



Civil Resolution Tribunal

Date Issued: October 5, 2023

File: SC-2022-008964

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Tjepkema v. Robillard*, 2023 BCCRT 848

BETWEEN:

KORINNE TJEPKEMA

APPLICANT

AND:

MARJORIE SHARON ROBILLARD

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Megan Stewart

INTRODUCTION

1. This dispute is about a private used vehicle sale.
2. The applicant, Korinne Tjepkema, bought a 1999 Subaru Impreza (Subaru or car) from the respondent, Marjorie Sharon Robillard, for \$2,500. The applicant says within a week of purchasing the car, it was making a squealing noise that got louder over

time. The applicant took the car to her mechanic and was told it needed repairs that exceeded the price she had paid for it. The applicant says the respondent misrepresented the car as being in good condition, and says it was not reasonably durable. She claims \$2,800, for the car's purchase price and 5% PST.

3. The respondent denies the applicant's claims. She says she advertised the car as being in good condition, and the fact that the applicant drove the car for 5 weeks before taking it to a mechanic shows it was drivable at the time of sale. The respondent also says the applicant negligently failed to have the car inspected by a mechanic before purchasing it. So, she says she owes the applicant nothing.
4. The parties are each self-represented.

JURISDICTION AND PROCEDURE

5. 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.
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. Some of the evidence in this dispute amounts to a "she said, she said" scenario. 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 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 an oral hearing is not necessary.

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 the respondent misrepresent the car's condition or breach an implied warranty of durability?
 - b. If so, is the applicant entitled to the claimed \$2,800?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicant must prove her claims on a balance of probabilities. I have read all the parties' submissions and evidence but refer only to the evidence and argument I find necessary to explain my decision.

Background

10. On October 2, 2022, the applicant went to view the Subaru, which had a mileage of 207,000 kilometers, test drove it, and bought it from the respondent the same day. Over the next several weeks, the applicant and her daughter drove the car, and noticed a squealing noise when they turned the steering wheel, which worsened over time. The applicant took the car to Clearway Automotive (Clearway) on November 9. None of this is disputed. I address the respondent's advertisement below.
11. The evidence shows that on November 10, Clearway provided the applicant with a \$1,956.89 estimate to replace the car's brake shoes, brake pads, suspension struts, and fluids, and 4 estimates to replace its tires, ranging from \$712.50 to \$888.50. It further shows Clearway provided the applicant with a \$4,784.94 estimate to repair the Subaru's exhaust system on November 16. The applicant says she paid \$712.50

to replace the tires because Clearway would not release the car to her without new tires. The respondent does not dispute this, and I accept this is what happened.

12. The applicant tried to contact the respondent several times in November without success, and filed her application for dispute resolution with the CRT on November 18, 2022. She says that sometime between November 13 and 19, the Subaru's "check engine" light came on. She says since then, it has been parked without insurance in anticipation of the CRT's decision.

The applicable law

13. 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 or becomes undriveable shortly after the sale. Rather, a buyer who fails to have the vehicle inspected, as the applicant failed to do, is subject to the risk that they did not get what they thought they were getting and made a bad bargain.
14. 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). Here, the applicant must show that "buyer beware" does not apply because one of these conditions exists. I find the applicant argues misrepresentation and breach of implied warranty under the *Sale of Goods Act* (SGA).

Misrepresentation

15. 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.
16. The respondent submitted a copy of an advertisement for a "1999 Subaru Hatchback AWD" with 207,000 kilometers on the odometer. I note the advertisement does not

specifically refer to the Subaru's condition, other than being clean. The parties agree that when the applicant went to view the car, the respondent's husband said it was "immaculate". I pause here to note that I find the respondent's husband was acting as her agent when he was showing the car to the applicant. The applicant says she believed "immaculate" referred to the car's mechanical condition. In contrast, the respondent says the word "immaculate" was used to describe the car's level of cleanliness, not to indicate the car was in perfect running condition. Though the respondent did not provide a statement from her husband about this point, I find this does not matter for the following reasons.

17. I agree that using the word "immaculate" to describe a vehicle in the context of a used car sale could reasonably be interpreted as referring to its overall condition, including its mechanical state. Here, however, I find it is clear the Subaru was not in immaculate overall condition when the applicant went to see it. I say this because it is undisputed that the respondent's husband pointed out a tear in one of the seat cushions and the worn condition of the car's tires (more on the tires below).
18. Further, the applicant says she noticed the Subaru was squeaky going over speed bumps during the test drive and the respondent's husband joked about banging it with a hammer to stop the squeaks. I note the applicant says, given her past experience, she attributed the squeakiness to Subarus having noisy shocks. Based on the seat cushion tear, the tires, and the squeakiness, I find it more likely than not that the applicant reasonably should have understood that the respondent's husband's use of the word "immaculate" was a reference to the car's cleanliness. I find this is further supported by the advertisement's pictures, which show the car's virtually spotless interior. So, I find the respondent did not misrepresent the car as being immaculate.
19. Next, the applicant says the respondent misrepresented that the car had been properly maintained. She bases her assertion on the car's maintenance records in evidence, and the fact that they do not document service dates or the car's kilometers. I find the maintenance records' lack of service dates and kilometers does not prove the Subaru was not properly maintained. I find that whether the car was properly

maintained is a technical matter that requires expert evidence to prove, as it is beyond the knowledge and experience of an ordinary person (see *Bergen v. Guliker*, 2015 BCCA 283). As noted, the applicant has the burden of proving the alleged misrepresentation.

