IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Reddy v. Insurance Corporation of British Columbia,* 2025 BCSC 280

Date: 20250220
Docket: S212835
Registry: New Westminster

Between:

Mun Reddy

Plaintiff

And

Insurance Corporation of British Columbia, Vancouver Motorsports Ltd., Nomad Auto Sales Ltd. and Newton Auto Detailing Ltd.

Defendants

Before: The Honourable Justice Tucker

Reasons for Judgment

Counsel for the Plaintiff:	S. Grey
Counsel for the Defendant Insurance Corporation of British Columbia:	N. Parker
Appearing as Representative for the Defendant Vancouver Motorsports Ltd.:	M. Nadan
No other appearances	
Place and Date of Trial:	New Westminster, B.C. February 4, 2025
Place and Date of Judgment:	New Westminster, B.C. February 20, 2025

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I. Introduction

[1] The plaintiff, Mun Reddy, entered into a vehicle purchase agreement (the "Contract") with the defendant Vancouver Motorsports Ltd. ("VMS") in respect of a 2013 BMW M5 (the "Car"). While the Car was parked behind the shop of the defendant Newton Auto Detailing Ltd. ("Newton"), a fire occurred in the engine compartment. Mr. Reddy filed an insurance claim with the Insurance Corporation of British Columbia ("ICBC") for loss or damage in respect of the Car. ICBC opened a file on the claim and authorized some work, but then put the claim on hold pending an investigation.

[2] The plaintiff then filed a notice of claim against ICBC, VMS, Newton and Nomad Auto Sales Ltd. ("Nomad"). Nomad's name appears on the Contract and also on Mr. Reddy's loan documents for the purchase of the Car.

[3] Nomad filed a response to claim stating that its participation was limited to facilitating the financing and denying being a party to the Contract. No one appeared for Nomad at the trial. The plaintiff accepts Nomad's position as set out in its response to claim, and agrees that VMS is the seller under the Contract. In view of that position, the plaintiff sought leave to file a notice of discontinuance against Nomad at the outset of the trial. Leave was granted.

[4] Also at the outset of the trial, the plaintiff and ICBC advised that they had reached a *BC Ferry* settlement agreement. Named for *British Columbia Ferry Corp. v. T & N* (1995), 16 B.C.L.R. (3d) 115, 1995 CanLII 1810 (B.C.C.A.), a *BC Ferry* settlement agreement obliges the plaintiff in a multi-party proceeding to forego recovery of any loss ultimately attributable to the settling defendant, thereby removing the basis for claims by the non-settling defendants for contribution and indemnity against the settling parties, thus extricating the settling defendant from the litigation. Further to the settlement agreement, the plaintiff sought leave to amend his notice of civil claim to expressly waive any right to recover any portion of loss that may be attributable to the fault of ICBC and for which any non-settling party might advance a claim for contribution and indemnity. Leave to amend the claim in

this respect was granted. Leave was also granted for the plaintiff to file a notice of discontinuance against ICBC.

[5] Accordingly, all that remained for trial was the plaintiff's breach of contract claim against VMS in respect of the Contract.

II. Background

[6] Mr. Mun and Mr. Nadan (who is the manager of VMS as well as its representative at the trial) both testified. There are no concrete facts in dispute. The case turns on the inferences to be drawn and the application of the law.

[7] VMS is in the business of buying salvage vehicles from ICBC and fixing them up for resale as rebuilt vehicles. Before a salvage vehicle can be registered as a rebuilt vehicle and sold as such, it must pass a certification inspection at a Ministry of Transportation and Highways' designated inspection facility.

[8] VMS bought the Car at ICBC's Salvage Depot in December 2016. VMS bought the Car in order to rebuild it.

[9] The plaintiff works in the autobody trade himself, and has a friend who does autobody work at VMS. While visiting his friend, he noticed the Car, then in its salvage state, sitting on the VMS shop lot ("VMS Lot"). Mr. Reddy expressed an interest in the Car. He testified that he was looking to buy that particular model for his son.

[10] On or about February 28, 2017, the plaintiff and VMS concluded the Contract. Under the Contract, including taxes and with an extended warranty, Mr. Reddy paid a total of $54,198.50 for the Car. A Nomad employee attended the VMS Lot and set up a financing loan for the plaintiff at the time of the Contract. The plaintiff obtained a loan from RBC, and the loan funds were applied to pay the Contract price.

[11] Mr. Reddy asked VMS to order and install specialty wheels and to add a number of custom finishes to the Car (the "Extras"). The cost of the Extras was $10,808 (i.e., over and above the Contract price).

