



Civil Resolution Tribunal

Date Issued: April 18, 2024

File: SC-2023-003109

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Loyla v. Kennon*, 2024 BCCRT 368

B E T W E E N :

PALVINDER LOYLA

APPLICANT

A N D :

CRAIG KENNON

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. This dispute is about a used car purchase.

2. The applicant, Palvinder Loyla, says they¹ bought a 1990 Chrysler LeBaron (car) from the respondent, Craig Kennon, for \$4,750. Mr. Loyla says the car was advertised as being in excellent “collector” condition, but in fact had many mechanical and cosmetic problems, so is not eligible for collector status through the Insurance Corporation of British Columbia (ICBC). Mr. Loyla also says the odometer does not work, so the advertised kilometers were false. As remedy, Mr. Loyla requests a refund of \$2,420.
3. Mr. Kennon says someone else, not Mr. Loyla, bought the car. He also says the car was sold as-is, with no warranty, but in any event was in good condition. Mr. Kennon says he had the car approved for ICBC collector status one year before the sale, but it is the buyer’s responsibility to re-apply for collector status after every sale.
4. The parties are each self-represented.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims under section 118 of the *Civil Resolution Tribunal Act* (CRTA). 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.
6. 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. As the CRT’s mandate includes proportional and speedy dispute resolution, I find I can fairly hear this dispute through written submissions.

¹ The CRT has a policy to use inclusive language that does not make assumptions about a person’s gender. As part of that commitment, the CRT asks parties to identify their pronouns and titles to ensure that the CRT addresses them respectfully. Mr. Loyla indicated their pronouns are “they/them” so that is what I have used in this decision.

7. 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.

ISSUE

8. Is the applicant entitled to a \$2,420 refund for the car?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, Mr. Loyla, as the applicant, must prove their claims on a balance of probabilities. I have read the parties' submitted evidence and arguments, but refer only to what I find relevant to provide context for my decision.
10. Mr. Kennon did not provide evidence in this dispute, although invited to do so.
11. As noted above, Mr. Kennon says someone else, not Mr. Loyla, bought the car. Mr. Loyla says they bought the car "sight unseen", "via 2 representatives." Mr. Loyla also provided a copy of the completed ICBC Transfer/Tax Form. That form was signed by both Mr. Loyla and Mr. Kennon, and shows that Mr. Kennon sold the car to Mr. Loyla on June 11, 2022. Based on that form, I find that Mr. Kennon sold the car to Mr. Loyla.
12. Mr. Loyla's main argument is that the car's odometer does not work, so the car's value is less than the \$4,750 they paid. Based on dated photos provided in evidence showing identical odometer readings in May 2023 and January 2024, and essentially the same odometer reading on the June 2022 ICBC Transfer/Tax Form, I accept that the odometer does not work. Mr. Kennon says he did not know the odometer did not work.
13. In general, the principle of "buyer beware" applies to private sales of used vehicles. To be entitled to compensation for a used vehicle that is not in the condition the buyer thought it was, the buyer must prove fraud, non-innocent misrepresentation, breach of contract, breach of warranty, or a known latent (invisible) defect: see *Mah Estate v. Lawrence*, 2023 BCSC 411.

14. In this case, Mr. Loyla says the odometer did not work from the time they bought the car, and they discovered this after they had the car for several weeks. However, I find that a non-working odometer is a patent (visible) defect, rather than a latent defect. In other words, I find that it would have been possible to determine that the odometer did not work before purchasing the car, by test-driving it for a few kilometers and noting the odometer readings. Alternatively, as Mr. Loyla points out, the Carfax report from June 10, 2022 shows essentially the same odometer reading in June 2019 as in June 2022. For these reasons, I find the broken odometer was a patent defect, easily discoverable before the car's purchase. Because of this, I find the buyer beware principle applies, and Mr. Loyla is not entitled to any refund due to the broken odometer or incorrect kilometer readings.
15. Mr. Loyla also argues that the car has many mechanical and cosmetic problems, including non-working motorized light flaps, broken gear shifter housing, broken rear bumper, non-working emergency brake, rusted and defective muffler, leaking transmission fluid, and paint blemishes.
16. Mr. Kennon says the car was not leaking and was in running condition when he sold it in June 2022. Mr. Kennon argues that someone drove the car for a year before filing this CRT dispute on May 4, 2023, so some of the leaks and mechanical problems likely arose during that time, which is to be expected since the car is over 29 years old.
17. I find that the problems Mr. Loyla alleges are all patent defects, which could easily have been identified based on a visual and mechanical inspection before completing the sale. There is no suggestion before me, and no report from a mechanic or other expert, indicating that the problems could not have been easily discovered during a pre-purchase inspection. I also note that the applicant does not specifically say when these issues arose.
18. Section 18(c) of the *Sale of Goods Act* (SGA) applies to private sales of used cars. It says a car must be durable for a reasonable period of normal use, and considering all the surrounding circumstances of the sale. 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.

19. In this case, the car was 29 years old at the time of purchase. There is also no evidence before me that the car has ever been unroadworthy, or that it has broken down. So, I find the SGA section 18(c) warranty was not breached.
20. Mr. Loyla also says that after buying the car, he obtained the Carfax report, which shows the car was "rebuilt" in 2020. Mr. Loyla says they asked Mr. Kennon about this after the sale, and Mr. Kennon said he was unaware of that status. I find nothing turns on this because Mr. Loyla has not proved that Mr. Kennon misrepresented his knowledge about the car's status. Also, the Carfax report was available before the purchase, so Mr. Loyla could have accessed that information before buying the car.
21. For these reasons, I find Mr. Loyla is not entitled to any refund based on the car's condition.
22. Mr. Loyla's final argument is that the car is not eligible for ICBC collector status. However, I find Mr. Loyla has not proved that Mr. Kennon promised that the car was eligible for collector status. There is no written contract setting out such a promise, and Mr. Loyla did not provide a copy of an advertisement setting out that promise. Also, as Mr. Kennon argues, there is no evidence that Mr. Loyla ever applied for collector status for the car, so I find it unproven that the car is ineligible.
23. Finally, the ICBC document Mr. Loyla provided in evidence says that to qualify for collector status, the car must have no damage, with no paint blemishes. As explained above, Mr. Loyla could easily have discovered the paint blemishes before buying the car, if he had inspected it or paid someone to do so. Also, the ICBC document says a collector car must meet the original manufacturer specifications. Mr. Loyla says the car has an MP3 player and a spoiler, which are not original, and so the car is not

eligible for collector status. Again, I find Mr. Loyla could easily have discovered this before buying the car, as these modifications are obvious.

24. So, I find Mr. Loyla is not entitled to a refund based on collector status, or for any other reasons.
25. 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. As Mr. Loyla was unsuccessful, I dismiss their claim for reimbursement of CRT fees. Mr. Kennon is the successful party. He paid no CRT fees and claims no dispute-related expenses, so I award no reimbursement.

ORDER

24. I dismiss Mr. Loyla's claims and this dispute.

Kate Campbell, Tribunal Member