



Civil Resolution Tribunal

Date Issued: March 12, 2024

File: SC-2023-005709

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Chowdhury v. Jacobson*, 2024 BCCRT 249

BETWEEN:

PAVEL CHOWDHURY

APPLICANT

AND:

KIRK JACOBSON

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Christopher C. Rivers

INTRODUCTION

1. This dispute is about a used travel trailer.
2. Using Facebook Marketplace, the applicant, Pavel Chowdhury, bought a used 2007 Fleetwood Pioneer travel trailer (trailer) from the respondent, Kirk Jacobson, for

\$9,500. After buying the trailer, the applicant discovered water damage inside one of its walls. The applicant obtained an estimate of \$15,000 to repair the damage. He later sold the trailer for \$1,000.

3. The applicant claims the respondent fraudulently misrepresented the trailer, but also admits he bears some responsibility for not doing due diligence. He claims \$4,250 in damages.
4. The respondent says he did not conceal the water damage. He says he fully disclosed the issues he knew about. The respondent says a purchaser assumes certain risks when they buy a used vehicle, and he depends on the principle of “buyer beware.” He asks me to dismiss the applicant’s claims.
5. The parties are each self-represented.
6. For the reasons that follow, I dismiss the applicant’s claim.

JURISDICTION AND PROCEDURE

7. These are the Civil Resolution Tribunal (CRT)’s formal written reasons. The CRT has jurisdiction over small claims brought under *Civil Resolution Tribunal Act* (CRTA) section 118. 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.
8. CRTA section 39 says the CRT has discretion to decide the hearing’s format, 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.

9. 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 a court of law.
10. Where permitted by CRTA section 118, 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.

ISSUE

11. The issue in this dispute is whether the respondent misrepresented the trailer's condition, and if so, whether he must pay the applicant damages.

EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, the applicant must prove his claims on a balance of probabilities. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.
13. On April 26, 2023, the respondent purchased the trailer from the applicant. The respondent had seen the applicant's ad on Facebook Marketplace for a 2008 trailer listed at \$9,999. The ad says, in part, that the trailer has "normal wear and tear" but that "everything works."
14. The applicant went to view the trailer. He asked the respondent questions about the trailer, including about tape that was present around the roof's perimeter. The respondent says he answered all the questions to the best of his knowledge, including saying the tape was preventative only. The applicant says his spouse specifically asked about leaks and the respondent said he had not experienced any.
15. The respondent says the applicant never asked to have the trailer professionally inspected, which is consistent with the applicant's admission that he did not do his due diligence.

16. The parties negotiated a purchase price of \$9,500 and completed the sale. When filling out sale documents, they realized the trailer was actually a 2007 model, but completed the sale anyway.
17. The applicant says after he bought the trailer, he took it into storage. Shortly after that, he says he discovered a small hole in the wall when he removed a couch to have it reupholstered. The applicant then apparently removed further panels from the wall and ceiling and discovered extensive water damage.
18. The applicant obtained a \$15,000 estimate to repair the water damage, but given the trailer's value, chose not to proceed. The applicant says he sold the trailer for \$1,000 for parts.

The applicable law

19. 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 they discover damage 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.
20. To be entitled to compensation, the buyer must prove fraud, negligent misrepresentation, breach of contract, breach of warranty, or known latent defect.¹ The applicant must show that “buyer beware” does not apply because one of these conditions exists.
21. The applicant specifically argues misrepresentation, but I have also considered whether there is a known latent defect or a breach of implied warranty under the *Sale of Goods Act* (SGA).

¹ See: *Mah Estate v. Lawrence*, 2023 BCSC 411.

Misrepresentation

22. If a seller misrepresents the condition of an item, 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 has the effect of inducing a reasonable person to enter into the contract.
23. Fraudulent misrepresentation occurs when a seller makes a false representation of fact, and the seller knew it was false or recklessly made it without knowing whether it was true or false. Negligent misrepresentation occurs when a seller fails to exercise reasonable care to ensure representations are accurate and not misleading. The misrepresentation must reasonably induce the purchaser to buy the item.
24. Here, the applicant specifically claims the respondent fraudulently misrepresented the trailer’s condition and concealed the water damage, I consider both fraudulent and negligent misrepresentation below.
25. The applicant says the respondent knowingly concealed information about the water damage to the trailer. In support, he says the trailer had been previously repaired. He says certain wall panels had been replaced and provided a photo showing different patterns on the panels.
26. However, I note there is no evidence that proves when any repairs were made or for what purpose. I find the simple fact that the trailer may have had previous repairs does not mean the respondent knew there was water damage behind the wall panels. While the applicant implies it was the respondent who replaced the wall panels to hide water damage, I find this is only speculation.
27. There is no evidence showing the respondent knew about the water damage prior to the sale, so I find applicant’s claim of fraudulent misrepresentation is unproven.
28. I turn to negligent misrepresentation. Did the respondent fail to exercise reasonable care in making the Facebook ad or answering the applicant’s questions? As I set out below, he did not.

29. The Facebook ad describes normal wear and tear to the trailer and notes that everything works. I find the ad reasonably describes the trailer's apparent condition. All photos of the trailer's interior show it is used, but clean and apparently well kept. There is no visible evidence of water damage. The respondent says he had not experienced any leaks himself and there is no evidence to the contrary.
30. The respondent went as far as to contact the trailer's previous owner, who confirmed the tape on the roof was a preventative installation that pre-dated the respondent's ownership. I find the respondent exercised reasonable care in advertising and selling the trailer. So, I find the applicant has not proven negligent misrepresentation.

Latent defect

31. 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. The CRT has previously applied this concept to a private used car sale², which I find is similar to a used trailer sale.
32. It is not clear to me from the evidence whether the couch in front of the hole was affixed to the wall in some way or could be moved. If the couch could be moved, the defect was not latent, as it was discoverable on reasonable inspection.
33. On the other hand, if the couch was a fixture, I accept the moisture damage was a latent defect. This is because the damage was behind the wall panels and the hole by which the applicant discovered the damage could not be seen without removing the couch. However, even if that was the case, there is no evidence that the respondent knew of or concealed the defects. So, I find the applicant is not entitled to damages for latent defect.

² See, eg: *St-Cyr v. Pashak*, 2023 BCCRT 852.

Sale of Goods Act

34. Since the respondent is not a commercial seller of trailers, SGA section 18(c) applies. It says that there are no implied conditions or warranties in the sale of goods except that they be durable for a reasonable period of time.
35. While not binding on me, previous CRT decisions³ have 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. Generally, the older the vehicle, the more likely it will have problems. For an older vehicle, if it is "roadworthy" when purchased, it is likely to be considered reasonably durable, even if problems are discovered shortly afterwards. I find these principles apply here, where the trailer was 16 years old when purchased. The trailer was not so water damaged for the damage to be visible on a visual inspection and it was sufficiently durable to be towed to storage without showing damage.
36. The applicant only discovered the damage when they removed wall panels. While the trailer may have been structurally unsound, as the applicant alleges, there is no evidence that the trailer was not sufficiently durable under the SGA.

Conclusion

37. In summary, I find the respondent has not proven a misrepresentation, latent defect, or breach of warranty. I find that "buyer beware" applies and the applicant is not entitled to any compensation. I dismiss his claim.
38. Under CRTA section 49 and the CRT rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. The applicant is not entitled to reimbursement of their CRT fees or dispute-related expenses, and I dismiss his claims for them. The respondent did not pay any CRT fees and did not claim any dispute-related expenses, so I make no orders for them.

³ See *St-Cyr*, above.

ORDER

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

Christopher C. Rivers, Tribunal Member