[12] On March 20 and 21, 2017, the rebuilt Car was inspected at a Ministry of Transportation and Highways' designated "Commercial Vehicle Safety and Enforcement" ("CVSE") inspection facility. On March 21, 2017, the facility issued a "Private Vehicle Inspection Report" indicating that the Car had passed inspection as a rebuilt vehicle.

[13] On March 24, 2017, Mr. Reddy attended the VMS Lot. The requested Extras had all been completed by then. VMS generated a separate invoice for the Extras with that date, and Mr. Reddy paid the invoice by a personal cheque to VMS dated that same day, March 24, 2017.

[14] Also on March 24, 2017, Mr. Reddy, accompanied by a VMS manager, took the Car for a test drive heading out from the VMS Lot with VMS' dealer plates on the Car. Mr. Reddy testified that the Car was working perfectly and he was pleased with it. During the test drive, Mr. Reddy and the VMS Manager stopped off at an insurance office and completed a BC Government Transfer/Tax Form (the "Transfer Form") transferring the Car from VMS (as seller) to Mr. Reddy (as purchaser). Mr. Reddy obtained ICBC insurance for the Car at the same time. The insurance agent provided Mr. Reddy with a set of license plates for the Car.

[15] Mr. Reddy drove the Car back to the VMS Lot with the VMS dealer plates on it. He testified that when they got back to the VMS Lot, he put his new license plates on the Car.

[16] Mr. Reddy testified that he did not take the Car home with him from the VMS Lot on March 24, 2017, because it was "dirty, dusty" and he wanted VMS to have it cleaned at VMS' expense. Mr. Reddy asked Mr. Nadan to have the Car cleaned. Mr. Nadan agreed, on behalf of VMS, to have the Car detailed for Mr. Reddy, and it was agreed that Mr. Reddy would return to pick the Car up at the VMS Lot on Monday (i.e., March 27, 2017).

[17] The plaintiff and VMS entered an agreed statement of facts into evidence. The statement reads, in its entirety:

> On March 24, 2017, an employee of Vancouver Motorsports Ltd. drove the plaintiff's 2013 BMW motor vehicle (the "Vehicle") from the premises of Vancouver Motorsports to the premises of Newton Auto Detailing Ltd. ("Newton") in the City of Surrey.
>
> After delivering the Vehicle to Newton an employee of Newton drove the vehicle to another part of [sic] parking lot at Newton. Shortly thereafter a fire occurred in the engine compartment of the Vehicle.

[18] Mr. Reddy testified that on the weekend, a VMS Manager called him and said the Car had caught on fire. He went to the VMS Lot to view the Car. He testified that he could see there had been a fire under the hood and some resulting smoke and paint damage to the hood as well. Mr. Reddy testified that he asked VMS to send the Car to a BMW dealership to have the engine fixed.

[19] Mr. Reddy's evidence is that he never laid eyes on the Car again. He testified that he fully repaid the RBC loan, that it was stressful for him to make payments on a loan for a vehicle that he had never received, and that at times he had difficulty covering the payments.

[20] Mr. Nadan testified on behalf of VMS. Mr. Nadan testified that Newton called VMS to say there had been a fire in the Car, and that a VMS manager had then gone to look at the Car. After looking at the Car, VMS took the position that Mr. Reddy should file an ICBC claim regarding the damage.

[21] Mr. Reddy did file an ICBC claim. VMS began arranging for the Car to be repaired for Mr. Reddy. Mr. Nadan testified that VMS does not do electrical work in-house, but rather subcontracts out such work. He said Mr. Reddy specifically asked for the Car to be sent to a BMW dealership for electrical repairs. Mr. Nadan agreed to send the Car to a BMW dealership as requested.

[22] On initial inspection, the BMW dealership advised VMS that a wiring harness needed to be replaced. VMS paid the BMW dealership that amount upfront in order to get the BMW dealership to order in the part. When the BMW dealership removed the engine from the Car, they advised VMS that a second wiring harness beneath the engine needed to be replaced as well. VMS contacted ICBC to get approval to

order the second wiring harness under the ICBC claim. Mr. Nadan testified that when he called for authorization, ICBC directed VMS to hold off on any further work under the claim as ICBC intended to investigate Mr. Reddy's claim.

[23] Mr. Nadan testified that the Car was never returned to the VMS Lot from the BMW dealership. The BMW dealership sent VMS a notice indicating that ICBC had had the Car towed from the BMW dealership to an ICBC location. Mr. Nadan could not recall exactly when VMS received that notice, but believed it was likely still within the month of March. He testified that Mr. Reddy never contacted VMS about the Car again prior to the notice of civil claim.

