



# Civil Resolution Tribunal

Date Issued: January 31, 2024

File: SC-2022-005748

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Opheim v. Hughes*, 2024 BCCRT 100

BETWEEN:

BRODIE JAMES OPHEIM

**APPLICANT**

AND:

MIKE HUGHES

**RESPONDENT**

---

## REASONS FOR DECISION

---

Tribunal Member:

Kate Campbell

## INTRODUCTION

1. This dispute is about a boat purchase.

2. The applicant, Brodie James Opheim bought a boat from the respondent, Mike Hughes.<sup>1</sup> The applicant says the respondent assured him the boat was in perfect working order, but when he ran it for the first time, a loud alarm sounded after 15 minutes. The applicant says two marine mechanics later confirmed the boat had a fuel leak. The applicant claims \$2,800 for boat repairs.
3. The respondent does not deny the alleged problems with the boat. Rather, the respondent says they offered the applicant \$2,000 for boat repairs, paid in monthly installments of \$100 per month for 20 months, because they could not afford to pay a lump sum. In their Dispute Response Form, the respondent offered to pay the applicant \$379.05 plus CRT fees, but also ticked “agree” in the box responding to the applicant’s \$2,800 claim.
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 under section 118 of the *Civil Resolution Tribunal Act* (CRTA). CRTA section 2 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. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. As the CRT’s mandate includes proportional and speedy dispute resolution, I find I can fairly hear this dispute through written submissions.

---

<sup>1</sup> The CRT has a policy to use inclusive language that does not make assumptions about a person’s gender. As part of that commitment, the CRT asks parties to identify their pronouns and titles to ensure that the CRT addresses them respectfully, including in published decisions. Mike Hughes did not provide pronouns or a title. Because of this, I will refer to Mike Hughes as the respondent and using the gender-neutral pronoun “them”, intending no disrespect.

7. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary, and appropriate, whether or not the information would be admissible in court.

## **ISSUE**

8. Must the respondent pay the applicant \$2,800 for boat repairs?

## **BACKGROUND**

9. In a civil proceeding like this one, the applicant must prove his claim on a balance of probabilities (meaning “more likely than not”). I have read the parties’ submitted evidence and arguments but refer only to what I find relevant to provide context for my decision. The respondent had the opportunity to provide evidence but did not do so.
10. The applicant set out the following facts in his dispute application and submissions:
  - The applicant bought the boat from the respondent in August 2020.
  - The applicant was working in a remote location, so his spouse, LRL, travelled to the respondent’s town to see the boat, and showed the boat to the applicant using a video call.
  - The boat was not in or near water, so they did not run it. However, the respondent told the applicant the boat needed no repairs and was in perfect working order.
  - The applicant gave the respondent a \$300 deposit on August 9, 2020, and paid the remaining balance of \$8,200 on August 10, 2020. This was the full asking price.
  - The parties agreed that the applicant would pick up the boat on August 19, 2020.
  - After picking up the boat, the applicant took it to a lake.

- After running the boat for about 15 minutes, an alarm sounded. After the applicant stopped the motor, there was a strong gasoline smell, and a large amount of discharge from the bilge floating on the water.
- The applicant asked to return the boat for a refund, but the respondent said he had already spent the money.
- The applicant got 2 estimates for boat repairs. The lowest estimate was \$2,800, from Pacific Oceaneering & Design Ltd. (Pacific).
- The respondent said they would cover the cost of repairs, but insisted the repairs would be less expensive at Dean's Marine (Dean's). The applicant called Dean's, and was informed that Dean's could not do the repairs because it required fiberglass work. Dean's recommended Pacific.
- The applicant sent Pacific's estimate to the respondent, plus a second invoice for \$319.82 in repairs from a second mechanic, Triton Mechanical. In a series of text messages, the respondent said they were willing to pay for the repairs, but has not done so.

11. The respondent did not dispute any of these facts, or provide contrary evidence, so I accept the applicant's version of events as accurate.

## **REASONS AND ANALYSIS**

12. It is well-established law that in the sale of used goods, the general rule is "buyer beware". This generally means that a buyer who fails to have the vehicle inspected is subject to the risk that they did not get what they thought they were getting and made a bad bargain.