20. Clearway provided the applicant with repair and replacement cost estimates, but did not say the car had not been properly maintained. Clearway's estimates do not include any opinion about the cause of the needed or recommended repairs and replacements. In any case, there is no evidence of Clearway's technician's qualifications in evidence, which is a CRT requirement of expert evidence. I find the applicant has not proven the respondent misrepresented that the car was properly maintained.
21. Finally, I turn to the applicant's allegations about the car's tires. The applicant says the respondent's husband told her the tires "weren't great" but that "any issues were just cosmetic". The applicant also says the respondent knew the tires would need replacing because in submissions, the respondent says when she sold the Subaru "it was roadworthy except for the tires." As previously noted, when the applicant went to pick up her car at Clearway on November 10, she had to purchase new tires before she was allowed to drive the car away.
22. For her part, the respondent says the fact that the car needed new tires was one of the reasons she decided to sell it and buy a new one. She says her husband told the applicant the tires needed to be replaced before she decided to buy the car. The applicant denies this, and says had she known the extent of the tires' poor condition, she would not have endangered her life and her daughter's life by driving the car home after purchasing it.
23. On balance, I find it likely the respondent's husband told the applicant she would need to replace the car's tires. I say this because I find that otherwise, it would not make sense for the respondent to admit in submissions that the car was roadworthy apart from the tires. In addition, the applicant submitted a witness statement from her daughter who accompanied her when she went to see the car on October 2. In that

statement, the applicant's daughter said the only issues with the car were the tear in the seat cushion and "some worn-out tires." I find this reference to "worn-out tires" supports a conclusion that the respondent's husband indicated the tires would need to be replaced. So, I also find the applicant has not proven the respondent misrepresented the condition of the car's tires.

24. Even if the respondent's husband had not said the Subaru's tires needed replacing, I find that given the applicant admits he told her the tires "weren't great" and given the tires' condition was obvious on a reasonable inspection, it would have been unreasonable for the applicant to rely on the alleged misrepresentation.
25. For the reasons above, I find it unproven that the respondent misrepresented the Subaru.

Breach of implied warranty

26. SGA 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. The other warranties in SGA section 18 do not apply to private car sales like this one.
27. In *Sugiyama v. Pilsen*, 2006 BCPC 265, the 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 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.
28. The CRT has considered many cases about used vehicles that break down shortly after they are bought. For example, in *Gilbert v. Quirk*, 2023 BCCRT 336, a vice chair found that a 27-year-old van with 260,000 miles or kilometers on the odometer was

reasonably durable even though it broke down 15 minutes after the applicant began driving it. Similarly, in *Bleiler v. Sawhney*, 2022 BCCRT 213, a tribunal 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.

29. Here, the Subaru was 23 years old with a mileage of 207,000 kilometers when the applicant bought it for a relatively low price of \$2,500. The applicant undisputedly drove the car for about 701 kilometers before the “check engine” light came on and she stopped driving it. As noted, the applicant did not have the car professionally inspected before buying it, and there is no evidence from Clearway that the recommended repairs and replacements existed before the applicant bought the car. In these circumstances, I find the implied warranty under SGA section 18(c) was very limited, requiring only that the Subaru was roadworthy and could be safely driven when purchased.
30. The applicant says the car was not roadworthy because Clearway would not let her leave with the Subaru unless she bought new tires. However, as explained above, I find it likely the respondent’s husband told the applicant the car’s tires needed replacing. SGA section 18(e) says an implied condition is negated where an express warranty or condition is inconsistent with it. Here, I find the respondent’s husband’s statement that the tires needed to be replaced was an express condition of the Subaru’s sale that negated any implied condition of durability regarding the tires. So, I find the SGA section 18(c) implied warranty as it concerns the Subaru’s roadworthiness does not apply to the tires.
31. If I am wrong and the implied warranty does apply to the tires, I find there is no evidence the respondent breached it. This is because even though Clearway required the applicant to buy new tires because the car was otherwise unsafe to drive, I find there is no evidence the tires needed replacing at the time the applicant bought the Subaru, particularly since the applicant drove the car for about 701 kilometers and had it for approximately 5 weeks before taking it to Clearway. Again, the applicant declined to have the Subaru professionally inspected before buying it.

32. Given the above, I find the applicant has not shown the respondent breached the implied warranty of SGA section 18(c). I dismiss the applicant's claim.
33. 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. The respondent was successful but did not pay CRT fees, and neither party claimed dispute-related expenses.

ORDER

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

Megan Stewart, Tribunal Member