2020 SCC NO. 500063

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: *Lachapelle v. Smith*, 2021 NSSM 39

BETWEEN:

PIERRE-LUC LACHAPELLE

CLAIMANT

and

LANA LOUISE SMITH and WINSTON FOUGERE

DEFENDANTS

REASONS FOR DECISION

BEFORE: A. Robert Sampson, Q.C., Adjudicator

DATE OF HEARING: Hearing held by phone at Sydney, Nova Scotia May 5th, 2021.

DECISION RENDERED: July 9TH, 2021

APPEARANCES:

For the Claimant: Self-Represented

Witnesses: Claimant

For the Defendant: T.J. McKeough

Witnesses: Winston Fougere

BY THE COURT:

[1] This claim was commenced by a Notice of Claim filed with the Court on August 27th, 2020 and originally scheduled to be heard March 5th, 2021. No formal Defence was filed. As a result of ongoing Covid-19 restrictions and court scheduling, the matter was re-scheduled to be heard by audio conference on May 5th, 2021. The Court file confirms that one of the named Defendants, Lana Louise Smith, was personally served the Notice of Claim on August 31st, 2020. The Court file further confirms that all named parties were sent a registered letter from the Court confirming the new date (May 5th) as well as the required call-in numbers, etc. The hearing commenced at 5:00 pm by telephone and lasted approximately 2 hours and 15 minutes.

[2] This is a claim arising out of a verbal contract between the parties relating to the purchase and sale of a 2010 Dodge Journey motor vehicle (hereinafter referred to as "the Vehicle") which the Claimant had purchased from the Defendant in Glace Bay on August 3, 2020. The Claimant claims from the Defendant the sum of Three Thousand Eight Hundred Fifty Dollars ($3850.00) or the return to the Defendant of the Vehicle. The written claim (Form 1) notes the grounds to be "hidden defects on the car". As noted, no written Defence was filed with the Court. However, as the evidence confirms from both parties, although the Vehicle was registered in Ms. Smith's name only, essentially all of the dealings surrounding the sale of the Vehicle were conducted between the Claimant and Ms. Smith's partner, also a named Defendant, Winston Fougere. The Defendant's position was that he/they were not aware of any defects associated with the Vehicle as described through the Claimant's evidence and further states that this used vehicle was sold without any representations or warranties.

[3] At the outset the Court reviewed the general procedure to be employed in hearing the claim by phone, the role of each party and how evidence was to be received including the opportunity of both parties to provide their "side of the story", that each would be afforded a chance to question the other and any witnesses. At the outset the Claimant noted that his first language was French and it was acknowledged by the Court that it would interrupt the Claimant if there was anything said or described that was not readily understandable. The Court found the Claimant's command of the English language satisfactory and did not experience any communication issues throughout.

[4] The Court is appreciative to both parties for the organized and respectful manner in which they presented their position including the documents presented to the Court. There were a total of forty-eight (48) exhibit documents/pages tendered to the Court, all from the Claimant. The Court satisfied itself at the outset that all parties had copies of the exhibits (same numbering) anticipated to be referred by the Claimant.

[5] Finally, from the Court's introductory summary of this matter, based on the pleadings of the Claimant and the evidence and exhibits received by the Court, this matter can clearly be identified as a "claim" arising from a contract between the parties. Although this hearing was lengthy (2.3 hours) and extensive evidence, mainly by the Claimant, was given by both sides, the evidence confirmed that each party participated in the discussions and communications that led to the creation of a "verbal contract" evidenced by the exchange which took place on August 3rd, 2020. The Claimant agreed to purchase from the Defendant the Vehicle and paid the agreed-upon price of Three Thousand Eight Hundred and Fifty Dollars ($3850.00) and the Vehicle was delivered by the Defendant(s) directly to the

Claimant at the Canadian Coast Guard Collage, Sydney. From the evidence there was no dispute surrounding what was purchased, the date/time and details of sale. Essentially the basis of the Claimant's claim was that he did not get what he bargained for as it related to the condition of the Vehicle, stating that he would not have been able to detect the various defects that were later found when he had conducted his personal inspection of the Vehicle at the time of purchase.

