



Civil Resolution Tribunal

Date Issued: January 18, 2024

File: SC-2022-009385

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Boelke v. Meredith*, 2024 BCCRT 51

B E T W E E N :

JENNY MARLENE BOELKE

APPLICANT

A N D :

NELLIE MAE MEREDITH

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about the private sale of a used 2005 Dodge Grand Caravan. The applicant, Jenny Marlene Boelke, purchased the van from the respondent, Nellie Mae Meredith. Ms. Boelke says the van was not safe or roadworthy at the time of purchase. She claims \$2,500 as compensation.

2. Mrs. Meredith denies liability. She says that the van was sold “as is, where is”. She submits that Ms. Boelke declined offers to test drive or inspect the clearly “well loved” van before purchasing it. She says that in these circumstances, Ms. Boelke cannot claim compensation for its condition after purchase.
3. Ms. Boelke represents herself. A family member represents Mrs. Meredith.
4. For the reasons that follow, I dismiss Ms. Boelke’s claim.

JURISDICTION AND PROCEDURE

5. 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.
6. Section 39 of the CRTA says 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.
7. Section 42 of the CRTA 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.
8. 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.

ISSUES

9. The issues in this dispute are as follows:
 - a. Did Mrs. Meredith breach the parties' contract or misrepresent the van?
 - b. Are any remedies appropriate?

BACKGROUND, EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, Ms. Boelke as the applicant must prove her claims on a balance of probabilities. This means more likely than not. 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.
11. Mrs. Meredith advertised her van online in an October 8, 2022 Facebook ad. The ad said the van was from 2005 and had a mileage of over 250,000 kilometers. It noted the van's body had rust. The ad also said the van "runs very good" and came with a full set of winter tires and new summer tires. The ad stated a price of \$3,500, or best offer.
12. On October 11, 2022, Ms. Boelke met Mrs. Meredith to view the van. Mrs. Meredith's friend or acquaintance, BZ, attended. BZ texted their recollection of events in April 2022 to Mrs. Meredith at her request. BZ provides the following undisputed account. Ms. Boelke said she planned to use the van for business purposes. Mrs. Meredith offered the keys for a test drive. Ms. Boelke declined. She offered only \$2,500 because of the visible rust. Mrs. Meredith agreed to the price. The parties also agreed that Ms. Boelke could pay for the van in instalments.
13. A receipt shows that Ms. Boelke paid \$500 on October 12 and \$2,000 on October 14, 2022. Mrs. Meredith wrote that the van was "paid in full" and signed the receipt.
14. The parties disagree on whether the van was sold on an "as is where is" basis. This phrase is commonly used to show that a vehicle or other item is sold without warranties. The online ad, BZ's account, and the receipt all omit mentioning that the

van was sold “as is where is”. Given the lack of evidence, and Ms. Boelke’s denial, I find it unproven that Mrs. Meredith sold the van without any warranties. I will return to this point briefly below.

15. On December 22, 2022, Ms. Boelke hired a mechanic to inspect the van. In a work detail document, the mechanic wrote the following. The van required repairs to make it roadworthy. Its front end also required a “complete overhaul to ensure safety”. The mechanic noted the necessary repairs would “outweigh the value of the unit”.
16. Ms. Meredith says the mechanic did not actually state that the van was unsafe to drive. I respectfully disagree. I find the only reasonable interpretation of the mechanic’s comments is that the van was unsafe, as it required further repairs to “ensure safety”. Ultimately, nothing turns on this.

Did Mrs. Meredith breach the parties’ contract or misrepresent the van?

17. I find the parties entered into a private sale which was subject to section 18(c) of the Sale of Goods Act (SGA). Section 18(c) requires that the goods sold be durable for a reasonable period, considering how the goods would be normally used and the sale’s surrounding circumstances. The other implied warranties in section 18 of the SGA do not apply to private sales. In general, sales of used vehicles are governed by the principle of “buyer beware”, but the implied warranty of SGA section 18(c) is an exception to this rule. See, for example, my decision of *Bourke v. Holbek*, 2021 BCCRT 515.
18. A seller of used goods can exclude the implied warranty of SGA section 18(c) but the seller must do so in clear and unambiguous language. See *Conners v. McMillan*, 2020 BCPC 230 at paragraphs 63 to 65. I find it unproven that the parties agreed to exclude the implied warrant of SGA section 18(c). As noted above, I have found this was not an “as is where is” sale. There is no other clear and unambiguous language present in evidence, as described in *Conners*, that would have the same effect. So, I must next consider whether the van was durable for a reasonable period of time, as required by section 18(c).

