

SMALL CLAIMS COURT OF NOVA SCOTIA
Citation: *Ikhidero v. Auction Direct*, 2024 NSSM 20

Date: 20240415
Docket: 526385
Registry: Halifax

Between:

Rosemary Ikhidero and Godwin Ikhidero

v.

Auction Direct

Adjudicator: Darrel Pink

Heard: March 26, 2024, in Halifax Nova Scotia

Decision April 15, 2024

Counsel: Claimants – Self-represented
Defendant – Self-represented by owner Donnie Armstrong

By the Court:

The Facts

[1] The Claimants live in Bedford, Nova Scotia. The Defendant sells used cars from business premises in Sackville, Nova Scotia.

[2] In January 2023, the Claimant, Rosemary Ikhidero, bought a used 2014 Mercedes Benz 250 from the Defendant. Mr. Ikhidero did the shopping for the car and dealt with a salesperson, Jillian, employed by the Defendant. Once he identified what he wanted to buy, he checked with his wife and paid a deposit to hold it so they could arrange financing.

[3] Mr. Ikhidero says there were representations made regarding the quality of the Mercedes. He provided no details of those representations or what they entailed.

[4] The cost of the vehicle was \$15741.78, including HST and registration (Ex. 14). The Claimants took delivery of the car on February 9, 2023. The sale was financed by a loan from RBC under by a conditional sales agreement dated February 9, 2023.

[5] There was no contract or Bill of Sale that stipulated any terms or conditions of the sale, other than the Conditional Sales Agreement that stipulates the goods are accepted by the Buyer at her 'risk' (Ex. 14, Additional Terms and Conditions (a)). The *Consumer Protection Act* applies to the sale contract.

[6] Immediately the Claimants smelled an odour when they turned on the heater. A check engine light illuminated. The Defendant asked the Claimants to return the vehicle on February 13. On February 20, they picked up the car, having been told it was repaired.

[7] Though no smell was detected, the Claimant, Godwin Ikhidero, testified he felt a sensation in his nose and throat. Over the time the Claimants had the car, Mr. Ikhidero says he experienced joint pains, shortness of breath, fatigue and fogginess, which he attributed to fumes emitted by the vehicle. There is some evidence to suggest he believed the Mercedes was leaking carbon monoxide.

[8] On March 18, 2023, the engine check light came on. Mr. Ikhidero called the Defendant and returned the car to them. He advised the Service Manager there continued to be odours or fumes which were causing him problems. On March 27, the Service Manager advised they could not detect any issues with the car.

[9] Mr. Ikhidero advised he would not keep the vehicle as in that condition it was causing him health problems. He demanded a refund of the purchase price.

The owner of the Defendant, Donnie Armstrong, became involved. He told the Claimants there was a contract in place and there was no obligation to refund the purchase price. He offered to let the Claimants replace the Mercedes with a car of similar value, but they declined.

[10] The Claimants left the vehicle with the Defendant with no arrangements being made to resolve the dispute.

[11] Mr. Ikhidero asserts his health was directly affected by odours or fumes from the car. He is adamant about this and recounted his experience with the healthcare system to address his symptoms. No independent medical evidence was presented to verify the Claimant's assertion.

[12] Though his views were strongly held and seem to be sincere, there is not enough evidence before the Court to connect Mr. Ikhidero's health to any defect in the vehicle.

[13] On August 28, 2023, the Claimants commenced their action in the Sall Claims Court. From March 2023, until this trial, the vehicle sat on the Defendant's lot. At the conclusion of the evidence, it was clear the Claimants had done nothing to mitigate the damages they sought. Following the Court's suggestion, after the Hearing, the parties agreed the Defendant would sell the vehicle on behalf of the Claimants.

[14] The Defendant sold the vehicle for \$12900, a sum the Claimants agreed to. The Defendant paid \$6415.75 to RBC, who had a lien on the vehicles under the conditional sales agreement. The balance of \$6484.25 was paid to the Claimants. The Defendant asked for nothing from this sale transaction.

[15] Donnie Armstrong testified for the Defendant. There is no dispute on the basic facts regarding the sale and return of the vehicle for repairs. Mr. Armstrong stated his service technicians could find nothing wrong with the vehicle and could not identify and smells or odours. His Service Manager was new, so Mr. Armstrong became involved when the Claimants asked for a refund of their purchase price. He indicated to them that there was a contract of sale and there was no basis to cancel that contract and refund the sale price. He offered to bring the vehicle into his shop and to provide a loaner vehicle to the Claimants. He then offered to let them take a replacement vehicle of a similar value if they no longer wanted the Mercedes Benz. Both offers were declined.

[16] He described that the Claimants were upset. He reminded them they had not purchased a one-year warranty from the Defendant that would have entitled them to repairs. Despite that, he offered to have the vehicle checked to see if there were any obvious defects. His service shop found nothing that would have caused the issues identified by the Claimants.

[17] In response to questions from Mr. Ikhidero about whether he had not disclosed information about the vehicle, he described that the Defendant's policy is to provide the information about the vehicle history available from [CarFax](#), a publicly available website that provides information on motor vehicles. Mr. Armstrong stated neither he nor his employees made any representations about the quality of the vehicle other than what was reported by CarFax.

Analysis

[18] As is common in the sale of used vehicles, there are no contractual terms beyond those implied by the *Consumer Protection Act*. The relevant provisions are found in s. 26(3)(j) which implies:

a condition that the goods shall be durable for a reasonable period of time having regard to the use to which they would normally be put and to all the surrounding circumstances of the sale.

[19] At common law, the principle associated with a sale of used cars is that of 'buyer beware', which means that the buyer takes the goods as they are, and the seller has no obligations regarding the goods unless something is stipulated in the contract of sale, or the buyer is induced by a representation from the seller that amounts to a misrepresentation. The *Consumer Protection Act* modifies the common law and provides a degree of protection to purchasers as it imposes a duty relating to durability.

[20] The Claimants assert the Mercedes Benz was defective because of the smell or odour. Mr. Ikhidero says he became ill because of that.

[21] The Claimants suggest there was a representation regarding the quality of the vehicle. They provide no specifics of what representations were made and how they were erroneous or overstated. The salesperson did not testify. In the weeks following the purchase when the Claimants were asking for repairs to be done, there were many text messages with Jillian, the salesperson, and on March 29 there was a letter asking the contract to be cancelled. In none of these exchanges did the Claimants suggest there had been a misrepresentation about the quality of the vehicle. I accept Mr. Armstrong's evidence of the Defendant's practice to represent what is available through CarFax and I do not find there was any misrepresentation regarding the vehicle that would allow the Court to rescind the contract or otherwise entitle the Claimants to damages.

[22] The Claimants have presented no evidence that a defect in the vehicle caused it to emit an odour or fumes. Normally evidence relating to the quality or lack thereof would be provided by a licenced mechanic or someone with similar skills. The Claimants presented no evidence to prove there was any issue with the quality of the vehicle.

[23] Mr. Ikhidero's assertion regarding the car causing a deterioration in his health is not supported by any evidence. Medical evidence would normally be provided to establish causation of an ailment. Normally that would be medical evidence. None was presented.

[24] The Claimants have not proven on the balance of probabilities that the car they bought from the Defendant was not 'durable for a reasonable period of time'. To prove their claim they would have to produce the facts, through evidence, that meet the burden of proof on them.

[25] Because they have not proven on the balance of probabilities that there was a misrepresentation or that the car they purchased was not durable, the claim is dismissed.

Darrel Pink, Small Claims Court Adjudicator