III. Positions

[24] The plaintiff alleges breach of contract. He claims the return of monies paid for the Car and for the Extras, and also non-pecuniary damages for his loss of enjoyment and inconvenience. He advances two theories of contractual breach.

[25] First, he says there was a fundamental breach by non-delivery in that he paid for a vehicle that he "never received". He submits that the Car was destroyed while it was still in VMS' possession and prior to its being delivered to him. By reference to the *Sale of Goods Act*, R.S.B.C. 1996, c. 410 [*SGA*], counsel for the plaintiff asserted that the Car was not in a "deliverable" state on Friday, March 24, 2017, and (with specific reference to *SGA*, s. 23(3)) would not have been "deliverable" until it had been cleaned in accordance with his agreement with Mr. Nadan.

[26] In the alternative, the plaintiff alleges the evidence establishes a breach of the implied conditions of quality and fitness implied into the Contract by operation of s.18 of the *SGA*.

[27] VMS says the Car had been delivered to Mr. Reddy and was his property while it was at the Newton shop. VMS says the Car was delivered and accepted on March 24, 2017.

[28] VMS says the only issue Mr. Reddy had with the Car was his complaint that there was shop dust on it, and wanted VMS to bear the expense of having it detailed. VMS agreed to arrange to have the Car cleaned for Mr. Reddy.

[29] VMS says the Car passed its CVSE inspection, including the electrical inspection, and there is no evidence before the Court establishing the existence of any defect in the Car.

IV. Decision

A. Alleged Breach of Contract by Non-Delivery

[30] The concept of delivery is addressed by a number of *SGA* provisions:

> **Definitions**
>
> 1 In this Act:
>
> …
>
> "delivery" means voluntary transfer of possession from one person to another;
>
> …
>
> **Deliverable state**
>
> 4 Goods are in a deliverable state within the meaning of this Act when they are in such a state that the buyer would under the contract be bound to take delivery of them.
>
> **Possession**
>
> 5 A person is deemed to be in possession of goods, or of the documents of title to goods, if the goods or documents are in the person's actual custody or are held by another who is subject to the person's control or for the person or on the person's behalf.
>
> …
>
> **Property passes according to intent of parties**
>
> 22 (1) If there is a contract for the sale of specific or ascertained goods, the property in them is transferred to the buyer at the time the parties to the contract intend it to be transferred.
>
> (2) For ascertaining the intention of the parties, regard must be had to the terms of the contract, the conduct of the parties and the circumstances of the case.
>
> **Intention of the parties as to the passing of the property in the goods**

> 23 (1) Unless a different intention appears, the intention of the parties as to the time at which the property in the goods is to pass to the buyer is governed by the rules set out in this section.
>
> (2) If there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment or the time of delivery, or both, are postponed.
>
> (3) If there is a contract for the sale of specific goods, and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until that thing is done and the buyer has notice of it.
>
> …
>
> **Risk passes with property**
>
> 25 (1) Unless otherwise agreed, the goods remain at the seller's risk until the property in them is transferred to the buyer, but when the property in them is transferred to the buyer the goods are at the buyer's risk, whether delivery has been made or not.
>
> …
>
> (3) Nothing in this section affects the duties or liabilities of either seller or buyer as a bailee or custodian of the goods of the other party.
>
> [Emphasis added.]

[31] Neither party identified any terms of the Contract as being particularly relevant to the parties' intention as to when property would transfer. My own review did not disclose any such terms. However, the conduct of the parties and the circumstances both strongly indicate that property in the Car was transferred to Mr. Reddy on March 24, 2017.

[32] On that day, Mr. Reddy confirmed that all of the Extras had been completed in accordance with his request and paid the Extras invoice. Mr. Reddy took the Car for a drive and then, after approving the Car, completed the Transfer Form, took out an insurance policy in his own name, and put his personal plates on the Car. In signing the Transfer Form, Mr. Reddy expressly consented to the transfer of registered ownership to him.

[33] Mr. Reddy did all of these things without making an objection to the fact that the Car was dirty. Further, on the evidence, the Car was dirty only in the limited sense of having accumulated surface dust while parked at the VMS Lot.

[34] It is reasonable for a customer to want to drive away from a dealership – even a used car dealership – in a sparkling vehicle. It was reasonable for VMS to agree to arrange to have the Car detailed so its customer could have the benefit of that experience. However, nothing in the Contract required VMS to provide a dust-free Car. I do not accept that the Car was not in a "deliverable" state for purposes of the *SGA*, simply because it was dusty. The Car was, on March 24, 2017, in a state such that Mr. Reddy was bound under the Contract to take delivery of it.

