



# Civil Resolution Tribunal

Date Issued: March 20, 2024

File: SC-2023-003293

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Grunow v. Molema*, 2024 BCCRT 292

BETWEEN:

ASHTON ANDREW GRUNOW

**APPLICANT**

AND:

AMBER-MARIE MOLEMA

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Andrea Ritchie, Vice Chair

## INTRODUCTION

1. This dispute is about a used car sale. The applicant, Ashton Andrew Grunow, purchased a 2006 Mazda3 from the respondent, Amber-Marie Molema, for \$3,500. The applicant says the car broke down shortly after buying it, and that it will cost \$7,000 to repair. The applicant says the respondent misrepresented the car's condition. He seeks \$3,800. The applicant is represented by a family member, LV.

2. The respondent says the only issue with the car was a wiring issue with the radio that they disclosed to the applicant and his father. The respondent says the applicant and his father test drove the vehicle and bought it as is. They deny owing the applicant any money. The respondent is self-represented.

## **JURISDICTION AND PROCEDURE**

3. 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. In resolving disputes, the CRT must apply principles of law and fairness.
4. Section 39 of the CRTA says that 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.
5. Section 42 of the CRTA says that the CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court.
6. 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.

### ***Style of Cause***

7. In the Dispute Notice, the applicant named the respondent as "Amber Leonard". The respondent's Dispute Response and the parties' submissions and evidence show that the respondent's name is "Amber-Marie Molema". So, I have exercised my discretion

under CRTA section 61 to amend the style of cause to reflect the respondent's correct name.

## **ISSUE**

8. The issue in this dispute is whether the respondent misrepresented the car, and if so, whether they must pay the applicant \$3,800.

## **EVIDENCE AND ANALYSIS**

9. In a civil claim such as this, the applicant must prove his claims on a balance of probabilities (meaning "more likely than not"). While I have read all of the parties' submitted evidence and arguments, I have only addressed those necessary to explain my decision.
10. On March 7, 2023, LV saw the respondent's advertisement for the Mazda3 on Facebook Marketplace. LV says the car was listed for \$3,500 and described as "a great little car with no mechanical issues". The advertisement is not in evidence. On March 10, 2023, the applicant and his father went to the respondent's home and looked at the vehicle. As the applicant did not know how to drive a manual transmission, his father test drove the vehicle, and the applicant says "it seemed to drive nicely", so the applicant paid the respondent \$3,500 and took the car. The applicant did not have the car professionally inspected.
11. The applicant continued to use the car after purchased, but on March 22, 2023 says it sounded funny when he started it up. After driving a short time, the engine was "knocking and banging", so he took it to a mechanic. The applicant says the mechanic told him the "engine was blown and would cost over \$7,000 to replace".
12. 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, just because the vehicle breaks down 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.

13. 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). The applicant must show that “buyer beware” does not apply because one of these conditions exists.
14. The problem for the applicant is that he has provided no evidence to support why the car broke down, or what repairs are necessary. Although he says he took the vehicle to a mechanic, he provided no evidence from the mechanic, no vehicle photos, and no repair estimate. The respondent argues the applicant may have damaged the engine himself as he was using the vehicle to learn to drive a manual transmission. The burden is on the applicant to prove his case. Here, I find he has not proven why the car broke down, whether it was due to a spontaneous mechanical failure, a pre-existing issue, or damage to the engine while he owned the vehicle. So, I find he cannot prove the respondent misrepresented the vehicle’s condition or otherwise breached the parties’ contract of sale.
15. Although not specifically addressed by the parties, I also considered whether the *Sale of Goods Act* (SGA) applies. Section 18(c) of the SGA says that there is an implied warranty that goods sold will be durable for a reasonable period of time, considering their normal use. The other warranties in section 18 of the SGA do not apply to private car sales.
16. 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 17 years old.

17. The applicant was undisputedly able to drive the car home and use it over the next nearly 2 weeks. I find the vehicle was durable at the time of sale. So, the respondent did not breach section 18 of the SGA.

18. Given all the above, I dismiss the applicant's claims.

19. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. However, neither party paid tribunal fees or claimed dispute-related expenses.

## **ORDER**

20. The applicant's claims, and this dispute, are dismissed.

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Andrea Ritchie, Vice Chair