



# Civil Resolution Tribunal

Date Issued: September 18, 2023

File: SC-2022-006984

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ellis v. FL (Litigation Guardian of)*, 2023 BCCRT 789

BETWEEN:

BRIA ELLIS

**APPLICANT**

AND:

SP as Litigation Guardian of FL, minor

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Micah Carmody

### INTRODUCTION

1. This dispute is about a private used vehicle sale.
2. The applicant, Bria Ellis, purchased a used 2008 Mazda 3 (car) from the respondent, FL, for \$4,800. Ms. Ellis says FL told her that the car was in perfect condition and

needed no work. She says the car started having problems less than a week after purchase and needs about \$4,000 worth of repairs. Ms. Ellis claims \$4,500 to repair the car to the condition she says FL represented it to be in. Ms. Ellis represents herself.

3. FL says the car did not have any mechanical issues when he sold it to Ms. Ellis. FL says Ms. Ellis could have had an inspection but decided not to. FL also says Ms. Ellis drove the car for 2 months before any serious issues arose. So, FL says he owes nothing.
4. FL is a minor and is participating in this dispute through his litigation guardian, SP. Because FL is a minor, I have anonymized FL's and SP's names in the published version of this decision to protect FL's identity.

## **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.
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. 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 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.

## **ISSUES**

8. The issues in this dispute are:
  - a. Did FL breach an implied warranty of durability, misrepresent the car's condition, or fail to disclose a latent defect in the car?
  - b. What remedy, if any, is appropriate?

## **EVIDENCE AND ANALYSIS**

9. As the applicant in this civil proceeding, Ms. Ellis must prove her claims on a balance of probabilities, meaning more likely than not. While I have considered all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
10. On May 24, 2022, Ms. Ellis paid FL \$4,800 for the car. Ms. Ellis says 2 days later, the car started overheating. She took the car to a repair shop, Jimmy Eddie Ltd., (JEL). According to JEL's June 10, 2022 invoice, it provided new oil and filter, coolant, 2 spark plugs, and a thermostat. The total cost was \$510.96. There are limited notes on the invoice, but the labour description includes "check for overheating." The invoice also said, "Attention! PCV valve causing misfire... fluid flushes... belts... rear caliper." These notes are not explained further, and Ms. Ellis does not address them in submissions.
11. Ms. Ellis texted FL on June 12, 2022. She said the car had been overheating and needed repairs that would cost about \$1,500. She asked if FL could help with those costs. FL did not respond.
12. JEL's second invoice is dated August 5, 2022. The work was described as "check for coolant leak, pressure test cooling system" The invoice does not report any findings. The cost was \$80.98. Later in August, Ms. Ellis texted FL, saying that she had to put more coolant in the car each time she drove it. She said the car had a cracked head gasket that was a \$2,000 repair on its own, among other issues. FL said he was not willing to provide any refund because these were new issues that arose after the sale.

13. In addition to JEL's 2 invoices, Ms. Ellis relies on JEL's April 26, 2023 estimate for \$4,372.46. The work in that estimate includes replacing the cylinder head gasket, serpentine belt and tensioner assembly, rear brake calipers, pads and rotors. Ms. Ellis does not say whether she has proceeded with any repairs.

### ***The applicable law***

14. 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, as Ms. Ellis failed to do, is subject to the risk that they did not get what they thought they were getting and made a bad bargain.
15. 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). As the applicant, Ms. Ellis must show that "buyer beware" does not apply because one of these conditions exists. I find Ms. Ellis argues misrepresentation, known latent defect, and breach of implied warranty under the *Sale of Goods Act* (SGA).

### ***Breach of implied warranty***

16. In submissions, SP says that no adults were present with FL when he sold the car. I find SP indirectly raises the application of section 19(1) of the *Infants Act*. That provision says that a contract made by an "infant", or minor, is not enforceable against them unless certain exceptions apply. I find those exceptions do not apply here, and so I find that Ms. Ellis cannot enforce the sale contract against FL. By extension, I find Ms. Ellis cannot enforce any contractual terms, including an implied warranty or condition under the SGA, against FL. For that reason, I find Ms. Ellis's claim that the car was not reasonably durable under SGA section 18(c) cannot succeed.
17. Even if Ms. Ellis's claim for breach of implied warranty under SGA section 18(c) were not precluded by the *Infants Act*, I would still dismiss it. In *Sugiyama v. Pilsen*, 2006 BCPC 265, the Provincial Court applied the SGA section 18 warranty to a used car

sale. The court noted several factors to consider when determining whether a vehicle is durable for a reasonable period of time, including age, mileage, price, use of the vehicle, reason for the breakdown, and expectations of the parties as shown by any express warranties. The court found that if an older vehicle is “roadworthy” and can be safely driven when purchased, it is likely to be considered reasonably durable, even if it breaks down shortly afterwards. Similarly, in *Wanless v. Graham*, 2009 BCSC 578, the BC Supreme Court said that buyers of older used vehicles must reasonably expect that defects could arise at any time. Applying that reasoning here, I find the car was reasonably durable in the circumstances, which include the relatively low price of \$4,800, the car’s 14-year age, its mileage of around 158,000 km, and Ms. Ellis’s evidence that she drove the car 358 km before having it serviced (more on this below).

