
5. 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.
6. I note that in submissions, Cypress indicated it had offered Safeside \$500 "as a good business practice" during the CRT's facilitation process. CRT rule 1.11(1) says

that settlement communications from the facilitation process are confidential and must not be disclosed unless the parties all agree. There is no indication that Safeside consented to disclosure of this settlement offer, so I have placed no weight on it. In any event, nothing turns on the disclosure of the offer as I find it includes no admission of liability or fault.

ISSUES

7. The issue in this dispute is whether Cypress must pay for the heater repairs. This requires me to answer the following questions:
 - a. Did Cypress fraudulently conceal diagnostic codes that showed the heater was broken?
 - b. Did Cypress negligently misrepresent the truck's condition?
 - c. Did Cypress breach the implied warranty of durability?

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, Safeside as the applicant must prove its claims on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
9. Ms. Lamb went to Cypress in June 2022 after seeing an online ad. The ad is not in evidence. At some point during the sale process, Safeside says a Cypress employee told Ms. Lamb that "everything worked". However, during a test drive, Ms. Lamb noticed that the air conditioner and stereo did not work. Cypress agreed to repair these issues before giving the truck to Safeside. Safeside implicitly admits that Ms. Lamb did not try the heater during the test drive. Safeside did not have the vehicle professionally inspected.
10. Safeside bought the truck on June 13, 2022, for \$16,465.01 plus taxes and fees. Cypress undisputedly provided Safeside with a "multi-point inspection" report from

Ridge Motors Auto Repair & Tires dated March 29, 2022. However, that inspection report does not say anything about the truck's heater.

11. Safeside picked up the truck on June 18, 2022, after Cypress had repaired the air conditioner and stereo. Safeside says that Cypress drove the truck over 100 kilometers between June 13 and 18. So, it says that even though the sale forms say the truck had 110,212 kilometers at the time of sale, it was up to 110,344 at the time of delivery. Cypress does not specifically deny this, and admits to filling the truck with gas before delivery, so I accept Safeside's allegation is accurate.
12. Safeside says it did not attempt to use the truck's heater until October 25, 2022. Safeside says the temperature gauge did not work and there was no heat at all. At that point, the odometer read 110,532, so Safeside had only put about 200 kilometers on the truck since buying it.
13. Safeside texted Cypress the same day and asked if the heater was covered by a warranty, and Cypress said it was not. I note that a copy of a warranty is in evidence, and it does not cover the heater. In any event, Safeside does not rely on an express warranty.
14. Safeside took the truck to a mechanic. On October 30, 2022, Safeside texted Cypress that the truck was "faulty" and demanded Cypress pay to repair the heater. Cypress declined saying it "can not warranty a used truck for the rest of my life".
15. On November 8, 2022, the mechanic texted Safeside a photo of 3 diagnostic codes from the truck. All 3 are clearly related to the truck's HVAC system. In a November 10, 2022 demand letter, Safeside alleged that Cypress had "erased" the diagnostic codes that showed a heater problem.
16. The mechanic finished repairing the heater on November 25, 2022. The repairs cost \$2,160.16. Safeside does not explain the small difference between this and the claimed \$2,180.66, but given my conclusion below, nothing turns on this.

17. 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 there is an issue with the vehicle after the sale. Instead, upon purchase, the buyer assumes the risks of vehicle ownership unless they can prove one of the following things: fraud, breach of contract, negligent misrepresentation, breach of an implied warranty, or an undiscoverable latent defect. See *Mah Estate v. Lawrence*, 2023 BCSC 411.
18. I find that Safeside’s evidence and submissions raise the following issues: fraud, negligent misrepresentation, and breach of an implied warranty. I will address them in turn.

