



Civil Resolution Tribunal

Date Issued: October 10, 2023

File: SC-2022-007614

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *St-Cyr v. Pashak*, 2023 BCCRT 852

BETWEEN:

CHRIS ST-CYR

APPLICANT

AND:

LAWRENCE PASHAK

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. This dispute is about a private used vehicle sale.
2. The applicant, Chris St-Cyr, purchased a used 2006 Chrysler PT Cruiser (car) from the respondent, Lawrence Pashak, for \$2,900. Mr. St-Cyr says within 2 weeks the

car needed repairs estimated at over \$3,500. He asks for a refund of the \$2,900 purchase price.

3. Mr. Pashak says he was not aware of any serious problems with the car when he sold it. He asks me to dismiss the claim.
4. Each party is 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.
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.
8. After submissions closed, Mr. Pashak emailed CRT staff indicating that his submissions were missing a portion and were heavily edited, and the evidence did not include a copy of the vehicle transfer form. He included an email containing his original submissions. However, those submissions were included verbatim in the submissions I read in the CRT portal. The copy of the vehicle transfer form was also in the evidence. I concluded that there was no error and no need for further information from Mr. Pashak.

ISSUES

9. The issues in this dispute are:
 - a. Did Mr. Pashak 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

10. As the applicant in this civil proceeding, Mr. St-Cyr must prove his 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.
11. On September 27, 2022, Mr. St-Cyr texted Mr. Pashak about a different PT Cruiser Mr. Pashak was offering for sale with a sign in the window. Mr. Pashak says this was a family member's vehicle. The price was out of Mr. St-Cyr's budget, but Mr. Pashak offered to sell Mr. St-Cyr his own car, the car at issue in this dispute, for \$2,900 instead. Mr. Pashak said the car was in excellent condition with low mileage.
12. The parties arranged to meet the next day and Mr. St-Cyr arrived with license plates in hand. There is little evidence about what, if anything, was discussed. There was no professional inspection. Both parties signed the September 28 Transfer/Tax Form. Although the form indicates a \$500 purchase price, it is undisputed that Mr. St-Cyr paid \$2,500 that day and the remaining \$400 on October 5.
13. On October 8, Mr. St-Cyr texted Mr. Pashak to ask if the car had any previous issues. He said the check engine light was on, it was getting "stuck in a gear," and it was "slightly" overheating. Mr. Pashak replied that he had never had a gear shifting problem, but the check engine light went on intermittently. He had taken the car to Midas Auto & Tire Service (Midas) on September 17, 2022. He said Midas told him

the check engine light was a sensor issue and was not a problem. I return to Midas's inspection below.

14. On October 11, Mr. St-Cyr texted Mr. Pashak to report a bubbling sound under the hood and "almost" overheating. He dropped the car off the next day at Olender's Auto Care (OAC). OAC performed an inspection or safety check. OAC's October 13, 2022 safety check worksheet indicates several car components that OAC marked satisfactory, some in marginal condition or having a minor defect, and some that were unsatisfactory. The most notable were 3 areas of leaks identified under the "engine" heading.
15. Mr. St-Cyr then obtained from Midas a copy of its September 17, 2022 inspection report from just before the sale. The report identified some minor maintenance issues not in dispute here. The report then identified the following issues that it said could lead to additional repairs if ignored (colour-coded orange):
 - a. Spark plugs were worn, resulting in engine misfire and low gas mileage.
 - b. Valve cover gasket was leaking. Further inspection was recommended.
16. The report identified the following issues as priority items that could contribute to dangerous driving conditions or breakdowns (colour-coded red):
 - a. The right brake light was out.
 - b. Brake fluid level was low.
17. Mr. St-Cyr argues that the Midas report means Mr. Pashak was aware that the car had serious issues and deliberately concealed those issues during the sale. For his part, Mr. Pashak says he believed the car would provide good service for Mr. St-Cyr as it had for him. He says he bought the car on June 14, 2022 as interim transportation to use before a planned holiday in the fall. He says he had no problems during the time he owned it. He says he did not feel that any of the recommended work in the Midas report was warranted at the time.

The applicable law

18. 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 Mr. St-Cyr failed to do, is subject to the risk that they did not get what they thought they were getting and made a bad bargain.
19. 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, Mr. St-Cyr must show that “buyer beware” does not apply because one of these conditions exists. I find Mr. St-Cyr argues misrepresentation, known latent defect, and breach of implied warranty under the *Sale of Goods Act* (SGA).
20. Mr. St-Cyr also argues that the *Business Practices and Consumer Protection Act* (BPCPA) applies. He says the BPCPA prohibits deceptive acts or practices that could mislead consumers. However, the BPCPA applies to a “supplier”, which is defined as a person who, in the course of business, participates in a consumer transaction. Mr. St-Cyr does not suggest or provide evidence that Mr. Pashak is in the business of selling used vehicles. Although he had 2 PT Cruisers to sell, there is no evidence to refute Mr. Pashak’s claim that one was his and one was a family member’s. So, I find this was a private used vehicle sale. This means the BPCPA does not apply.

