



Civil Resolution Tribunal

Date Issued: April 4, 2018

File: SC-2017-004110

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Panduro v. Ebell*, 2018 BCCRT 110

B E T W E E N :

Annemarie Panduro

APPLICANT

A N D :

Marla Ebell

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about whether the respondent Marla Ebell is responsible for damage caused to the applicant Annemarie Panduro's collectible horse statue. The applicant says the respondent caused unreasonably excessive vibrations

while installing shelves that caused the statue to fall off a shelf on her side of the parties' common dividing wall (Wall). The parties are self-represented.

JURISDICTION AND PROCEDURE

2. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
3. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing. An oral hearing was not requested.
4. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
5. Under tribunal rule 121, in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUES

6. The issue in this dispute is whether the respondent is responsible for damage to the applicant's statue, and if so, what amount of damages are payable.

EVIDENCE AND ANALYSIS

7. I have only commented upon the evidence and submissions to the extent necessary to give context to these reasons. In a civil dispute such as this, the applicant bears the burden of proof on a balance of probabilities.
8. The applicant runs a hair salon in her commercial unit. The respondent runs a general store in the adjacent commercial unit. I find the applicant had the statue located on a shelf on her side of the Wall, which is not particularly disputed.

Liability

9. The primary question is whether the respondent was negligent in conducting the shelf installation, and in particular whether she allowed unreasonable vibrations and shaking to occur that in turn caused the applicant's statue to fall from its shelf. I find the answer is yes. My reasons follow.
10. The general elements of a negligence claim are: the respondent owes a duty of care, the respondent failed to meet a reasonable standard of care, it was reasonably foreseeable that the respondent's failure to meet that standard could cause the applicant's damages, and the failure did cause the claimed damages.
11. I find that the respondent owed the applicant, whose unit was adjacent, a duty of care in these circumstances. I find the reasonable standard of care was to not cause large vibrations without reasonable notice.
12. It is undisputed that in September 2016 the respondent and her father installed 2 cedar shelves on the respondent's side of the Wall. Based on the respondent's own evidence, and that of her mother and father, I find the respondent knew the shelving installation would be significantly noisy, and so much so that it would be appropriate to alert the applicant.
13. While the respondent says she "poked my head" into the salon and did not see anyone there, I find that effort was insufficient in the circumstances. There is no evidence the respondent actually went into the salon to alert anyone nor did she

attempt to leave a note. I accept that had the respondent given the applicant a warning, the applicant would have taken steps to safeguard valuable items, including the statue.

14. The respondent says that she could not foresee that the shelving installation would cause things to fall off the applicant's Wall shelf. The respondent submits that over the previous months she had installed 2 sets of the same style of shelves in other areas of the shop along with other fixtures on the same joining wall. However, I find the respondent ought to have foreseen the shelving installation could cause vibrations and potential damage to anything affixed to the applicant's side of the common Wall. I say this because if the shelving was expected to involve significant noisy banging, one could reasonably expect related vibrations. I also say this because the respondent's father described the shelving as requiring steel rods, and so I find the shelving required a substantial installation.
15. Further, based on the applicant's evidence and written statements from her employee and her client, I find the shelving installation was in fact "very, very loud" and "so loud I thought someone was going to come through the wall", that it lasted a couple of minutes, and caused so much vibration that multiple items fell off the applicant's shelf Wall, including the statue. The vibrations caused the employee and the client to be concerned that shaking mirrors would crack and harm clients.
16. Based on the overall evidence before me, including photos, statements from the applicant, her employee and her client, I find that the respondent's shelf installation caused the applicant's statue to fall from its shelf and break. I find the vibrations involved were unreasonable, given the lack of notice to the applicant.
17. Given my conclusions above, I find the respondent is responsible to compensate the applicant for the damage caused to the applicant's statue.

Damages

18. The applicant says the horse statue was a one of a kind auction piece that she hoped to pass down to her children. She bought it in July 2016, for \$1,500 USD or

about \$1,950 CAD. In addition, the applicant paid a) a \$100 “proxy fee” that she paid to someone else to buy the statue for her, b) \$41 for shipping, and c) \$15 for paypal fees. Thus, I find the applicant paid a total of about \$2,100 CAD for the statue.

19. The applicant claims \$5,000 in damages, based on the statue’s cost, shipping, and paypal fees, and its potential resale value. The applicant otherwise submits that on the second hand market the statue is “easily worth \$3,000 US maybe more”. The applicant provided a written statement from the proxy buyer she used to buy the statue. I accept the statue was a valuable and unique collectible and based on the photos provided I also accept the damage is not insignificant.
20. The respondent disputes this value, saying originally the applicant said it was worth \$1,500, which the respondent says is also excessive. I find the applicant has reasonably explained the amounts she paid and how she arrives at her total claim in the dispute.
21. The proxy buyer’s evidence, which I accept as expert evidence on this issue, is that the damaged statue cannot be sold at its original value and certainly not at its anticipated increased resale value over time. The proxy buyer estimated that the applicant had sustained a loss of \$3,000 and possibly up to \$4,500, which I infer to be in US dollars.
22. Prospective future value is not guaranteed. Markets can change. In this case, I am not prepared to order reimbursement at potential resale value. The proxy buyer also indicated that if repaired there is some value in the statue, although I accept that it would be something less than the original purchase price. The photos of the damaged statue show a hole where the tail broke off and a crack, and perhaps a buff or scratch, but otherwise the statue appears intact. There is no evidence before me that it is beyond any repair. While I have no specific evidence before me as to how much the damaged statue may be worth, I find that there is some residual value.

23. On balance, I find that \$2,100 is an appropriate award for the damaged statue, and I order the respondent to pay that amount to the applicant.
24. Based on the evidence before me, the applicant has not already replaced the statue. I therefore make no order for pre-judgment interest.
25. The applicant was successful. In accordance with section 49 of the Act and the tribunal's rules, I find the respondent must reimburse the applicant \$175 in tribunal fees.

ORDERS

26. Within 30 days of the date of this decision, I order the respondent to pay the applicant a total of \$2,275, broken down as follows:
 - a. \$2,100, as compensation for the damaged horse statue, and
 - b. \$175 in tribunal fees.
27. The applicant is also entitled to post-judgment interest, as applicable.

Shelley Lopez, Vice Chair