19. In *Sugiyama v. Pilsen*, 2006 BCPC 265 at paragraph 45, the court discussed some of the principles applicable in the sale of a used vehicle. The court noted that the seller is not a guarantor of the car's future performance. The buyer knows that some problems will inevitably occur, and the greater the car's age and mileage, the more likely it is that something will break down. The court also outlined factors affecting the extent of any implied warranty for a used car. In addition to age and mileage, these include price, the vehicle's prior and intended use, and the reason for the breakdown.
20. In *Wanless v. Graham*, 2009 BCSC 579, the court said that buyers of used cars, especially older models with substantial mileage, must expect that defects in such cars will come to light at any time.
21. The van in this dispute was about 18 years old at the time of sale. It had an extremely high mileage of over 250,000 kilometers. It sold for a relatively low cash value of \$2,500. It also had visible rust at the time of sale, shown in both the ad and several photos in evidence. I find the reasoning in *Wanless* applicable. So, I find that the implied warranty of durability was that the vehicle was safely drivable at the time of sale but could break down at any time thereafter.
22. The evidence shows that Ms. Boelke hired a mechanic to inspect the van in late December 2022. I am satisfied that the mechanic determined that the van was unsafe at the time of this inspection. Ms. Boelke essentially argues that I should therefore infer the van was unsafe to drive approximately 2 months earlier, at the time of sale. However, for the reasons that follow, I decline to do so.
23. I find the issue of whether the van was safe to drive at the time of purchase requires expert evidence. This is because I find that assessing the van's safety is beyond ordinary knowledge and experience and would require expert evidence from someone in the profession of assessing such vehicles. See *Bergen v. Guliker*, 2015 BCCA 283.
24. Here, the mechanic did not provide their identity or state their qualifications in their report. Mrs. Meredith referred to the author as a mechanic and I have used this term,

but the author did not do so. So, I find the report is not expert evidence as the author did not state their qualifications as required by CRT rule 8.3(2).

25. I considered waiving this requirement under CRT rule 1.2(2). However, I find that even this would not assist Ms. Boelke. This is because the mechanic did not say whether the van was unsafe to drive at the time of purchase. This is the key issue in this dispute, and the evidence does not address it.
26. Ms. Boelke submits that the mechanic's name is MW and that MW had warned Mrs. Meredith against reselling the van. Ms. Boelke also said that MW told her other parts of the van were unsafe. I find these submissions are hearsay. While hearsay is admissible in CRT proceedings, I do not place any significant weight upon it here. This is because the hearsay is about a central issue in this dispute. See, for example, *The Owners, Strata Plan VR 824 v. Malbanan*, 2023 BCCRT 166, at paragraph 14.
27. Given the lack of evidence, and my earlier conclusion that the van could have broken down or ceased to be roadworthy at any time after the sale, I find Ms. Boelke's claim for breach of contract unproven.
28. I also considered whether Mrs. Meredith misrepresented the van as roadworthy and safe to drive. However, I find the claim for misrepresentation unproven as well for largely the same reasons outlined above.
29. To show negligent misrepresentation, Ms. Boelke must establish the following: 1) there must be a duty of care, 2) the representation must be untrue, inaccurate, or misleading, 3) Mrs. Meredith must have breached the standard of care in making the misrepresentation, 4) Ms. Boelke must have reasonably relied on the misrepresentation, and 5) the reliance resulted in damages. The applicable standard of care in a used car sale like this one is to take "reasonable care" to not mislead the buyer about the vehicle's condition: *Daniel v. Watkinson*, 2019 BCPC 319 at paragraphs 51 and 57.
30. To show fraudulent misrepresentation, Ms. Boelke must establish the following: 1) Mrs. Meredith made a representation of fact to Ms. Boelke, 2) the representation was

false, 3) Mrs. Meredith knew that the representation was false or was reckless about whether it was true or false, 4) Mrs. Meredith intended for Ms. Boelke act on the representation, and 5) Ms. Boelke was induced to enter into the contract in reliance upon the false representation and suffered a detriment. See *Ban v. Keleher*, 2017 BCSC 1132 at paragraph 16.

31. As noted earlier, Mrs. Meredith said in her ad that the van “runs very good”. Given the vague language of this representation, I find it was limited to claiming that the van was roadworthy and safe to drive at the time of sale. I have already found it unproven that this was not the case. I also note that Mrs. Meredith’s uncontradicted submission is that she drove the van without issue until she sold it to Ms. Boelke. I find this consistent with Mrs. Meredith’s submission that she sincerely believed the van was safe to drive at the time of sale.
32. For all those reasons, I find Mrs. Meredith did not misrepresent the van. So, I dismiss Ms. Boelke’s claims for misrepresentation as well.
33. Under section 49 of the CRTA and 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. I dismiss Ms. Boelke’s claim for reimbursement of CRT fees. The parties did not claim any specific dispute-related expenses.

ORDERS

34. I dismiss Ms. Boelke’s claims and this dispute.

David Jiang, Tribunal Member