



Civil Resolution Tribunal

Date Issued: October 26, 2023

File: SC-2023-001312

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Sandstrom v. Lang*, 2023 BCCRT 921

BETWEEN:

JOCELYN MAUREEN SANDSTROM

APPLICANT

AND:

ANDREW LANG also known as ANDREW EARL LANG

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This dispute is about a private used vehicle sale.
2. The applicant, Jocelyn Maureen Sandstrom, purchased a used 2006 Nissan Murano from the respondent, Andrew Lang also known as Andrew Earl Lang. She says an inspection the day after she bought the car identified a rotten subframe and multiple

poor exhaust repairs, among other issues. Ms. Sandstrom says the car has been undrivable since February 2023. Ms. Sandstrom says Mr. Lang misrepresented the car as being in good condition, with no significant damage or problems. Ms. Sandstrom claims a refund of the car's \$4,900 purchase price.

3. Mr. Lang says he did not misrepresent the car's condition, and says the car was sold "as is where is".
4. The parties are each 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. 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.

ISSUES

9. The issues in this dispute are:
 - a. Did Mr. Lang 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. In a civil claim like this one, Ms. Sandstrom, as the applicant, must prove her claims on a balance of probabilities (meaning more likely than not). I have reviewed all the parties' submissions and evidence but refer only to what I find necessary to explain my decision.
11. Ms. Lang viewed the car on January 30, 2023. On January 31, 2023, Ms. Sandstrom purchased the car from Mr. Lang for \$4,900. It is undisputed that Ms. Sandstrom did not have the car inspected before she bought it, and only test drove the vehicle for a few minutes. Ms. Sandstrom says she called her mechanic to have the car inspected and the next available inspection date was the following day. Mr. Lang says if Ms. Sandstrom had indicated she wanted an inspection before purchasing the car, he would have let her do so. The evidence does not support a finding that Ms. Sandstrom was prevented from having the car inspected before she purchased it.
12. Ms. Sandstrom says as she was driving the car home on the highway, she noticed "very little power getting up to speed". Ms. Sandstrom says she took the car to Rand Automotive. She says the inspection report noted multiple poor repairs and a rotted subframe. She says the "main context" of Rand's inspection report stated "not advised to invest any money into this vehicle". She also says Mr. Lang put a soup can on the exhaust in an attempt to mitigate loss of power and exhaust smell. She says the car has leaked fluid all over the street, and has been undrivable since February 2023. Ms. Sandstrom also provided a photograph that shows a rusted subframe.

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 or a refund of the purchase price, just because the vehicle breaks down shortly after the sale. Rather, a buyer who fails to have the vehicle inspected, as Ms. Sandstrom 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. As the applicant, Ms. Sandstrom must show that “buyer beware” does not apply because one of these conditions exists. I find Ms. Sandstrom argues misrepresentation, known latent defect, and breach of implied warranty under the *Sale of Goods Act* (SGA).

Breach of implied warranty

15. I find the parties entered into a private sale which was subject to section 18(c) of the SGA. Section 18(c) requires that the goods sold be durable for a reasonable period, considering how the goods would be normally used and the sale’s surrounding circumstances. The other implied warranties in section 18 of the SGA do not apply to private sales.
16. A seller of used goods can exclude this implied warranty through a contract term, but the seller must do so in clear and unambiguous language. See *Connors v. McMillan*, 2020 BCPC 230 at paragraphs 63 to 65.
17. Mr. Lang argues the car was sold “as is”, but I find he did not exclude the implied warranty of durability. Mr. Lang did not use any clear and unambiguous wording to show this was the case. The ad did not say the car was being sold “as is where is”, and there is no indication that Mr. Lang used such wording when he met with Ms. Sandstrom. So, I find the implied warranty of durability still applies to this sale.

18. I next consider whether the car was durable for a reasonable period of time. 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. In short, I find the implied warranty Ms. Sandstrom relies on is limited in the context of the car’s 17-year age and its mileage of around 270,000 km. I find the key question to answer in deciding the car’s durability is whether the car was unsafe or undrivable when Ms. Sandstrom bought it. For the reasons below, I find it was not.
19. Ms. Sandstrom did not submit Rand’s entire inspection report. Instead, she only submitted screenshots of some specific parts of the inspection report. Based on the screenshots, I find the inspection was completed by Rand Automotive. The screenshots do not list the inspection date. However, based on Facebook messages exchanged between the parties, I find the inspection likely occurred on February 1, 2023, the day after Ms. Sandstrom purchased the car.
20. One screenshot shows what I infer is the inspection report overview. It lists the car’s various components, with icons beside each components, that I find indicate which components require repairs or further attention.
21. A screenshot of the frame and subframe components noted “Rear subframe rotten. Do not recommend repairing vehicle”. Given this discovery the day after Ms. Sandstrom purchased the car, I find the rotten subframe pre-dated the January 31, 2023 sale. However, the inspection report did not say the rotten subframe meant the car was unsafe or undrivable. I also find the "do not recommend repairing" comment

is ambiguous, and could just as likely mean it was uneconomical to repair the rotten subframe given the car's value.