[6] Evidence of the Claimant was affirmed. By way of background, the Claimant's evidence confirmed that he was a student, studying at the Canadian Coast Guard in Westmount, CB, NS. His home was in Northern Quebec. He was scheduled to go to sea in the fall of 2020 and was anxious to travel home to see his family before leaving on assignment. He confirmed, because of Covid-19, he was not able to secure travel by plane and as result set out to purchase a vehicle to allow him to drive to Quebec. His evidence was that with assistance from family his budget to secure a vehicle was $4000.00. His evidence was that he became aware of the Defendants' vehicle through a Kijiji advertisement which led to an exchange of messages between the parties. These were exhibited by the Claimant as an exchange of text messages (see exhibits c-1 to c-7) most of which related to logistics of where and when they could meet to view the Vehicle. These also included an exchange of a picture of the name of business and address where the Claimant could take the Vehicle to have it inspected. In addition, the Claimant requested the Vehicle Identification Number to complete a Carfax check. This initial series of messages also confirmed that the Defendant had disclosed that the air conditioner on the Vehicle was not working but otherwise, in response to inquiry about its mechanical shape and frame, the Defendant confirmed there were no issues.

[7] A time to meet at the Defendants' residence in Glace Bay was confirmed and the Claimant arranged for two other cadets to drive him there. He testified that after they met and he visually inspected the Vehicle he got in with the Defendant (Mr. Fougere) for a test drive. The Vehicle would not start and the Defendant stated that there was something wrong with the "park switch" and the Vehicle had to be in neutral to start. The Claimant stated this raised a "red flag" for him. The Defendant stated he would take $100.00 off the asking price which was $4000.00. Evidence confirmed they went for a 15-20 minute test drive mainly around the Defendants' neighborhood and not on any highway. After the test drive, the Claimant confirmed he wished to purchase the Vehicle and asked if the Defendant could deliver it to him at the Canadian Coast Guard College to allow him time to get licence/insurance in place. The Claimant had explained to the Defendant that it was his intention to get a temporary licence in Nova Scotia and register the Vehicle in Quebec when he got there. Later that evening the Vehicle was delivered by Ms. Smith and Mr. Fougere.

[8] The Claimant testified that "just before" the transaction was completed (any paper work or money exchange), Mr. Fougere explained that there appeared to be a bit of a vibration in one of the wheels when on the highway. He thought it was likely a tire out of balance. The Claimant testified that this raised another "red flag" but he trusted what Mr. Fougere had said. He said he would remove another $50.00 and the deal was finalized at $3850.00. The evidence confirmed (exhibit c-29) that at time of sale the Vehicle had 202765 kms on it. The transfer papers were signed off and the purchase funds transferred to the Defendant.

[9] On August 7th, 2020 the Claimant attended the Registry of Motor Vehicles to secure a temporary licence (see exhibit c-28). On August 10th the Claimant

testified he had made an appointment with Jed's Auto to get the tire balanced. Prior to that he testified he had only driven the Vehicle to Walmart. It appears this is when the problem started. The Claimant tendered exhibits c-31, 32 and 33 which was a three-page handwritten list which he stated was prepared by the mechanic setting forth a host of mechanical items associated with the Vehicle that the mechanic identified as items that should be attended to. On the list were 32 items relating to items such as brakes (pads and rotors), control arms, drive shaft, calipers, wheel bearings, bushings, axle seal, lower ball joints, strut bushing to note a few. Also tendered as exhibit c-43 was a detailed invoice addressed to the Claimant from Jed's Auto Repair dated August 10th, 2020, confirming the costs to complete the repairs would total $3716.35. The Claimant testified he then took the Vehicle to Canadian Tire, Sydney and exhibits c-34, 35, 36, 37, 38, 39 and 40 were presented. Included in these documents was a three-page "inspection report" dated August 13th, 2020. From the Court's review it identifies that most items are "OK" and specifically identifies the following items requiring attention: fluid leaks (both rear axle seals), alignment, brakes (front and rear). No estimate as to costs for these repairs is noted on this Canadian Tire Inspection.