Fraud

19. Safeside argues that Cypress knew that the heater was not working and actively concealed this fact by erasing diagnostic codes. As mentioned above, it provided a photo from its mechanic showing the codes existed in November 2022 when it had the truck repaired. In submissions, Safeside says that its mechanic said that the codes “most likely” existed when Cypress fixed the air conditioning. So, Safeside argues Cypress hid the codes.
20. I find that the operation of diagnostic codes is outside the common knowledge of an ordinary person, so expert evidence is required to explain how diagnostic codes work, including how they can be erased. There is no direct evidence from Safeside’s mechanic in evidence. While the CRT can accept hearsay evidence, I find that it would be inappropriate and unfair to rely on hearsay expert evidence about a central issue in this dispute. So, I find it unproven that Cypress fraudulently hid the diagnostic codes about the heater at the time of sale.

Negligent Misrepresentation

21. A negligent misrepresentation occurs when:
- a. The seller makes a representation to the purchaser that is untrue, inaccurate, or misleading,

- b. The seller breaches the standard of care in making the misrepresentation, and
 - c. The purchaser reasonably relies on the misrepresentation to their detriment.
22. Safeside says that Cypress's statement that "everything worked" was untrue. Safeside believes that the heater did not work when Cypress sold the truck and that Cypress knew this. Safeside relies, in part, on the "hidden" codes as evidence that Cypress knew about the defective heater, but for the reasons set out above, I find this allegation unproven. There is no other expert evidence that the heater was likely broken at the time of purchase. The only other evidence that the heater did not work at the time of purchase is the simple fact that Safeside did not drive it very much before discovering the problem.
23. For its part, Cypress says its standard practice with used vehicles is to have them detailed. It says the detailer uses a vehicle's heater to dry the interior as part of the cleaning process, and the detailer did not tell Cypress about any heater problem.
24. Given this evidence, I find that Safeside has not proven that the heater was broken at the time of purchase. Even if it was, I find that Safeside has not proven that Cypress knew or reasonably should have known that the heater did not work when it told Safeside that "everything worked". As noted, the sale occurred in the summer when I find a heater issue would not necessarily be apparent.

Implied Warranty

25. Section 18 of the *Sale of Goods Act* (SGA) contains several implied warranties that may apply to a sale of goods contract. Relevant to this dispute, section 18(c) says there is an implied warranty that goods sold will be durable for a reasonable period of time having regard to their normal use.
26. In *Sugiyama v. Pilsen*, 2006 BCPC 265, the BC Provincial Court outlined several factors to consider when determining whether a vehicle is reasonably durable, including its age, mileage, price, the use of the vehicle, and the reason for the

malfunction. Ultimately, for older vehicles, 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 478, the BC Supreme Court said that buyers of old used vehicles must expect that defects can arise at any time.

27. Here, the truck was over 10 years old and had over 110,000 kilometers when purchased. I find it is an “older” vehicle as that term is used in the court cases mentioned above. With that, I find that the relevant question is whether the truck was roadworthy and safe. While I accept that a heater is important in the winter months, I find that a truck without a working heater is roadworthy and safe to drive. So, even if the heater was broken at the time of purchase, I find that Cypress did not breach the implied warranty in section 18(c) of the SGA.
28. The other potentially relevant implied warranty is found in section 18(a) of the SGA, which says that the goods must be reasonably fit for the purchaser’s intended purpose, as long as the purchaser expressly or implicitly informs the seller of that purpose and relies on the seller’s expertise. Here, Safeside intended to use the truck as part of its traffic control business. Safeside says that a heater is important because its employees take breaks inside the truck during cold weather. However, there is no evidence that Safeside told Cypress about this, or otherwise implied it, prior to the sale. So, I find this implied warranty does not apply.
29. Therefore, I find that Safeside did not prove any of the exceptions to the buyer beware principle. It follows that it is not entitled to any repair costs, and I dismiss its claim.
30. 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. Safeside was unsuccessful so I dismiss its claim for CRT fees and dispute-related expenses. Cypress did not claim any dispute-related expenses.

ORDERS

31. I dismiss Safeside's claims, and this dispute.

Eric Regehr, Vice Chair