



Civil Resolution Tribunal

Date Issued: September 17, 2018

File: SC-2017-004882

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *James v. B.A. Blacktop Ltd. et al,*

2018 BCCRT 528

B E T W E E N :

Emma James

APPLICANT

A N D :

B.A. Blacktop, District of North Vancouver, and the Owners, Strata Plan
VR 2312

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. This is a dispute about compensation for damage to the applicant's car.
2. The applicant, Emma James, says her car was damaged by the gate at a townhouse complex on Indian River Drive in North Vancouver. The townhouses are part of a strata corporation, the Owners, Strata Plan VR 2312 (strata), a respondent in this dispute.
3. The applicant says the accident arose as a result of repaving on Indian River Drive, and all 3 respondents are liable. She says the respondent paving contractor, B.A. Blacktop (B.A.), failed to provide adequate signage and flag people, and the respondent District of North Vancouver (District) failed to ensure that their contractor B.A. met this obligation. The applicant also says the strata failed to ensure that its gate would not close on a vehicle.
4. The applicant seeks an order that the respondents reimburse the Insurance Corporation of British Columbia (ICBC) \$2,858 for car damage, to prevent her premium from going up. The applicant also seeks an order that the strata fix the gate so it cannot hit objects in its path.
5. The applicant is self-represented. B.A. and the District are represented by Emmanuel Rose, who says B.A. assumes any liability on behalf of the District. The strata is represented by Jay Finch, a strata council member.

JURISDICTION AND PROCEDURE

6. 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.

7. 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. Neither party requested an oral hearing.
8. 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.
9. 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

10. The issues in this dispute are:
 - a. Are any or all of the respondents liable for damage to the applicants' vehicle, and if so, what remedy is appropriate?
 - b. Should I order the strata to fix its gate?

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.

The Accident

12. The applicant says LG was driving her car at the time of the accident. The applicant was not present. LG lives at the strata, and had a "clicker" to operate the

gate. He was following 2 other cars, which proceeded through the driveway exiting the strata complex and turned onto Indian River Drive. Indian River Drive was designated “single lane alternating” due to the repaving work.

13. After turning onto Indian River Drive, the driver of the first car saw oncoming traffic approaching in the single lane, so he started backing up into the driveway. According to LG, the first car hit the bumper of the second car. The second car then backed up toward LG. To avoid a collision, LG backed further down the driveway. This put him in the path of the mechanical swinging gate across the strata’s driveway, which hit the applicant’s vehicle as it closed.
14. These facts are not particularly in dispute. The gate is large and metal, and the photos provided in evidence show that it struck the applicant’s vehicle and caused considerable damage. The strata admits that its gate struck the applicant’s vehicle, but says LG, B.A., and the District are liable for any damage.

Liability of the Strata

15. The applicant says the strata was negligent, as it failed to either lock the gate in an open position during construction, or install a safety mechanism to prevent the gate from hitting objects as it closed.
16. 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 caused the claimed damages.
17. I find the applicant has met the burden of proving, on a balance of probabilities, that the strata is liable for the damage to her car.
18. As the owner of the strata property, the strata is an “occupier” under the *Occupiers Liability Act* (OLA). Under section 3 of the OLA, occupiers owe a duty of care to ensure those who use their premises are reasonably safe from harm to themselves and their property. Thus, the strata had a duty to provide safe access

for cars entering and exiting its premises. LG is a resident of the strata, and therefore had proper authority to use the driveway.

19. I accept that the gate was functioning in its normal manner, as submitted by the strata. However, the evidence provided by the applicant shows that the gate had hit a car before. The strata did not post warning signs or circulate warnings to residents about this risk. LG says he did not know the gate would not stop automatically if blocked, and I accept that evidence as it is consistent with the statements provided by other residents. For these reasons, I find the strata failed to meet the reasonable standard of care. I also find that the damage to the applicant's car was a reasonably foreseeable outcome of being hit by the gate.
20. The strata says LG backed the vehicle up after the initial collision with the gate, which caused further damage. While the scrapes shown on the photos indicate that the gate hit the vehicle while it was travelling backwards, I find this does not change the strata's liability. If the gate had not hit the vehicle, there would be no damage. There is no evidence before me that the cost of repairs would have been different if LG had stopped more quickly after being hit by the gate.
21. The strata says LG failed to take proper lookout while driving, failed to take reasonable precautions and evasive actions to avoid colliding with the gate, and failed to properly operate the gate clicker to stop the gate. I disagree, and find that based on his statement and the statements of other witnesses, LG acted reasonably in the circumstances.
22. For all these reasons, I find the strata is liable for the damage to the applicant's car. The strata has not disputed the \$2,858 repair cost, so I find the applicant is entitled to reimbursement of that amount. While she requested that the strata reimburse ICBC, ICBC is not a party to this dispute, and I find it is more efficient for the strata to reimburse her directly. The applicant may then reimburse ICBC.
23. Since the applicant has not yet paid ICBC, I find she is not entitled to pre-judgment interest under the *Court Order Interest Act* (COIA).

24. The applicant requests an order that the strata fix its gate. The tribunal does not typically make prospective orders relating to matters that have not yet occurred: *Bourque et al v. McKnight et al*, 2017 BCCRT 26. I find no reason to depart from that general rule in this case, particularly since the applicant does not live in the strata complex. I therefore decline to make the requested order.

Liability of B.A. and the District

25. Mr. Rose, on behalf of B.A. and the District, says liability for the accident rests with LG, who should have waited for the exit to clear before moving forward into the gate's path, and possibly also with the strata, due the operation of its gate. Mr. Rose says B.A. provided all traffic control measures and personnel required under the Ministry of Transportation's *Traffic Management Manual for Work on Roadways*.

26. Although the applicant says B.A. should have posted a traffic flagger at the end of the driveway, I find she has not provided evidence that B.A. failed to meet the required traffic control standards. More importantly, I find that in the circumstances, it was not reasonably foreseeable to B.A. or the District that the applicant's car would be hit by the strata's gate. For these reasons, I find that B.A. and the District are not liable for the car damage.

Conclusion

27. The tribunal's rules provide that the successful party is generally entitled to recovery of their fees and expenses. The applicant was successful against the respondent strata, so I order that the strata reimburse the applicant \$125 paid in tribunal fees.

ORDERS

28. I order that within 30 days of this decision, the respondent strata pay the applicant a total of \$2,983, broken down as follows:

- a. \$2,858 for vehicle damage, and
 - b. \$125 for tribunal fees and dispute-related expenses.
29. The applicant is also entitled to post-judgment interest under the COIA.
30. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.
31. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Kate Campbell, Tribunal Member