[10] The Claimant tendered a series of further text message exchanges (exhibits c-9 to c-26) between the parties. These mainly represented the Claimant introducing the seller/Defendant to the problems he had incurred and asking that the Defendant be responsible and pay for the repairs. The Claimant felt he had bought a lemon. The Defendant, Mr. Fougere, maintained his position that he had no knowledge of any of these concerns nor did he experience any problems with any of these items. He stated that he openly acknowledged that the A/C was not working as well as the problem he was experiencing with the tire shaking which he believed was a balance problem. He said that he had the Vehicle inspected in the

fall of 2019 and based on that he assumed everything was OK. The Defendant testified that there had been a few items that were required to be fixed on the Vehicle before it was able to be passed for inspection and these were all dealt with. The Vehicle inspection report was tendered as exhibit c-27, dated September 27th, 2019. It identified the odometer reading on the Vehicle at the time of inspection at 198041.

[11] The Claimant testified that the Vehicle had been parked for the past eight months after he lost part of a coil spring. He testified that this situation has been very stressful for him.

[12] In response to the Court's inquiry as to a photo appearing in exhibits c-7 & 8, the Claimant testified that the Defendant, during their initial exchange of texts and "before" the transaction occurred, proposed a name and location of J. Dedrick Auto Sales and Auto Appraisal as a place the Claimant could take the Vehicle to have it checked and appraised. The Claimant did not take him up on this offer. Further, upon inquiry by the Court, the Claimant was asked to explain what exhibit c-48 was. The Claimant explained that this was a "check list" he himself had prepared before viewing the Vehicle and concluding a purchase. It is a very detailed list of items associated with any vehicle that one would want to be satisfied as to its condition. Included was "brakes", suspension both of which he confirmed and wrote "smooth" and was satisfied from the test drive. He also confirmed that he satisfied himself of all of the items he had set forth on this somewhat homemade inspection report and based on that, he made his decision to purchase the Vehicle.

[13] During cross-examination he confirmed that no repairs had yet been carried out to the Vehicle. He was also questioned on what his expression "red flag" meant, which he had referenced on two occasions. He confirmed that it meant "concerned with quality of vehicle". He further acknowledged that his father was a mechanic for many years and he has some knowledge of used cars but felt he was by no means experienced. On cross, Mr. McKeough noted to the Claimant that since the last inspection (Sept 2019) the Vehicle had only been driven approximately 4600 km. The Claimant acknowledged the same. The Claimant testified that he did not have a chance to test drive the Vehicle on the highway as he did not know the area around the Defendants' home and where the highway was. The Claimant stated that Mr. Fougere seemed to be somewhat upset when he asked to take the vehicle on the highway during the test drive. The Claimant further confirmed that he did not take the Vehicle for an independent inspection because it was a holiday on the day in which he attended Glace Bay to inspect the Vehicle. He testified on cross that he had not asked the Defendant to hold the Vehicle to afford him time the following day to take it for inspection. He also testified on cross that during the test drive everything appeared to be fine with the Vehicle. He stated that he relied on Mr. Fougere, trusted him and took his word as to the condition of the Vehicle. He confirmed that he did not know what Mr. Fougere did for a living and what knowledge he had of the Vehicle other than his partner owning it.

[14] Mr. Fougere was affirmed and gave evidence. He acknowledged hearing the Claimant's evidence and was asked if he knew of any of the deficiencies complained of. His evidence was that he knew and stated from the outset that the air conditioner unit was not working. He also stated that he was aware of the starting problem because it had happened before. He stated he had arranged for the

Vehicle to be inspected in September 2019 and was required at that time to put a new trailing arm as well as a stabilizer bar on it. He stated that he had completed this work himself. He stated that had the Claimant asked for sufficient time to take the Vehicle for inspection that would not have been a problem. He stated that the Claimant had told him his father owned a garage and was a mechanic and told him what to look for. He stated the Claimant completed a thorough inspection of the Vehicle when he attended at his home, pulled on the wheels, was underneath the Vehicle and so forth. He confirmed that the Vehicle was 10 years old at the time and was a mid-size SUV. He testified that he was the primary driver and regularly drove the Vehicle in town and on the highway traveling back and forth between Glace Bay and Mira twice a week. He stated that he had purchased the Vehicle approximately two years prior to time of sale.

[15] The Claimant cross-examined Mr. Fougere on several different points. There arose an issue as to whether the Claimant had been driving the Vehicle after the sale. Mr. Fougere testified he ended up driving behind the Vehicle on the Trans-Canada highway leading to North Sydney after these complaints arose back in August 2020. Mr. Fougere was also questioned as to why he had gotten the Vehicle inspected and confirmed that he had been required under normal motor vehicle requirements.

