



# Civil Resolution Tribunal

Date Issued: February 8, 2024

File: SC-2023-003043

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Bredy v. Gosal*, 2024 BCCRT 125

BETWEEN:

GARTH BREDY

**APPLICANT**

AND:

MICHAEL GOSAL and JAY GILL

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Kate Campbell

## INTRODUCTION

1. This dispute is about a used car purchase.

2. The applicant, Garth Bredy, says the respondent, Michael Gosal, advertised a 2005 Chrysler 300c (car) for sale on Facebook, for Michael Gosal's friend, the respondent, Jay Gill. Mr. Bredy purchased the car for \$2,300. Mr. Bredy says the car was advertised as having 123,061 kilometers, but that was false. He says a Carfax report he obtained after the sale shows the odometer had been rolled back. Mr. Bredy says that because of the higher mileage, the car is worth significantly less and requires significant repairs and maintenance. He requests a partial refund of \$2,000.
3. Mr. Gill says Mr. Bredy bought the car "as is", so he is not entitled to any refund. Mr. Gill also says the odometer was not rolled back during the time he owned the car.
4. Mr. Bredy and Mr. Gill are both self-represented in this dispute. Michael Gosal did not file a Dispute Response is therefore technically in default.
5. For the reasons set out below, I dismiss Mr. Bredy's claim.

## **JURISDICTION AND PROCEDURE**

6. 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.
7. 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.
8. 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

9. Is Mr. Bredy entitled to a partial refund for the car?

## EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, Mr. Bredy, as applicant, must prove his claims 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.
11. The parties agree that Mr. Bredy bought the car from Mr. Gill on December 10, 2023, for \$2,300. Photos in evidence show that the car was advertised as having an odometer reading of 123,057 kms at the time of purchase. This is not disputed.
12. Mr. Bredy says the car's odometer was rolled back. He says Mr. Gill committed fraud, because he either rolled it back himself, or knew it was rolled back and failed to disclose that fact. As noted above, Mr. Bredy says this means the car's value was less than he understood at the time of the sale, and he would not have bought it for \$2,300 if he had known the true mileage.
13. In general, the principle of "buyer beware" applies to private sales of used vehicles. This means that a buyer who fails to obtain the vehicle's history report before completing the sale, as occurred here, 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 for a used vehicle that is not in the condition the buyer thought it was, the buyer must prove fraud, non-innocent misrepresentation, breach of contract, breach of warranty, or a known latent (invisible) defect: see *Mah Estate v. Lawrence*, 2023 BCSC 411.
15. In this case, Mr. Bredy alleges fraud. In *Anderson v. British Columbia (Securities Commission)*, 2004 BCCA 7, the court said that because fraud is a very serious allegation, which carries a stigma, it requires evidence that is clear and convincing

proof of the elements of fraud, including the mental element (intention). The four elements of civil fraud, also known as fraudulent misrepresentation, are as follows, as set out by the Supreme Court of Canada in *Bruno Appliance and Furniture, Inc. v. Hryniak*, 2014 SCC 8, at paragraph 21:

- a. A false representation made by the respondent,
- b. Some level of knowledge of the representation's falsehood on the part of the respondent (whether through knowledge or recklessness),
- c. The false representation caused the applicant to act, and
- d. The applicant's actions resulted in a loss.

16. For the following reasons, I find that Mr. Bredy has not provided clear and convincing proof that Mr. Gill or Michael Gosal knowingly and falsely represented the car's mileage. I also find Mr. Bredy has not proved that the respondents' actions resulted in a loss.

### ***Fraud***

17. The Carfax report in evidence confirms that the car's odometer was rolled back sometime between May 3, 2021 and December 16, 2021. The relevant Carfax entries indicate the following chronology:

- May 3, 2021: odometer reading 177,071 kilometers, Midas Chilliwack
- November 4, 2021: Mr. Gill purchased car, ownership transferred (no odometer reading)
- December 16, 2021: odometer reading 111,000 kilometers, Jiffy Lube Aldergrove
- July 14, 2022: odometer reading 116,000 kilometers, Jiffy Lube Aldergrove
- December 10, 2022: odometer reading 122,181 kilometers, Langley Chrysler

- December 10, 2022: Mr. Bredy purchased car, ownership transferred
- June 19, 2023: odometer reading 130,383 kilometers, Ocean Park Ford

18. No party disputes the accuracy of the Carfax report, so I accept it as accurate.

19. Mr. Gill says that when he bought the car on November 4, 2021, the odometer read 111,699 kilometers. He says he did not roll it back and did not know it had been rolled back.

