



Civil Resolution Tribunal

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File: SC-2023-006389

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Mathiesen v. Sea Power Marine Centre Ltd.*, 2024 BCCRT 367

BETWEEN:

ROSE MARIE MATHIESEN and OISTEIN JOHN MATHIESEN

APPLICANTS

AND:

SEA POWER MARINE CENTRE LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr, Vice Chair

INTRODUCTION

1. Rose Marie Mathiesen and Oistein John Mathiesen bought an outboard motor from Sea Power Marine Centre Ltd. The Mathiesens allege that Sea Power misrepresented the motor's age when they bought it. Specifically, they say that Sea Power told them the motor was new when it was actually five years old. They initially asked for a full refund of the \$3,584 they paid for the motor, or alternatively, an order

that Sea Power exchange it for a new motor. In submissions, they clarified that they only wanted compensation. Rose Mathiesen represents the applicants.

2. Sea Power says that the motor was manufactured in 2016, but was a display model. So, even though Sea Power sold it to the Mathiesens in 2021, it was still “new” in that it had zero hours of use. Sea Power says it discounted the motor’s price accordingly. Sea Power asks me to dismiss the Mathiesens’ claims. It is represented by its owner.

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 says 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. 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. In some respects, both sides to this dispute question the credibility, or truthfulness, of the other. However, in the circumstances of this dispute, it is not necessary for me to resolve the credibility issues that the parties raised. There is no other compelling reason for an oral hearing, especially considering the CRT’s mandate to provide proportional and speedy dispute resolution. I therefore decided to hear this dispute through written submissions.
5. CRTA section 42 says the CRT may accept as evidence any information that it considers relevant, necessary, and appropriate, whether or not the information would be admissible in court.

ISSUES

6. The issues in this dispute are:

- a. Did Sea Power misrepresent the motor or breach the parties' contract?
- b. If so, what remedy is appropriate?

EVIDENCE AND ANALYSIS

7. In a civil claim such as this, the Mathiesens must prove their claims on a balance of probabilities. This means more likely than not. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
8. The Mathiesens purchased the motor on August 16, 2021, over the phone. They say that Sea Power's salesperson told them it was "new in the box" and came with a 3-year warranty. The August 16, 2021 invoice lists the motor's model and serial number, but not its model year. The Mathiesens say it "looked brand new" when they received it.
9. The parties dispute whether Sea Power told the Mathiesens that the motor was a 2016 model. They also dispute whether Sea Power gave the Mathiesens a discount to reflect this. Given my conclusions, below, I find it unnecessary to decide these issues.
10. The Mathiesens used the motor without issue until the spring of 2023. When they returned to BC from their winter residence, they noticed the motor's idle was too high, making it unsafe when approaching their dock. They contacted Sea Power, who said it would be several weeks before it could inspect the motor. So, they took it to a different marine mechanic, Allen Marine.
11. On May 31, 2023, Allen Marine provided an invoice about its assessment of the motor. The invoice said that the throttle was stuck almost fully open. Allen Marine was able to get the motor idling normally again, but noted that it was unclear why the throttle had seized in the first place. Allen Marine said that if the problem returned, the Mathiesens would need to replace the whole throttle body assembly.

12. There were two things Allen Marine put in its invoice that troubled the Mathiesens. First, the invoice said it was a 2016 motor. Second, the invoice said that the “shift & throttle linkages do not appear to be in factory condition”. Together, the Mathiesens say these notations prove that the motor was not only older than advertised, but also previously used or altered.
13. In early June, the Mathiesens contacted Mercury about the warranty. They say this is when they learned the motor had never been registered. Ultimately, despite the delay, Mercury registered a warranty. Allen Marine permanently repaired the throttle issue under Mercury’s warranty in July.
14. The Mathiesens allege that Sea Power misrepresented the motor by calling it “new”. They say this was untrue in three ways. First, they say someone modified it by removing factory parts. Second, they say it may have been previously used. Finally, they say it was five years old.
15. The Mathiesens’ arguments raise both negligent and fraudulent misrepresentation. These two legal doctrines have different tests, but they both require the Mathiesens to prove that Sea Power made a representation that was untrue, inaccurate, misleading, or false.
16. First, did someone modify the motor before the sale? If so, I agree with the Mathiesens that the motor could not be considered “new”. However, their evidence for this is the first Allen Marine invoice. The Mathiesens take this to be conclusive proof that someone had modified or tampered with the motor before they bought it. However, the second Allen Marine invoice, after the work was done, seems to contradict the first. It says that the “engine does not look to have been altered but shift linkage was not set correctly”. The Mathiesens do not explain this contradiction. On balance, I find it unproven that the motor was modified before the Mathiesens purchased it.
17. Was the motor previously used? The Mathiesens say there is no way to know whether the motor was previously used and returned, or was a “parts motor”. However, the

Mathiesens said in a 2023 email that when they took it to Allen Marine they had used it for about 40 hours. Allen Marine's second invoice said the motor had run for 33 hours. So, I find that it was likely unused and had no previous owner when they bought it.

18. Was the motor not "new" because it was an older model? The Mathiesens strongly believe that a "new" motor must both be the current (or, at least, a recent) model year. They argue that a 2016 motor could not reasonably be called "new" if it is sold in 2021.
19. I find that the word "new", on its own, is ambiguous in the context of the sale of an item. I agree with the Mathiesens that a "new" item cannot have been previously used. However, I do not agree with the Mathiesens that a "new" item must be recently manufactured. For some items (like a car), most people consider the model year to be important, while in other contexts (like a wheelbarrow), it is unlikely that anyone would care.
20. It is common knowledge that the model year of cars is important to their value. It is not common knowledge whether this is also true of outboard motors. There is no evidence before me about whether outboard motors change annually such that each model year is different. The Mathiesens provided screenshots showing that Sea Power's website does not mention outboard motors' model years. This is also true of its invoice to the Mathiesens. This suggests that the year is not a critical detail to most purchasers. The Mathiesens say it is possible that certain parts deteriorated over the years, but there is no evidence to support this assertion. I find this argument speculative.
21. So, while I accept that the model year was important to the Mathiesens, the evidence does not establish that the model year was so central to a motor's value that it that it was untrue, misleading, inaccurate, or false for Sea Power to call it new.
22. The Mathiesens also say that Sea Power told them it would register the motor for a warranty but never did. I find that this is not a claim about a misrepresentation but a

claim about whether Sea Power fulfilled the terms of the parties' contract. The problem for the Mathiesens is that if Sea Power had agreed to register the motor, there is no longer anything to remedy. The Mathiesens got the three-year warranty from Mercury and were not out-of-pocket for the throttle repair. So, even if Sea Power breached the contract about the warranty, the Mathiesens did not suffer a loss.

23. I therefore find that the Mathiesens have not proved that Sea Power misrepresented the motor or breached the parties' contract. I therefore dismiss their claims.

24. Under CRTA section 49 and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. The Mathiesens were unsuccessful, so I dismiss their claim for CRT fees and dispute-related expenses. Sea Power did not claim any dispute-related expenses or pay any CRT fees.

ORDER

25. I dismiss the Mathiesens' claims, and this dispute.

Eric Regehr, Vice Chair