### ***Misrepresentation***

18. 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. If a seller misrepresents the vehicle, either fraudulently or negligently, the buyer may be entitled to compensation for losses arising from that misrepresentation.
19. Is the misrepresentation claim against FL precluded by the *Infants Act* like the implied warranty claim? Minors are generally liable for their torts (civil wrongs) like negligent and fraudulent misrepresentation. However, minors may not be sued in tort as a way of indirectly enforcing a contract (see *Dickson Bros. Garage v. Jing*, 1957 CanLII 275 (BC CA)). The question is whether the tort is so connected to the contract as to be part of the same transaction. Here, it is not necessary to answer that question because, as I explain below, I find Ms. Ellis has not proven any misrepresentations.
20. FL’s ad said the car was in “amazing condition and runs and drives great.” It also said the car had “good brakes, good tires, healthy engine, and needs no work whatsoever.” FL does not dispute that he made the same statements in person. However, I find Ms. Ellis has not proven that these statements were false at the time FL made them.

21. Ms. Ellis argues that the overheating issue must have been present before the sale. She says she noticed it within 2 days of the sale. However, the earliest objective evidence of the overheating issue is the June 10, 2022 JEL invoice, which was 17 days after the sale. Further, as noted above, Ms. Ellis concedes she drove the car 358 km before June 10, 2022. I find she has not proved that the car overheated within 2 days. However, I accept that it overheated by June 10, 2022.
22. The difficulty for Ms. Ellis is that on its own, the appearance of the overheating issue by June 10, 2022 is insufficient evidence that the overheating issue was present before the sale. Car engine issues like this are technical in nature and are generally outside ordinary knowledge. Ms. Ellis has not provided any expert evidence, such a statement from a mechanic who inspected the car, stating that there were signs that the car had likely been overheating since before May 24, 2022.
23. I find the same is true for the rest of the repairs Ms. Ellis claims are now needed based on the JEL estimate dated nearly a year after the sale. There is no expert evidence that any of these components needed repair before the sale, which is what Ms. Ellis must prove to establish that FL's statement that the car did not need any work was false. For example, brake pads, rotors, and calipers are components that wear out and must be replaced. There is no persuasive evidence that the brakes were not in good condition when Ms. Ellis purchased the car. The statement that the car had "good brakes" is not specific enough to be a representation that the brake components each had at least 11 months of life left on them.
24. I also note there is no odometer reading recorded in JEL's estimate and no evidence of how much Ms. Ellis drove the car in those 11 months. Further, there is no evidence about the condition of these components Ms. Ellis says must be repaired immediately after the purchase. There is no evidence about their condition at all, other than the inference that may be drawn from JEL's willingness to provide an estimate to replace them.
25. For these reasons, I find Ms. Ellis has not proven that FL's statements were false, and I dismiss the misrepresentation aspect of Ms. Ellis' claim.

### ***Latent defect***

26. A latent defect is one that cannot be discovered by reasonable inspection. A seller who is aware of a latent defect and fails to disclose or conceals it may be liable for damages. In *Mah Estate*, the court applied this concept to a private used car sale. The court found there was no evidence that the buyer could not have had an inspection performed or that the defects could not have been discovered with a reasonable inspection. I find the same is true here. Ms. Ellis does not dispute that she could have had the car inspected. She provided no evidence that an inspection would not have revealed the overheating issues, or any other alleged repair required. In other words, Ms. Ellis has not proven a latent, rather than patent or obvious, defect.
27. In summary, I find that none of the exceptions to the buyer beware principle apply, so Ms. Ellis is not entitled to compensation. I dismiss her claim.
28. Under section 49 of the CRTA and CRT rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. FL was successful but did not pay CRT fees. I dismiss Ms. Ellis's claim for CRT fees. Neither party claims dispute-related expenses.

### **ORDER**

29. I dismiss Ms. Ellis's claims and this dispute.

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Micah Carmody, Tribunal Member