22. Finally, another screenshot of the exhaust component noted “multiple leaks, multiple poor repairs, soup can hose clamped to exhaust. Suspect plugged CATS, needs complete exhaust system. (Engine back)”. I find the exhaust issues pre-dated the sale. However, as with the rotten subframe, the inspection report did not say the exhaust issues meant the car was unsafe or undriveable.
23. I note that in another CRT decision, *Austin v. Godin*, 2021 BCCRT 415, the buyer bought a car with no apparent problems after a test drive. Three days later, a mechanic inspected the car and found it was not safe to be driven due to undercarriage rust. The CRT determined that the 17-year-old car with almost 300,000 kms on it was unsafe to drive when it was sold due to undercarriage rust, and so was not reasonably durable. However, in that dispute, the mechanic who inspected the vehicle explicitly wrote that the vehicle was “not safe for the road”. Here, there is no such evidence.
24. I also considered finding from the photograph of the rusted subframe that the car was unsafe or not roadworthy at the time of purchase. However, I find the subframe’s condition and its effects on the car’s safety or roadworthiness are outside of the knowledge or expertise of an ordinary person, and requires expert evidence. See *Bergen v. Guliker*, 2015 BCCA 283 at paragraph 119. Ms. Sandstrom did not provide such expert evidence in this dispute. Apart from Ms. Sandstrom’s own submissions that the car has been undrivable since February 2023, the inspection report and other documentary evidence do not show the car was undrivable or unsafe at the time Ms. Sandstrom purchased it or at any time afterwards, either due to the subframe’s condition or the exhaust issues.
25. As noted, the applicant Ms. Sandstrom bears the burden of proving her claims. In these circumstances, I find Ms. Sandstrom has not proven the car was unsafe or undrivable when she bought it. So, I find she has not proven that Mr. Lang breached the implied warranty in SGA section 18(c).

Misrepresentation

26. 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.
27. Ms. Sandstrom says Mr. Lang misrepresented the car because the ad stated that the vehicle had no significant damage or problems. Mr. Lang's Facebook ad included a section titled "About This Vehicle". This section included various details about the car. Among other things, this section indicated that the car had "clean title", with a sub-description in a greyed-out font that said "This vehicle has no significant damage or problems". Mr. Lang says the statement that the vehicle has "no significant damage or problems" was included when he selected "clean title" from Facebook's drop down menu when posting the ad. Mr. Lang says the other options were "salvage" and "flood damage". He says the car had a clean title so that is the option he selected. Ms. Sandstrom does not dispute that the car has a clean title, nor that the sub-description was automatically included by Facebook when Mr. Lang selected "clean title", and I find that it was.
28. In any event, although the sub-description for the "clean title" section was "this vehicle has no significant damage or problems", I find Ms. Sandstrom has not proved that the above statement was false. I say this because I find the statement must be read as a description of the car's undisputed "clean title" status. In that context, I find the above statement cannot reasonably be read as a specific representation that the car was free of any damage or problems due to age, wear and tear, or otherwise. Rather, I find the statement that a "clean title" car has no significant damage or problems, means only that the car had not been damaged or had problems due to an accident, which is undisputedly true. So, I find Ms. Sandstrom has not proved Mr. Lang misrepresented the car when he selected the "clean title" option that indicated the car had no significant damage or problems. For these reasons, I find Ms. Sandstrom has not proven that Mr. Lang's statement was false, and I dismiss the misrepresentation aspect of Ms. Sandstrom's claim.

Latent defect

29. 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. Sandstrom purchased the car without an inspection, but then had the car inspected the next day. The inspection undisputedly revealed various issues with the car, including the subframe and exhaust issues. So, I find Ms. Sandstrom has not proven a latent, rather than patent or obvious, defect.

30. In summary, I find that none of the exceptions to the buyer beware principle apply, so Ms. Sandstrom is not entitled to compensation. I dismiss her claim.

CRT fees and expenses

31. 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. However, neither party paid CRT fees nor claimed dispute-related expenses, so I award none.

ORDER

32. I dismiss Ms. Sandstrom's claims and this dispute.

Leah Volkens, Tribunal Member