[16] At the conclusion of cross-examination the Court asked both parties whether they had anything further to say. Neither had anything further. The Court confirmed to the parties, based on the evidence it had received, that the principal issue in law appeared to be one surrounding the notion of "buyer beware". The Court adjourned confirming it would provide a written decision.

[17] It is worthy of note that seldom in dealing with disputes of this nature is anything simply black or white. While many aspects of the evidence of both sides remain undisputed and/or confirmed by a document, clearly in the end the Court is called upon to assess issues of credibility of each party not only as it relates to the actual evidence that each has presented to the Court but also an assessment of their ability (or willingness at times) to recall with accuracy what may have taken place, when, where and what, if anything, may have been said. The onus or burden of proof when dealing with these type of Court actions rests with the Claimant. It remains the Claimant's burden to prove, on the balance of probabilities, that the Defendant has caused some form of breach of contract. In this case, the essence of what the Claimant is attempting to prove is that the Defendants knew or ought to have known of the various latent defects to the extent that he misrepresented the goods sold and the Claimant argues for relief. Further, and likely most important in this case, having regard to the nature of this claim it gives rise for the need to consider well-accepted legal principles surrounding the purchase and sale of used chattels.

ANALYSIS OF EVIDENCE AND REASONS FOR DECISION

[18] I have taken considerable time to set forth a summary of the evidence presented. This case extended over a lengthy court sitting and the evidence was extensive. I wish to note that the foregoing is intended as a summary only and does not necessarily include everything that was said under oath or presented as an exhibit. I confirm that I had taken detailed notes and have read all exhibits, including the initial claim filed by the Claimant. From this evidence the Court's task is to determine what the relevant issues are and make a determination based

on the evidence presented and the law. To that end I have determined the issues required to be addressed by the Court as follows:

(i) Was there a sale contract between the Claimant and Defendant? If so, what were the terms?

(ii) Did the Defendant misrepresent to the Claimant the condition of the Vehicle?

(iii) What affect, if any, does the provisions of the *Sale of Goods Act (NS)* or *Consumer Protection Act (NS)* have on this contract situation?

(iv) Does the principle of *caveat emptor* or "buyer beware" apply in this case?

(v) If a contract is found to have been breached, what are the remedies the Claimant is entitled to receive?

[19] This case, like so many others, is somewhat like a jig-saw puzzle. In addition to reviewing and assessing the evidence given, including the various documents, clearly the Court is required to assess issues of credibility of the respective witnesses, notably the parties to this action. In providing my decision I will attempt to explain the reasons for any conclusions. The Court can confirm at the outset that there is no evidence before me to question the credibility of any of the witnesses nor the information exhibited to me. What this case boils down to is the classic situation where someone has purchased a used chattel from another and

after the sale was complete found problems that were not detected at the time of purchase.

[20] Much of the evidence presented remains undisputed between the parties. Both acknowledge the exchanges that occurred between them leading up to entering into a final sales contract on August 3rd, 2020 relating to the sale of the Vehicle. The evidence is also clear that immediately after purchasing the Vehicle the Claimant, in efforts to deal with what was believed to be a tire balance situation, discovered by way of a third party inspection problems or potential problems with different aspects of the Vehicle. The Claimant presented two independent inspection reports verifying the problems or concerns that were discovered, after the sale transaction was concluded, relating to certain aspects of the condition of the Vehicles. I find nothing unusual about the documents exhibited to verify the problems detected and the corresponding repair costs and therefore accept these as presented.

[21] Similarly, evidence and documents were tendered providing verification of the Defendant's inspection of the Vehicle back in September 2019 and the work he had been required to carry out to the Vehicle. I find nothing unusual about this evidence and accept the same. I also accept the fact that this used vehicle, at the time of sale, was ten years old and had been driven approximately 202700 km. Further, I accept the evidence of the Defendant, Mr. Fougere, as exhibited through the initial text exchange (exhibit c-7) as well as his testimony, that there did not appear to be any reluctance on his part to allow the Claimant the opportunity to have the Vehicle inspected or appraised. The Court also accepts the evidence of

both parties that at no time did the Claimant ask for sufficient time to have an inspection completed before concluding the transaction.