13. In *Mah Estate v. Lawrence*, 2023 BCSC 411, the court recently found that to be entitled to compensation, a buyer must prove fraud, negligent misrepresentation, breach of contract, breach of warranty, or known latent (hidden) defect. The applicant must show that "buyer beware" does not apply because at least one of those conditions exists.

14. As noted above, the applicant says the respondent misrepresented the boat's condition, by saying it was in perfect working order and needed no repairs.
15. If a seller misrepresents a used item's condition, the buyer may be entitled to compensation for losses arising from that misrepresentation. A misrepresentation is a false statement of fact made during negotiations or in an advertisement that induces a reasonable person to enter into a contract. The seller must have acted negligently or fraudulently in making the misrepresentation, the buyer must have reasonably relied on the misrepresentation to enter into the contract, and the reliance "must have been detrimental in the sense that damages resulted" (see: *Queen v. Cognos Inc.*, [1993] 1 SCR 87 at paragraph 110).
16. I find the applicant has proved misrepresentation in this case. The respondent did not dispute that they told the applicant the boat was in perfect working condition, and did not dispute that the applicant tried to return the boat before having it repaired. The respondent also did not dispute that the applicant discovered mechanical problems with the boat immediately after running it for the first time.
17. In a series of text messages between the applicant and the respondent in September and October 2020, the applicant provided the repair invoices to the respondent, and the respondent agreed to pay, but said they needed more time to get the money. I find this supports the conclusion that the respondent misrepresented the boat's condition at the time of the sale, as they essentially admitted responsibility for the repairs afterwards.
18. There is no suggestion that the respondent knew about the specific problems with the boat, so I find the misrepresentation was negligent and not fraudulent.
19. I find that the mechanics' invoices in evidence show that the applicant paid \$3,119.82 for boat repairs shortly after purchasing it. In a text exchange with the respondent, the applicant admitted that \$400 of this was for a fuel tank upgrade, which was not the respondent's responsibility. So, I find the applicant paid \$2,719.82 in repairs because of the respondent's misrepresentation of the boat's condition.

20. In their submissions, the respondent did not specifically argue they were not responsible for the repairs, but said the amount should be limited to \$379.05 for the cost of the fuel tank, gear lubricant, and two gaskets.
21. I am not persuaded by the respondent's argument, because they provided no evidence to support it. The respondent did not provide a mechanic's estimate or a report from an expert in boat repairs to explain why the work set out in the applicant's invoices was unnecessary, or not related to the August 2020 misrepresentation. Also, I find the fact that the respondent repeatedly sent text messages agreeing to pay for all or a significant portion of the claimed repairs does not support their position that they are not responsible for the full \$2,719.82.
22. For these reasons, I find the applicant is entitled to payment of \$2,719.82 for boat repairs.
23. The *Court Order Interest Act* (COIA) applies to the CRT. I find the applicant is entitled to pre-judgment interest on the \$2,719.82 under the COIA. Calculated from September 23, 2020 (the date of the final repairs) to the date of this decision, this interest equals \$184.87.
24. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. The applicant was successful, so I find he is entitled to reimbursement of \$150 in paid CRT fees. Neither party claims dispute-related expenses.
25. The respondent requests that the CRT order any payment in installments, because they do not have enough income to pay a large sum. I am sympathetic, but I find that since the parties did not reach a settlement during the CRT's facilitation stage, and the applicant has proven his claim, he is legally entitled to his requested order for the full amount owed, plus interest and fees.

## **ORDERS**

26. I order that within 30 days of this decision, the respondent must pay the applicant a total of \$3,054.69, broken down as follows:

- a. \$2,719.82 in damages,
- b. \$184.87 in pre-judgment interest under the COIA, and
- c. \$150 in CRT fees.

27. The applicant is entitled to post-judgment interest under the COIA, as applicable.

28. Under CRTA section 58.1, a validated copy of the CRT's order can be enforced through the BC Provincial Court. Once filed, a CRT order has the same force and effect as an order of the BC Provincial Court.

---

Kate Campbell, Tribunal Member