[35] On the evidence, Mr. Reddy did just that. He voluntarily accepted a transfer of possession of the Car to him on March 24, 2017, by approving the Car, paying for the Extras, executing the Transfer Form, and putting his own licence plates on the Car.

[36] After taking possession of the Car, Mr. Reddy then allowed VMS to hold on to the Car for the limited purpose of arranging for it to be detailed, at VMS' expense, on his behalf. As acknowledged by counsel for the plaintiff at the hearing, there is no claim against VMS in bailment or otherwise as a custodian of the Car.

[37] The allegation of fundamental breach by reason of non-delivery of the Car is dismissed.

B. Alleged Breach of *SGA* Implied Conditions

[38] Section 18 of the SGA reads:

> **Implied conditions as to quality or fitness**
>
> 18 Subject to this and any other Act, 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 or lease, except as follows:
>
> > (a) if the buyer or lessee, expressly or by implication, makes known to the seller or lessor the particular purpose for which the goods are required, so as to show that the buyer or lessee relies on the seller's or lessor's skill or judgment, and the goods are of a description that it is in the course of the seller's or lessor's business to supply, whether the seller or lessor is the manufacturer or not, there is an implied condition that the goods are reasonably fit for that purpose; except that in the case of a contract for the sale or lease 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) if goods are bought by description from a seller or lessor who deals in goods of that description, whether the seller or lessor is the manufacturer or not, there is an implied condition that the goods are of merchantable quality; but if the buyer or lessee has examined the goods there is no implied condition as regards defects that the examination ought to have revealed;
>
> (c) there is an implied condition that the goods will 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 or lease;
>
> (d) an implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade;
>
> (e) an express warranty or condition does not negative a warranty or condition implied by this Act unless inconsistent with it.

[39] VMS does not assert that the Contract excludes any of the *SGA*, s. 18 conditions or warranties.

[40] The plaintiff did not identify which specific subparagraphs of s. 18 he was seeking to rely on. He did, however, refer the Court to *Wharton v. Tom Harris Chevrolet Oldsmobile Cadillac Ltd.,* 2002 BCCA 78, which includes a discussion of the differences in application between the various subparagraphs.

[41] A general discussion of the *SGA*, s. 18 provisions, as they apply in the context of a used automobile, is found in *Yao v. Terminal Avenue Automotive Ltd.*, 2023 BCPC 144. In *Yao*, Judge D. Boblin stated:

> [88] The implied conditions set out in s. 18 of the *SGA*, in combination, require the Vehicle to be reasonably fit for its purpose, of merchantable quality, and durable for a reasonable period of time, having regard to the use to which the Vehicle would normally be put and all the surrounding circumstances of the sale. Their application to used vehicles that later suffer from mechanical breakdowns was discussed in *Sugiyama v. Pilsen*, 2006 BCPC 265, at paras. 44 – 46, where Gulbransen PCJ said:
>
> > 44 The three warranties implied by s. 18 all address different aspects of the same issue regarding the sale of a used car. That is, a used vehicle that has a major breakdown shortly after being purchased, may not have been reasonably fit for the purpose for which it was bought. It may also mean that it was not of merchantable quality when it was sold and that it was not durable for a reasonable period of time.
> >
> > 45 Very much depends upon the particular circumstances of the case. The dealer who sells a used car is not a guarantor of the car's future performance. Anyone buying a used car knows that some

> problems will inevitably occur. The older a car is and the more kilometres it travels, the more likely it is that something will break down.
>
> 46 Thus, the often quoted words of Lord Denning M.R. in *Bartlett v. Sydney Marcus Ltd*, [1965] 2 All E.R. 753 (Eng. C.A.), illustrate how limited the "warranty of fitness" may be for a used car: (at p.755)
>
> > A second hand car is "reasonably fit for the purpose" if it is in a roadworthy condition, fit to be driven along the road in safety, even though it is not as perfect as a new car.
> >
> > Applying those tests here, the car was far from perfect. It required a good deal of work to be done on it, but so do many second hand cars. A buyer should realize that, when he buys a second hand car, defects may appear sooner or later; and, in the absence of an express warranty, he has no redress. Even when he buys from a dealer the most that he can require is that it should be reasonably fit for the purpose of being driven along the road.
>
> [89] Gulbransen PCJ then set out a non-exhaustive list of factors to be considered in assessing the extent of any implied warranty as to fitness, quality and durability for a used vehicle, including: the age of the motor vehicle; the number of kilometres on the odometer; nature of use by prior owners; the price paid by the purchaser; the use made of the car after purchase; the reason for any defective performance or breakdown; and the expectations of the parties as evidenced by any express warranties (*Sugiyama v. Pilsen*, at para. 59).