[22] The Court is also satisfied from the evidence that while the Claimant asked for Mr. Fougere's opinion as to how the condition of the Vehicle's mechanical and frame were, his answer was straightforward in confirming what he believed….."no issues with mechanical or frame". In providing his response (see exhibit c-3), I find that he simply confirmed what he believed to be true based on his own experience from operating the Vehicle. There is no evidence that he in any way tried to embellish his response. He was asked a direct question and provided a direct response. More importantly, upon review of all of the evidence before me, the Court does not find "any" evidence to suggest that either of the Defendants misrepresented anything as it relates to the condition of the Vehicle. Further, based on the evidence and with specific reference to nature of the problems found to the Vehicle through the inspection completed for the Claimant after the sale, while the Court has no doubt these items need to be repaired or replaced to whatever extent, there was also no evidence that would suggest that any of these anticipated problems would have been apparent to the Defendant. Clearly, based on the test drive, none were apparent to the Claimant as well except for the items specifically disclosed by Mr. Fougere to the Claimant prior to the sale being completed. Further on this point, the evidence from Mr. Fougere was that during the period of time leading up to the sale transaction, he personally operated the Vehicle on a regular basis, both in town and on the highway, and did not experience any problems associated with any of the items disclosed in the inspection report. The one item that may be directly connected with concerns raised in the inspection report was the shaky wheel when traveling on the highway. Again the evidence is that Mr. Fougere disclosed this prior to the sale and stated he believed it to be the

cause of an unbalanced tire or rim. He offered to discount the price by an additional $50.00 and in spite of the Claimant testifying that he saw this as a second red flag, he chose to complete the purchase. Finally on this point, the Court has little doubt that many of the items revealed in the inspection report which were flagged as concerns and required work would be found to some extent in most any vehicle that was ten years old with over 200,000 km.

[23] As noted above, there was extensive evidence confirming the nature of the defect(s) found, and the extent and cost of the repairs recommended to be made to the Vehicle. I am also satisfied having regard to the evidence that the defects were discovered within a reasonable time after the purchase occurred and therefore on balance likely existed at the time of sale. None of this evidence is in dispute. However, it only becomes relevant if it is found that the Defendant has breached any term, implied or otherwise, of the original sale contract with the Claimant.

[24] I am also satisfied that the Claimant was not an experienced car buyer but also that purchasing a vehicle was not completely foreign to him having grown up in a family associated with car service and repairs. It is clear from exhibit c-48 that he was aware of his responsibility as the buyer to carry out a thorough inspection beyond a simply viewing and test drive. Also the evidence of the fact that he sought the serial number of the Vehicle in advance of any purchase to complete a Carfax check (see exhibit c-5) also indicates to the Court that he was a reasonably knowledgeable purchaser. The Claimant testified that he understood that he was buying a used car, in this case one which was ten years old, and with that he fully expected there may be some odds and ends that would have to be fixed or upgraded. However, in this instance he testified that he never expected to be faced

with the extent of repair costs in order to have the Vehicle roadworthy enough to travel to Quebec.

[25] I find there is no dispute between the parties of the fact that at no time did the Defendant guarantee or offer any warranty associated with the sale of the Vehicle.

Was there a sale contract between the Claimant and Defendant? If so, what were the terms?

[26] I am satisfied there was a "lawful contract" for sale between the parties as confirmed by their respective testimony. The agreed upon consideration was paid to the Defendant(s) and the Vehicle was delivered to the Claimant. The sale transaction occurred on August 3rd, 2020. From the Court's review of the parties' testimony together with all documents exhibited to the Court, there is no evidence of any written or expressed warranties or assurances given by the Defendant(s) as it relates to the quality and fitness of the Vehicle sold other than the defects that he openly acknowledged to the Claimant prior to the sale.

Did the Defendant misrepresent to the Claimant the condition of the Vehicle?

[27] The essence of the Claimants position seems to be that the problems found associated with the Vehicle should be considered latent defects and were willfully hidden from the Claimant. The Court cannot find any evidence to support this assertion. Nor does the evidence disclose any statements made by either of the Defendants suggesting there had been any type statement advanced to induce this

sale which amounted to misleading or a misrepresentation of what was being sold or the condition of the Vehicle at the time of sale.

