



Civil Resolution Tribunal

Date Issued: April 5, 2018

File: SC-2017-003346

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *King v. Aria Ventures Ltd.*, 2018 BCCRT 114

BETWEEN:

Edward King

APPLICANT

AND:

ARIA VENTURES LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about a ripped vintage Gianni Versace silk shirt. The applicant Edward King says that while shopping in the respondent's market around June 20, 2017, the respondent's employee bumped into him and shortly afterwards Mr. King

saw his delicate silk shirt was ripped, which he values at around \$4,000. The respondent denies its employee damaged the shirt. 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 126, 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 ripped Gianni Versace silk shirt, 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. At the outset, I note that the respondent's manager's or owner's offer of \$200 (which the applicant refused before this dispute began) is not determinative of the respondent's liability.
9. The applicant's submitted "receipt" (which on its face appears to be an email and is not clearly a receipt) suggests he paid \$3,035 for the shirt in 2012. However, elsewhere in his submissions the applicant said he bought the shirt in "the 1990s". In his submissions, the applicant values the shirt at \$3,983.09, but did not provide any supporting evidence, other than to say that one could look up its value on the internet.
10. The applicant says his shirt was not ripped before shopping and was in "perfect" condition. The applicant's photos show a rip roughly the size of a thumb, although I cannot tell from the photos what part of the shirt was ripped.
11. This is a negligence case. In his application to the tribunal, the applicant said the respondent's employee bumped into him with a store dolly. The applicant's friend was elsewhere in the store and in his statement said that the applicant came up to him and said that the respondent's employee "just ran into him with his dolly" and that the applicant's shirt was ripped. I accept that the applicant found his shirt ripped while shopping in the respondent's store.
12. Based on the photo provided by the respondent, I agree the respondent's dolly does not have any sharp corners at all, and its edges are entirely rounded. The respondent submitted video evidence demonstrating how the dolly could not rip a shirt that rubbed up against it. The applicant disputes that evidence, saying his shirt was particularly delicate. I accept the applicant's shirt was particularly delicate and thin.

13. The respondent also submitted statements from its employees who said they do not recall any incident involving the applicant's shirt. I accept this evidence as accurately reflecting their recollection.

14. In his submissions, the applicant efficiently set out his evidence that I find key:

I don't believe that I ever said that it was the [dolly] that made the rip in my shirt? It could have been the [dolly]? It could have been simply from the [male employee] running into me? All I said was that the guy at Aria market ran into me and afterwards I checked my shirt and saw that it had a big Rip in it. It is an Easy shirt to Rip ...A person running into me, just like what happened at Aria market, Could easily rip my shirt, a dolly could even do more damage.

[reproduced as written, except where noted]

15. In short, the applicant's central submission is that the vintage shirt is so delicate that it could be ripped just by someone bumping into him. Given the above evidence, I find the applicant has not proven the respondent's employee bumped into him with a dolly or that the store's dolly caused the rip in his shirt.

16. For the purposes of this decision, I accept the respondent's employee likely bumped into the applicant in a minor way and that in doing so the applicant's shirt ripped. I find any bump here was minor at most, because on the applicant's own evidence he cannot recall what happened, whether it was the employee or the dolly. The respondent's employees do not recall any incident. I find that if the bump had been more significant, the applicant would likely be able to recall how the incident happened.

17. However, I do not accept that the minor bump was negligent. My reasons follow.

18. 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.

19. I find that the respondent owed the applicant a duty of care in these circumstances, because the applicant was shopping in the respondent's store. I find the reasonable standard of care was to not bump into customers with sharp objects that could reasonably be foreseen to damage clothing. However, I find a minor bump with one's body while passing in a shopping aisle is within the reasonable standard of care. A standard of no contact while shopping in public would not be reasonable. Further, it would not be reasonably foreseeable that a customer's shirt would rip due to a minor bump from another person.
20. In summary, I find the applicant has not proven the respondent was negligent, and therefore the applicant is not entitled to any of the damages claimed. The respondent is not responsible to pay for the ripped shirt.
21. Even if I had found the respondent negligent in causing the rip, I would not have ordered damages payable in the significant amount claimed as the applicant's evidence was insufficient to prove the shirt's value.
22. The applicant was unsuccessful. In accordance with section 49 of the Act and the tribunal's rules, I dismiss the applicant's claims for reimbursement of his tribunal fees and dispute-related expenses.

ORDER

23. I dismiss the applicant's dispute.

Shelley Lopez, Vice Chair