[42] I accept the proposition that a used (in this case, used and rebuilt) vehicle that suffers a major breakdown shortly after purchase may be found not to have been reasonably fit for the purpose for which it was bought, may not have been of merchantable quality when it was sold or may not have been reasonably durable. I also accept that there may be cases in which it could be reasonably inferred from the circumstances of a breakdown that a mechanical or electrical failure defect was the cause of the breakdown and, in some circumstances, the further fact that the defect must have been present in the vehicle as sold. Here, however, the surrounding circumstances regarding the occurrence of the fire are largely unknown and, where known, only vaguely so. The evidence before me does not disclose the reason for the fire, simply the fact that it occurred in the engine compartment.

[43] The plaintiff relies on *Queen Charlotte Lodge Ltd. v. Hiway Refrigeration Ltd.,* 1998 CanLII 6552 (B.C.S.C. Chambers); [1998] B.C.J. No. 13 [*Hiway*]. The plaintiff

in *Hiway* established a breach of s. 18(a) of the *SGA* with regard to his purchase of a used refrigeration unit from the defendant. The plaintiff had informed the seller that he intended to use the refrigeration unit to transport goods from Vancouver to a resort and thereafter use it as a stationary unit at the resort. The seller specifically said the unit would be suitable for that intended use, but would not be suitable for extended use by diesel power (i.e., long-term use as a trailer-truck transportation unit). The unit malfunctioned on the drive to the resort. A mechanic examined and repaired the unit when it arrived at the resort.

[44] The Court found that the unit had failed as a result of a defective part (i.e., the liquid line drier), which part the seller failed to replace in keeping with the manufacturer's recommendations: *Hiway* at paras. 30–31. The defective drier had rendered the unit not reasonably fit for the purchaser's purpose: *Hiway* at paras. 30–32. The Court's findings in this respect were based on the mechanic's evidence about the condition of the dryer and the manner in which its non-operation had caused the unit to fail, as well as evidence that the diesel power supply to the unit had been operating throughout: *Hiway* at paras. 19–20 and 31.

[45] By comparison, the plaintiff's claim here rests on the bare fact that there was a fire in the engine compartment while the Car was out behind Newton's shop. The plaintiff has not advanced evidence regarding any particular electrical, mechanical or other defect. The plaintiff has not adduced any evidence setting out even a theory of ignition as a result of defect.

[46] The plaintiff concedes is no evidence before the Court as to how or why the Car came to be on fire. Rather, the plaintiff points to the fact that the fire broke out on the very heels of his plates being placed on the Car. He submits that the only reasonable inference to be drawn in the circumstance is that the fire occurred due to a defect in the Car.

[47] The plaintiff points to the fact that there is no evidence before the Court indicating that any cause external to the Car (e.g., arson or accident) caused the fire to ignite. In fact, there is little of any surrounding circumstances. There is, for

example, no evidence from the Newton employee who moved the Car from the front of the shop and parked it out back. Accordingly, we do not know where or how he drove the Car or if he had any problems with it. There is no evidence about the back area of the shop (e.g., whether it is accessible to the public, whether people frequent the area, or the nature of the businesses surrounding the shop). Similarly, there is no evidence as to how long the Car was sitting parked out back before the fire started.

[48] The plaintiff submits that it would be mere speculation for the Court to find that anything external to the Car resulted in the fire. I agree. However, I am equally of the view that it would be speculative to conclude the fire was caused by a pre-existing defect. Notably, the Car had just passed an electrical inspection. It had been driven and parked a number of times since that inspection, including by Mr. Reddy, without any issues arising.

[49] There is no evidence on which possible causes could be ruled in or ruled out here. In particular, unlike *Hiway*, there is no expert evidence before the Court as to the probability or improbability of the existence of defects let alone of a causal connection to the fire. The evidence before me does not establish, on a balance of probabilities, that the Car was lost as a result of a breach of any *SGA*, s. 18 condition.

[50] Further, while that finding is dispositive here, had it been necessary to do so, I would draw an adverse inference from the plaintiff's failure to adduce any evidence regarding the origin of the fire given that the Car was examined at the BMW dealership.

V. Disposition

[51] The plaintiff has not established that VMS breached the Contract. The claim is dismissed.

[52] VMS has been substantially successful in the proceeding and is entitled to costs in the cause.

"Tucker J."