

SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: *Macauley v. Cars-R-Us Limited*, 2022 NSSM 52

Date: 20220816

Docket: SCCH 514831

Registry: Halifax

Between:

Alicia Macauley and Chris Macauley

Claimants

- and -

Cars-R-Us Limited

Defendant

REASONS FOR DECISION AND ORDER

Adjudicator: Eric K. Slone

Heard: August 12, 2022 via zoom in Halifax, Nova Scotia

Appearances: For the Claimants, self-represented

For the Defendant, Tony Forgeron

BY THE COURT:

[1] The Claimants bought a used black 2019 Honda Civic from the Defendant in March 2021. They made known their requirements that the vehicle be relatively new, low mileage, and that it had not been in an accident. This vehicle appeared to meet those criteria and in general, they are happy with it.

[2] Before agreeing to buy it, they were assured by Tony Forgeron that the vehicle had a clear Carfax report which he regarded as confirming that the car had not been in an accident. He supplied the Claimants with a copy of that report. There was nothing on a cursory inspection of the vehicle that caused the Claimants to believe that this was not true.

[3] Carfax is a reputable company that compiles information about accidents from insurance claims. For a small fee, anyone can obtain a report on the accident history, if any, associated with a vehicle information number.

[4] As Mr. Forgeron concedes, Carfax would have no way of knowing about accidents that were never reported to an insurance company. For example, someone might have a minor accident that they preferred to have repaired privately, in which case Carfax would be none the wiser.

[5] Still, a Carfax report might be the only way that a dealer such as the Defendant can know anything about a car's history. Some repairs resulting from an accident might be detectable, while others might be near impossible to detect.

[6] And what is an accident? While the answer might be thought to be obvious, when prospective buyers seek assurance that their car has not been in an accident, does that question include minor scrapes or damage caused by a caustic substance, that would have no impact on a vehicle's structural integrity?

[7] In the situation here, there was nothing obvious indicating that the subject vehicle had been in any type of accident, or incident. It was not until six months later that the Claimants took the vehicle into a car detailing facility that does diamond coating. This is a fairly expensive process that applies a specialized ceramic finish to enhance and protect the car's paint job, which is said to protect against the development of rust and other damage. The Claimants stated that it was their intention all along to take this step.

[8] When the diamond coating facility took a close look at the subject vehicle, they reported that an area on the driver's side rear panel was not painted fully or

properly and was not suitable for diamond coating. They suggested that the vehicle had probably been in some form of accident that required repainting that area, but that the paint job was imperfect.

[9] The Claimants reported this to the Defendant, who directed them to speak to Portland Honda which had been the source of the vehicle. The Claimants received no satisfaction and so brought this claim.

[10] The vehicle was taken to the auto body specialist Maaco who stripped down and repainted the affected areas at a cost of \$1,033.16. It is this amount that the Claimants seek to recover in this claim.

[11] The Claimants rely on the Defendant's verbal statements to the effect that the car was accident free, which they say turns out not to have been true. Mr. Forgeron for the Defendant says that he is only in a position to give such assurances based on Carfax reports, although I observe that it would be possible in some cases to have additional knowledge. For example, on the Defendant's standard purchase agreement there is a question asked of purchasers who are trading in a vehicle, whether that vehicle was damaged in an accident.

[12] The Claimants argue that the Defendant ought to have known, and would have known about the damage, had they closely inspected the vehicle in their own detailing shop. They say that when the vehicle was in the diamond coating shop, with specialized lighting on it, they were able to observe a slight discolouration.

[13] The Purchase Agreement for this vehicle does not warrant that it has never been in an accident.

[14] Based on the evidence presented, this is what I find:

- a. The Defendant had no actual knowledge that this vehicle had ever been in an accident, or that it had ever had any repairs to the paint job.
- b. It was reasonable for the Defendant to rely on a Carfax report to make the representation that the vehicle was accident free. Dealers who handle a large volume of used vehicles cannot be expected to possess intimate knowledge of everything that has happened to the vehicle necessitating a repair.
- c. The concern that most people have when buying a used vehicle is that

here have been no accidents that might affect the structural integrity of the vehicle. This is the concern that responsible dealers address with a Carfax report.

- d. The evidence is quite uncertain as to what actually caused this vehicle to have the imperfect paint job that made it unsuitable for diamond coating. Clearly there had been some repainting done of a section of the car. But no witness was called who could directly testify, or give an expert opinion, about the reason for the paint job. Just by way of example, it could have been someone deliberately “keying” the car in an act of petty vandalism. Or it might have been damage from a flying rock on the highway. Or a minor scrape along a guardrail. It may not have been put through insurance because the previous owner or lessee did not have collision insurance or had a high deductible.
- e. There is no evidence that the car has ever been damaged below the surface of the paint.

[15] There is no warranty in the purchase agreement that the vehicle has never had minor body work or repairs to the paint job. So there is no claim for a breach of contract or breach of warranty.

[16] I would not imply a warranty under the *Consumer Protection Act*, s.26, which would supplement the conditions and warranties in a consumer contract such as this.

[17] The only other legal theory that might apply would be negligent misrepresentation. That is the legal term that imposes liability for someone making untrue or misleading statements, but it is an exacting test. Not every careless statement gives rise to legal liability.

[18] The case that is most often referred to is *Queen (D.J.) v. Cognos Inc.*, [1993] 1 S.C.R. 87, at p. 110, where Iacobucci, J. set out five general requirements for liability in negligent misrepresentation:

1. there must be a duty of care based on a “special relationship” between the representor and the representee;
2. the representation in question must be untrue, inaccurate or misleading;
3. the representor must have acted negligently in making the

misrepresentation;

4. the representee must have relied, in a reasonable manner, on the negligent misrepresentation; and,

5. the reliance must have been detrimental to the representee in the sense that damages resulted.

[19] I have concluded that the Claimants here cannot make out all five elements of this test.

[20] I accept premise #1 that there is a special relationship, consisting of dealer to customer.

[21] I am not convinced as per question #2 that the representation was untrue, inaccurate or misleading. We know only that the vehicle had some work done to its paint. Whether that qualifies as an accident is a debatable point. But Mr. Forgeron was relying reasonably on the Carfax report as his only source of information.

[22] I do not think (#3) that the Defendant was negligent. I believe Mr. Forgeron acted in good faith within the knowledge available to him.

[23] I can accept that the Claimants relied on the representation. (#4)

[24] I can accept that the Claimants suffered damage in that they incurred an unanticipated cost. (#5)

ORDER

[25] In the result, however, the Claimants have not established all of the elements of negligent misrepresentation, nor of any other possible cause of action, and accordingly the claim must be dismissed.

Eric K. Slone, Adjudicator