Civil Resolution Tribunal

Date Issued: March 28, 2024

File: SC-2023-003568

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Roman v. Schulz*, 2024 BCCRT 327

B E T W E E N :

MACLEAN ROMAN

APPLICANT

A N D :

NATHAN SCHULZ

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Christopher C. Rivers

INTRODUCTION

1. This dispute is about a used car sale.

2. The applicant, Maclean Roman, bought a used 2005 Mazda 3 from the respondent, Nathan Schulz, for $3,000 through Facebook Marketplace. Three days after buying

the car, the applicant took it to a mechanic. The mechanic initially estimated $4,000 in repairs to make the car roadworthy, but after beginning work, determined it was beyond repair.

3. The applicant says the respondent sold him the car under false pretenses. He says the respondent told him the car had a squeaky belt but was otherwise "fantastic." He asks for a refund of the $3,000 purchase price.

4. The respondent says they disclosed the problems they knew about, including the belt and some rear-panel rust, but did not know about any other problems. The respondent says the applicant had permission to have the car inspected by a mechanic but chose not to. The respondent depends upon the principle of "buyer beware" and asks me to dismiss the claim.

5. The parties are each self-represented.

6. For the reasons that follow, I mostly allow 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 court.

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.

ISSUES

11. The issues in this dispute are:

    a. Did the respondent breach the implied warranty of durability under section 18(c) of the *Sale of Goods Act* (SGA)?

    b. If so, what is the appropriate remedy?

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 March 22, 2023, the applicant texted the respondent about their used Mazda 3 after seeing an ad on Facebook Marketplace. While it was not in the ad, the respondent said the car had been driven 195,620 km. The parties set up a time the following day for the applicant to view and test drive the car.

14. The applicant attended and test drove the car. It is undisputed that the respondent told the applicant the car's serpentine belt would make a squeaking sound when it was wet out but was not aware of any other problems. The applicant agreed to pay the car's list price of $3,000.

15. On March 25, 2023, the applicant took the car to a mechanic. The mechanic estimated approximately $4,000 for repairs. The applicant told the mechanic to proceed with repairs. He then texted the respondent to request that they share the cost of repairs, but the respondent said they could not help and that there was nothing they would do to rectify the problem. The applicant filed a claim with the CRT and claimed a portion of the repair costs.

16. The mechanic later told the applicant the car could not be repaired and was only good for scrap metal. The applicant says he received $500 in value from a dealer when he traded the car in and bought a different used vehicle.

17. The applicant amended his CRT claim to request a refund of the entire purchase amount.

18. 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 the vehicle breaks down shortly after the sale. Rather, a buyer who fails to have the vehicle inspected before purchasing, 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.

19. To be entitled to compensation, the buyer must prove fraud, negligent misrepresentation, breach of contract, breach of warranty, or known latent defect.[1] So, the applicant must show that "buyer beware" does not apply because one of these conditions exists. I find the applicant argues misrepresentation, known latent defect, and breach of implied warranty under the SGA. Since I can resolve this matter under the SGA, I have not considered the other potential bases for his claim.

Sale of Goods Act

20. SGA section 18 sets out 3 warranties implied into contracts for the sale of goods. I find only the implied warranty of durability in section 18(c) applies to this private used

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

car sale. That section warranties that goods will be durable for a reasonable period with normal use, considering the sale's context and the surrounding circumstances.[2] In determining whether they are durable for a reasonable period with normal use, I must consider all surrounding facts.

21. In *Sugiyama v. Pilsen*, 2006 BCPC 265, the court applied the SGA section 18(c) 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. Here, the car was 18 years old at purchase and had been driven over 195,000 km.

22. Only 3 days after purchase, the applicant drove the car to a mechanic, who determined it was not roadworthy and could not be made roadworthy through repair. The mechanic's estimate shows the car had 195,973 km when the applicant brought it in, meaning the applicant had driven it approximately 350 km since purchase.