[28] Finally on this issue, I believe it is relevant that there is no evidence to suggest that the Defendant either attempted to side track or be vague in answering any questions the Claimant had in connection with the condition and history of the Vehicle. Added to this was the evidence that the Defendant offered to assist the Claimant in securing a qualified mechanic/appraiser to carry out an inspection but it was the Claimant who chose not to obtain one. It is the Court's view that this type of conduct by a seller does not suggest that he was trying to hide anything from a buyer. The Court is satisfied there were no misrepresentations.

What effect, if any, does the provisions of the *Sale of Goods Act (NS)* or *Consumer Protection Act (NS)* have on this contract situation?

[29] The Court is satisfied that this contract took place in Nova Scotia and applicable statutory laws apply to certain sales in Nova Scotia. I find overall this sale would fall under the terms of the *Sale of Goods Act*. I find Article 17 dealing with "quality or fitness for a particular purpose" is only relevant insofar as confirming there is "no" implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under contract of sale unless one of the exceptions apply. I find that none apply in this case. This section is repeated below:

> **Quality or fitness for particular purpose**

> **17** Subject to this Act and any statute in that behalf, there is no implied warranty or condition as to the quality or fitness, for any particular purpose, of goods supplied under a contract of sale, except as follows:
>
> (a) where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the sellers skill or judgement and the goods are of a description that it is in the course of the sellers business to supply, whether he be the manufacturer or not, there is an implied condition that the goods shall be reasonably fit for such purpose, provided that, in the case of a contract for the sale of a specified article under its patent or other trade-name, there is no implied condition as to its fitness for any particular purpose;
>
> (b) where goods are bought by description from a seller who deals in goods of that description, whether he be the manufacturer or not, there is an implied condition that the goods shall be of merchantable quality, provided that, if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed;
>
> (c) an implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade;
>
> (d) an express warranty or condition does not negative a warranty or condition implied by this Act, unless inconsistent therewith. R.S., c. 408, s. 17

[30] The evidence confirms the Defendant was not "in the business" nor is there evidence to suggest that the seller (Defendant) had any specific or special skills to have had any knowledge of the problems associated with the condition of the Vehicle. The only other relevant provision of the *Sale of Goods Act* is section 36(10) which requires that a buyer be provided sufficient time to complete an inspection. In this regard, I am satisfied that it was open for the Claimant to complete any type of inspection he wished, including having an independent inspection and he chose not to. I find from the evidence that he considered his options and chose to rely on his own skill and knowledge and had sufficient time to complete his inspection.

[31] In the *Consumer Protection Act* (NS), it is clearly stated that its provisions are intended to apply to *"*….sellers who are in the business of selling goods and services to buyers". There is no evidence that either of the Defendant(s) were in the business of selling used motor vehicles. Therefore, the Claimant cannot rely on the statutory provisions under the *Consumer Protection Act* or the implied conditions of quality and fitness under Section 19 of the *Sale of Goods Act*. In this particular case I find that the contract of sale was between two individuals, neither of whom are considered to be in the business of buying or selling cars. Therefore, none of the provisions of this *Act*, including implied warranties, are applicable in this case.

Does the principle of *caveat emptor* or "buyer beware" apply in this case?

[32] I find that the legal principle of *caveat emptor* or "buyer aware" applies in the sale of used goods including, in this instance, a used motor vehicle. I find this principle is enhanced even further having regard to the age of the chattel being purchased. In the case before me the chattel was a ten-year-old SUV motor vehicle. While the evidence confirms it "showed well" the fact remained that it was ten years old. In the reported case of *Darryl Quibell v. Dakota Kuntz,* 2014 SKPC 134, that court dealt with a similar case involving the sale of a used boat and the discovery of problems and discrepancies after the deal was concluded. Although the issues of concern were different the Court was satisfied that the notion of *caveat emptor* applied to the situation. In that decision are found the following passages that assist in providing some guidance to the determination of this case. The Court acknowledged, as I do, that more often this issue arises in connection with the sale of used cars. The Court stated:

> The Application of these principles to the sale of used cars is summarized in the comments of Gow J. in *Rushak v. Henneken*, [1986], B.C.J. No. 3072 (QL) (S.C.) where he states: At a common law in the absence of a fiduciary or analogous relationship, there is not as between negotiating parties any duty of disclosure. Almost always the seller of a used car knows of its defects, or at least some of them, but he is not under any duty to disclose them to a potential buyer, unless there has been on his part active concealment, that is, he has done something to the car with intent to prevent the defect being discovered. *Leeson v. Darlow*, [1926] 4 D.L.R. 415 at p. 432; *Allen v. McCutcheon*, 1979 CanLII 280 (BSSC), (1979) 10 B.C.L.R. 149; *Sorensen v. Kaye Holdings Ltd.* 1979 CanLII 621 (BCCA), (1979) 14 B.C.L.R. 204 per Lambert, J.A. at p. 235. The common law rule is *caveat emptor*. The underlying philosophy of the law of contract is that "a party is expected to look out for himself, and make his own bargains. If he has done so foolishly, this is his own fault and he is left to his own devices."