Misrepresentation

21. 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.

22. There was no online or print advertisement for the car. Mr. St-Cyr says that throughout the sale process, Mr. Pashak repeatedly claimed that the car was in excellent condition. This is consistent with the parties' texts. The difficulty for Mr. St-Cyr in proving a misrepresentation is the parties' different perceptions of "excellent condition." I accept that Mr. Pashak believed the car to be in excellent condition when he sold it, as he says he had no issues driving it. Although Midas had recently identified some issues with the car and made recommendations, I accept that Mr. Pashak honestly believed there were no critical issues needing urgent attention. Mr. St-Cyr now claims, in effect, that he took Mr. Pashak's statement as indication of the condition of, spark plugs, control arms, valve cover gaskets and fluid levels. I find that was not a reasonable expectation on his part given the car's age and mileage. A buyer purchasing an older used vehicle must expect that defects will come to light at any time (see *Wanless v. Graham*, 2009 BCSC 579). In any event, there is no evidence that if Mr. Pashak had not made the "excellent condition" statement, Mr. St-Cyr would have declined the purchase.
23. The other alleged misrepresentation is that Mr. Pashak undisputedly said he had driven the car multiple times on the highway without any issues. Mr. St-Cyr says the Midas report proves this to be untrue. I disagree. There is no statement from Midas or any mechanic saying that the issues identified in the Midas report would have prevented the car from being driven on the highway. I find Mr. St-Cyr has not proven that Mr. Pashak's statement that he drove the car on the highway was false.
24. For these reasons, I find Mr. St-Cyr has not proven that Mr. Pashak's statements were false, and I dismiss the misrepresentation aspect of Mr. St-Cyr's claim.

Latent defect

25. A latent defect is one that cannot be discovered by reasonable inspection, as opposed to a patent or obvious defect. 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.

26. Mr. St-Cyr does not dispute that he could have had the car inspected by a mechanic. He chose not to and arrived to view the car with license plates in hand. The issues he discovered after the purchase were revealed by OAC's "visual only" safety check. In other words, they were not latent defects. They were there to be seen. There is no suggestion that Mr. Pashak concealed the defects. I dismiss this aspect of Mr. St-Cyr's claim.

Breach of SGA implied warranty

27. Section 18 of the SGA sets out 3 warranties implied into contracts for the sale of goods. I find only the implied warranty of durability in section 18(c) applies to this private used car sale. That section warranties that goods will be durable for a reasonable period with normal use, considering the sale's context and the surrounding circumstances (see *Drover v. West Country Auto Sales Inc.*, 2004 BCPC 454.)
28. In *Sugiyama v. Pilsen*, 2006 BCPC 265, the court applied the SGA section 18 warranty to a used car sale. The court noted that the seller of a used vehicle cannot guarantee the vehicle's future performance, and that a buyer must expect problems at some point. The court also found that the older the vehicle, the more likely it will break down. For an older vehicle, if it is "roadworthy" when purchased, it is likely to be considered reasonably durable, even if it breaks down shortly afterwards. I find these principles apply here, where the car purchased was 16 years old and had been driven nearly 180,000 km.
29. Unlike in *Sugiyama* and many other used vehicle cases, here there was not a total engine failure or complete breakdown. I find the issues OAC identified, such as engine leaks, worn spark plugs and low fluids, do not establish that the car was not reasonably durable. It was still running when brought to OAC for inspection. With

that, I find Mr. Pashak did not breach the implied warranty of durability in SGA section 18(c).

30. Even if Mr. St-Cyr had proven an implied warranty breach, I would not order Mr. Pashak to provide a full refund. As the applicant, Mr. St-Cyr must prove his claimed damages. He did not provide an estimate for the \$3,500 repairs he says are required, or any evidence of the car's market value to show that it was worth less than what he paid.
31. In summary, Mr. St-Cyr has not proven a misrepresentation, latent defect, a breach of warranty, or any damages. I find that "buyer beware" applies and Mr. St-Cyr is not entitled to any compensation. I dismiss his claim.
32. 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. Neither party paid CRT fees and neither party claims dispute-related expenses, so I make no orders.

ORDER

33. I dismiss Mr. St-Cyr's claims and this dispute.

Micah Carmody, Tribunal Member