23. The auto service manager, DR, who inspected the car, provided the initial repair estimate and later determined the car was beyond repair, provided expert evidence. In a November 7, 2023 letter, they introduced themselves as the shop's auto service manager, listed the car's problems, and provided their conclusions about its roadworthiness.

24. DR wrote that when they initially assessed the car for repairs on March 25, they estimated $4,000 to make the vehicle roadworthy, which the applicant approved. DR then wrote that once they began work, they found a number of problems that could not be fixed, and that the car could not be made safe to drive.

25. DR specifically noted that the upper rear shock mounts were completely rusted out and the surrounding body was so rusted it could be "pulled apart." They also wrote that the rear coil springs were broken and falling out, the unibody around the rear

[2] See: While not binding on me, see, eg: *Drover v. West Country Auto Sales Inc.*, 2004 BCPC 454

fender had separated and was coming apart, and that the rear control arm bushing was totally worn out and would not come apart due to the autobody's condition. DR concluded that they could not work on the car, as it could not be made safe to drive, and could not pass a private vehicle inspection. They concluded the car was suitable for nothing but scrap metal.

26. These issues are not the result of one or more car components suddenly giving out, as may occur with an older used car. Instead, I find they prove the car was not in a roadworthy condition when sold. I find it persuasive that the applicant was prepared to pay for repairs to make the car roadworthy and only stopped when the mechanic told him it could not be done. I am also persuaded by the mechanic's conclusion that the car was suitable only for scrap.

27. For the SGA section 18(c) implied warranty to have any effect in a used car sale, I find roadworthiness cannot be strictly limited to being able to drive the car away from the place of sale. While that is a factor that weighs heavily in the seller's favour, it is not absolute, and I still must consider the surrounding circumstances.

28. Here, given the limited number of days and kilometers driven before the applicant discovered the extensive damage to the car, I find he has proven it was not roadworthy when purchased. While the applicant was able to drive it to the mechanic without the vehicle breaking down, the mechanic's determination that the car was suitable only for scrap shows it was not reasonably durable and was unsafe at the time of sale.

29. While not binding on me, I note the CRT reached a similar decision in *Austin v. Godin*, 2021 BCCRT 415. In that case, as here, the purchaser discovered the extensive damage, including rust that made the car unsafe to drive, only 3 days after the car's purchase.

30. So, I find the applicant has established a breach of warranty under SGA section 18(c).

Remedy

31. The normal remedy for breach of contract is damages. Damages for breach of contract are meant to put the innocent person in the same position as if the contract had been performed.[3]

32. As noted earlier, the applicant says he received $500 in value for the car when he traded it in. The respondent did not indicate they wanted the car back and they did not dispute the trade-in value. So, I find the car's scrap value was $500.

33. The applicant requests a refund of $3,000. Given all these circumstances, I order the respondent to pay the applicant $2,500 as damages for breach of contract.

34. The *Court Order Interest Act* applies to the CRT. The applicant is entitled to pre-judgment interest on the damages from March 25, 2023 the date he contacted the seller about a refund, to the date of this decision. This equals $129.69.

35. 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. I see no reason in this case not to follow that general rule. Since the I find the applicant was substantially successful, he is entitled to reimbursement of $125 in CRT fees. The applicant did not claim any dispute-related expenses.

ORDERS

36. Within 14 days of the date of this order, I order the respondent to pay the applicant a total of $2,754.69, broken down as follows:

    a. $2,500 in damages,

    b. $129.69 in pre-judgment interest under the *Court Order Interest Act*, and

[3] See: *Water's Edge Resort v. Canada (Attorney General),* 2015 BCCA 319 at paragraph 39.

c. $125 in CRT fees.

37. The applicant is entitled to post-judgment interest, as applicable.

38. This is a validated decision and order. Under CRTA section 58.1, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Christopher C. Rivers, Tribunal Member