



# Civil Resolution Tribunal

Date Issued: November 21, 2018

File: SC-2018-001508

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Pauquette v. TRASOLINI & SONS CONSTRUCTION (BC) LTD.*,  
2018 BCCRT 752

B E T W E E N :

Kaycee Pauquette

**APPLICANT**

A N D :

TRASOLINI & SONS CONSTRUCTION (BC) LTD.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Shelley Lopez, Vice Chair

## INTRODUCTION

1. This dispute is about payment of \$1,261.94 for repairs to the applicant's car's front bumper and wheel. The applicant, Kaycee Pauquette, says the respondent,

TRASOLINI & SONS CONSTRUCTION (BC) LTD., was negligent and failed to adequately cover and warn of pot holes in its road construction area. The applicant says her car was damaged when she unknowingly ran over one of the pot holes the respondent had covered with plywood, and the plywood buckled under her car's weight.

2. The respondent denies responsibility, saying it had covered the potholes properly and questions whether the applicant's claimed vehicle damage was caused by the pothole in question. The applicant is self-represented and the respondent is represented by Danny Trasolini, a principal or employee.

## **JURISDICTION AND PROCEDURE**

3. 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.
4. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Some of the evidence in this dispute amounts to a "he said, he said" scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note that in *Yas v. Pope*, 2018

BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is in issue.

5. 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.
6. 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**

7. The issue in this dispute is whether the applicant has proved the respondent negligently covered potholes causing the claimed damage to her vehicle, and if so, what is the appropriate remedy.

## **EVIDENCE AND ANALYSIS**

8. In a civil claim such as this, the applicant bears the burden of proof on a balance of probabilities. While I have reviewed all of the evidence and submissions provided, I have only addressed it below as necessary to explain my decision.
9. At the outset, I note that section 3 of the *Occupier's Liability Act* (OLA) required the respondent to take reasonable care, in all of the circumstances, to ensure the road it was working on was reasonably safe to the public. I say this because the respondent met the definition of "occupier" in the OLA, because it had physical possession of the parking lot road and had responsibility for and control over its condition at the material time.
10. Next, I note the applicant's evidence largely consists of numerous photos of the construction area in question on the day in question and the next day, photos of her

vehicle's damage, and her estimate for repair. The applicant notes that the photos taken the next day show warning cones and new concrete, which she says were not present at the time the damage occurred. I find nothing turns on this, as from the photos the cones appear to be in place to warn the public that there was fresh concrete. I do however acknowledge the respondent did not provide any evidence.

11. Based on the evidence before me, I accept that at the time in question, January 14, 2018, the respondent had not blocked off the plywood-covered pothole in question and had not set up any warning signs about it. I further accept that the piece of plywood the applicant drove over buckled, either from another vehicle or under the weight of her car, which is what is shown in the applicant's photos. Based on the photos, the crack in the concrete below the broken plywood appears to be about 4" deep, which is what the respondent said was its depth. The applicant did not dispute the pothole was 4" deep.
12. The respondent says its road work in the area was being done 7 days a week, with a minimum of 200 cars passing through the parking lot section of the complex in question. However, the respondent did not provide any evidence to support the number of vehicles, which I therefore find is speculative and place no weight on it. Contrary to the respondent's suggestion, the fact that no other vehicle owners reported the same damage as the applicant is not determinative.
13. The applicant says the respondent was negligent by covering large potholes in the concrete with plywood, which could not support a vehicle's weight if driven over. The applicant also says the respondent was negligent in failing to properly mark the potholes or block them from drivers, and failing to warn about them. The applicant says it was impossible to see the plywood in the dark or know that plywood covered large potholes.
14. Based on the evidence before me, I accept that the applicant's vehicle was damaged when she drove over a plywood-covered hole on January 14, 2018, while it was dark (it was night or early morning, the exact time is not before me in

evidence). This is consistent with the evidence that the respondent was doing road construction work in the area at the time.

15. The respondent also says support blocks were placed beneath plywood coverings with a pylon on top, prior to leaving the job site. The respondent says the parking lot lighting was sufficient enough for it to carry out their work, though it does not say the time of day it did this work. In any event, the respondent says it believes the plywood was damaged by an overweight delivery truck and the pylons were relocated to facilitate the parking stall.
16. Based on the photos in evidence, I agree with the applicant that the plywood was not adequately marked and they were hard to see in the dark. The respondent should have provided better warnings, as I find it should have anticipated someone might move a pylon or cone to access a parking spot.
17. As a result, I accept that there is no basis to conclude the applicant should have avoided the plywood covering. I also accept that her car fell into the pothole somewhat, when she drove over it. I find these circumstances lead to a conclusion the respondent breached section 3 of the OLA and was negligent.
18. I therefore find the central question in this dispute is to what extent the applicant has proved the pothole caused the claimed damage to her bumper and wheel.
19. The respondent says at 10 kilometers per hour, and given the maximum pothole depth of 4", it does not believe it is possible to sustain damages as high up on the fender as claimed by the applicant. It is undisputed that the applicant refused to permit the respondent to inspect her car. This is relevant because there is no evidence before me, other than the applicant's own submission, to show that the bumper's scratches were caused by the 4" pothole.
20. Many of the applicant's photos show scratches on the face of the front bumper, which I find are roughly 6 to 8" from its bottom edge, which itself is several inches off the ground. I base these measurements from my review of the photos, as none were provided. Given the height of these scratches, I find the applicant has not

proved they were caused by her vehicle's drop into a 4" pothole. However, other photos show scratches on the metal wheel rim.

21. Given the above, I agree that the applicant has not proved causation with respect to the bumper damage, meaning she has not proved the respondent's poorly covered pothole caused the bumper's scratches as shown in the photos. However, I do find that the pothole caused the damage to the applicant's wheel rim. Based on the applicant's submissions and the \$1,261.94 repair estimate description of work, the cost of the wheel repair totals \$365 plus tax. This equals \$408.80. I order the respondent to pay the applicant this amount. As there is no evidence the applicant has already paid for the car's repair, I do not order pre-judgment interest.
22. The applicant also claims \$500 in expenses, which she says reflect the amount of time she missed from work to deal with the respondent and this dispute. While not binding on me, I adopt the tribunal's general practice of not awarding a party expenses for their own "time spent" on a dispute. This is consistent with the tribunal's rules that provide for reimbursement of legal fees in only extraordinary cases. This is not an extraordinary case.
23. The applicant was partially successful. In accordance with the Act and the tribunal's rules, I find she is entitled to half of the \$125 paid in tribunal fees, namely \$62.50. There were no other dispute-related expenses claimed.

## **ORDERS**

24. Within 14 days of the date of this order, I order the respondent to pay the applicant a total of \$471.30, broken down as follows:
  - a. \$408.80 as compensation for the applicant's vehicle damage, and
  - b. \$62.50 for tribunal fees.
25. I dismiss the applicant's remaining claims. The applicant is entitled to post-judgment interest, as applicable.

26. 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.
27. 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.

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Shelley Lopez, Vice Chair