[33] The Court went on to say "the distinction between patent and latent defects" is described in Halsbury's Laws of England (3d ed.) Vol 34, page 211, para. 353 as follows:

> Defects of quality may be either patent or latent. Patent defects are such as are discoverable by inspection and ordinary vigilance on the part of a purchaser; latent defects are such as would not be revealed by any inquiry which a purchaser is in a position to make before entering into the contract for purchase. As regards patent defects, the vendor is not bound to call attention to them; the rule is *caveat emptor*; a purchaser should make inspection and inquiry as to that which he is proposing to buy.
>
> However, fraudulent misrepresentation on the part of the seller will have an impact on the principal of *caveat emptor*. Fraud may be found when the vendor has actively concealed a latent defect. However, if the latent defect is unknown to the vendor, there will be no redress for the purchaser and the principle of *caveat emptor* or "buyer beware" will apply (*McGrath v. MacLean* (1979), 95 D.L.R. (3d) 144 (Ont. C.A.) at p. 150.)
>
> A fraudulent misrepresentation is a statement known to be false or made not caring whether it is true or false (Waddams, The Law of Contracts, 5th ed.

> Para. 416; *Derry v. Peek* (1880), 14 App. Cas. 337 (H.L.(E.)). Such a statement must be material to the decision of the purchaser to enter the agreement and the misstatement must serve as an inducement to the making of that decision (McCarmus, The Law of Contracts, 2005, p. 326).

[34] As I have noted earlier, I do not find that there was any evidence of the Defendant having mis-represented the situation to the Claimant. He told him what he believed to be true. There is no evidence to suggest that the Defendant knew of any of the suggested repairs disclosed by the Claimant's inspection report or that the Defendant(s) attempted to conceal anything from the buyer. In fact the evidence points to the fact that there was no hesitation on the part of the Defendant to answer any questions asked and to assist the buyer to secure an independent inspection/appraisal before the purchase took place.

[35] From my review of the case law the overall effect of the principle of "buyer beware" was best described by Adjudicator Slone in his decision of *MacLean v. LeBlanc*, 2014 NSSM 77, a case which involved defects arising after the sale of a home wherein he stated….

> (35) The legal principle of caveat emptor, or "buyer beware," is still alive and reasonably well - if not universally - loved in Nova Scotia. This phrase is shorthand for the cold truth that a buyer of any type of property has very limited protection available in the event that something goes wrong. While this may seem harsh, from a policy perspective it could be seen as equally or even harsher that someone might sell property in good faith and yet have a potentially ruinous claim come back to haunt him or her, years later, because of a problem that no one knew about. For better or worse, the law has provided only very limited recourse in such situations.

[36] However unfortunate was the situation the Claimant found himself in subsequent to concluding his purchase, I find that he chose to accept the risk of relying on his own expertise and judgment in completing his inspection knowing that such potential latent defects could have been found by a professional inspection. He chose the level and detail of inspection to be employed which led to his decision to purchase the Vehicle and with that he also knowingly assumed any risks as the condition of any part of the Vehicle. It is always unfortunate when situations such as the facts of this case arise however the formation of the law is for the protection of both parties when buying and selling used chattels and the Court is satisfied that the Claimant knew that it was his responsibility and corresponding risk to carry out the degree of inspection he felt necessary. Again there is no evidence that the Defendant attempted to hide any defects or mislead the Claimant. This is simply a case where a used car was purchased and where the buyer subsequently found out there were more required repairs than anticipated. That in itself is not sufficient grounds to repudiate a sale contract nor claim damages for such repair costs.

[37] The Court hereby dismisses this claim.

DATED at Sydney, Nova Scotia this 9th day of July, 2021.

A. ROBERT SAMPSON, Q.C.

Adjudicator