20. The Vehicle Transfer Form Mr. Gill signed when he bought the car appears at first glance to say the odometer reading was 119,699 kilometers. The form is slightly smudged and unclear. Having examined it closely, I find it possible that whoever filled out the handwritten odometer entry intended to write "111,699", and that the ambiguity is due to a handwriting mistake.

21. I find this possibility is consistent with the subsequent Carfax entries, which show odometer readings of 111,000 kilometers in December 2021 and 116,000 kilometers in July 2022.

22. Mr. Gill says it is standard practice at oil change shops to put in only the first three digits of the odometer reading. I place no weight on Mr. Gill's opinion about standard practice in oil change shops, since there is no indication that he has expertise in that business. However, I find it unlikely that the odometer reading would be exactly 111,000 kilometers at one oil change, and exactly 116,000 kilometers at the next, entered by the same oil change shop.

23. Also, while the car's odometer was clearly rolled back sometime after May 3, 2021 (from 177,071), I find it unlikely it was rolled back twice. This would have to be true if the odometer read 119,699 kilometers when Mr. Gill bought the car, and then read exactly 111,000 kilometers at the December 2021 oil change.

24. For these reasons, I accept Mr. Gill's evidence that the car's odometer read 111,699 kilometers when he bought the car. I find Mr. Bredy has not proved that Mr. Gill or

Michael Gosal rolled back the odometer, or knew it had been rolled back. In making this finding, I again note that a claim of fraud requires clear and convincing proof, which I find does not exist here.

### ***Damages***

25. Even if there was proof of fraud, I find Mr. Bredy has not proved that the respondents' actions resulted in a loss.
26. First, Mr. Bredy says that that because of the higher mileage, the car requires significant repairs and maintenance. However, Mr. Bredy provided no evidence of this, such as repair bills, or an expert opinion from a mechanic. Rather, the Carfax report shows that Mr. Bredy drove the car about 7,000 kilometers in the six months after he purchased it, and another 2,700 kilometres in the two months after that. There is no evidence indicating that the car had any significant mechanical problems in that time. So, I find Mr. Bredy's claim of higher repair and maintenance costs is not proved.
27. Second, Mr. Bredy says the car is worth significantly less because of its mileage. However, I find this is also not proven.
28. Mr. Bredy provided copies of Carfax used car value estimates. Mr. Gill agreed that these estimates are accurate, so I place significant weight on them.
29. The estimates say a 2005 Chrysler 300c with 123,000 kilometres is worth between \$5,439 and \$7,200. The same car with 200,000 kilometers is worth between \$2,873 and \$4,210.
30. I accept that these estimates show that in general, that type of car with lower kilometers is worth more. However, Mr. Bredy only paid \$2,300 for the car. That is 25% less than Carfax's lowest possible estimate of the car's value, even with the correct odometer reading.
31. There is no other evidence before me establishing that the car was worth less than the \$2,300 Mr. Bredy paid, even with the rolled back odometer.

32. For these reasons, I dismiss Mr. Bredy's claim.

***Claim against Michael Gosal***

33. As noted above, Michael Gosal did not file a Dispute Response, so is technically in default under the CRT's rules.

34. Generally, when a respondent is in default, the CRT will assume they are liable. However, this is not automatic, and in the circumstances here, I decline to find Michael Gosal liable despite their default status.

35. First, as explained above, I find Mr. Bredy has not proved his claim about fraud and loss in the car's value. Second, Mr. Bredy does not actually say that Michael Gosal committed the alleged fraud, or knew about it. From the evidence, Michael Gosal's only connection to the car's sale was posting the advertisement for Mr. Gill.

36. I find these facts rebut the presumption that a party in default will be found responsible for the claim against them.

37. For all these reasons, I dismiss Mr. Bredy's claim against both respondents.

21. Under CRTA section 49 and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. As Mr. Bredy was unsuccessful, I dismiss his claim for reimbursement of CRT fees. The respondents paid no CRT fees and claim no dispute-related expenses, so I award no reimbursement.

**ORDER**

22. I dismiss Mr. Bredy's claim and this dispute.

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Kate Campbell, Tribunal Member

