Civil Resolution Tribunal

Date Issued: December 17, 2018

File: SC-2018-002878

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Arevalo v. WALL FINANCIAL CORPORATION et al,* 2018 BCCRT 861

B E T W E E N :

Hugo Arevalo

APPLICANT

A N D :

WALL FINANCIAL CORPORATION and SWC ENTERPRISES LTD.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about damage to the applicant Hugo Arevalo's Tesla Model S vehicle when he parked at the Sheraton Wall Centre hotel (hotel). The applicant says the hotel was negligent for failing to properly place adequate signage to warn

of a “lower than standard vent unit” in a parking stall. The applicant claims $952.82 for repairs to his car’s tailgate.

2. While not clearly stated in any of the evidence or submissions, I infer the respondents, WALL FINANCIAL CORPORATION and SWC ENTERPRISES LTD., own and/or are occupiers of the hotel parking lot.

3. The applicant is self-represented. The respondents are represented by Mario Kalinowski, the “Director of Security – Wall Centre”, which I infer refers to one of the respondents.

JURISDICTION AND PROCEDURE

4. 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.

5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. 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.

6. 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.

7. 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.

ISSUE

8. The issue in this dispute is whether the applicant has proved the respondents were negligent in failing to warn drivers parking in their hotel about a low hanging ventilation unit, and if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

9. 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 submissions below as necessary to explain my decision.

10. The applicant backed into stall 200N in the hotel's underground parking lot, on February 27, 2018. It is undisputed his car's tailgate hit a low hanging ventilation unit at the back of that stall. The applicant provided a repair estimate for the claimed amount of $952.82. As referenced above, the applicant says the respondents failed to adequately warn of the hazard presented by the low hanging ventilation box.

11. Given my conclusion below, I find I do not need to address the respondents' respective roles in the hotel and its parking lot, which are not clearly set out in the evidence and submissions before me.

12. An applicant bears the burden of proving a negligence claim on a balance of probabilities. 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.

13. I also note that section 3 of the *Occupier's Liability Act* (OLA) required the respondents to take reasonable care, in all of the circumstances, to ensure the parking lot they provided was reasonably safe to its public users. For the purpose of this decision, I accept that the respondents met the definition of "occupier" in the OLA, because they had physical possession of the parking lot and had responsibility for and control over its condition at the material time.

14. In this case, I find that the question is whether the respondents breached the applicable standard of care in terms of the ventilation box's height and providing reasonable warning of the hazard.

15. The applicant relies on emails he exchanged with the City of Vancouver that state the 2014 Vancouver Building By-law #10908 provided a minimum clear overhead height of 2 meters in a storage (parking) garage. A failure to comply with a bylaw is not determinative, though in certain circumstances it could be evidence in support of a negligence claim. However, the respondents say that the 2014 bylaws are not the same as those in place at the time the hotel was built, almost 20 years ago. In reply, the applicant says the City of Vancouver told him the 2 meter limit was in the 2007 and 1999 by-laws, if not decades prior. However, the applicant did not provide evidence of this, and I therefore find I cannot rely on it. That said, given the current bylaw, I find that the parking lot operator ought to take precautions where the minimum clearance does not exist.

16. This dispute therefore turns on whether there were sufficient warnings in place to alert drivers to take care and avoid the ventilation box. For the reasons set out below, I find the answer is yes.

17. The applicant provided a photo annotated with a measurement "1m 20 cm", showing the height of the ventilation box from the parking lot floor. I accept this measurement, which is undisputed. This same photo shows the box has a piece of yellow and black striped tape wrapped around its bottom edge. I do not agree with the applicant's submission that this tape is "too thin" to be seen. The photo shows a light directly above the ventilation box, showing that the area is well-lit. I disagree

with the applicant's submission that the silver box blends in with the white wall behind. Given the ample lighting and the black and yellow tape, before the applicant started to back into stall 200N, I find the applicant ought to have seen and taken steps to avoid backing into the ventilation box.

18. The applicant's photo also shows stall 200N does not have a "do not back in" warning sign at the back of the stall, whereas certain other stalls in the parking lot do. However, one of the respondents' photos shows that "do not back in" was printed in large yellow letters on the side wall of the adjacent parking stall, and this signage faced the applicant's driver-side door as he backed into stall 200N. While the applicant says this sign would be blocked if a car were parked in that adjacent stall, the evidence before me is that the adjacent stall was empty when the applicant backed in. Further, based on one of the respondents' photos, the "do not back in" sign adjacent to 200N would be visible, above a parked sedan type car. Therefore, I find the applicant should have seen that "do not back in" signage out his driver window as he backed in, if not when he drove past the spot before backing in.

19. The applicant provided a video showing that the ventilation box is not visible in his rear-view mirror when backing in, and is not visible in his side-view mirrors, though in the video the latter were pointed downwards for reversing. I agree with the respondents that this is not determinative. I find the ventilation box's lower edge was well-marked and easily seen. I also find that the "do not back in" sign in the adjacent stall wall which faced the applicant's driver door, also reasonably alerted the applicant to the box's hazard.

20. On balance, I find the applicant has not proved that the respondents failed to take reasonable care in all of the circumstances. In particular, I find the applicant has not proved the respondents were negligent with respect to warning drivers about the ventilation box. I dismiss the applicant's claims.

21. In accordance with the Act and the tribunal's rules, as he was unsuccessful I find the applicant is not entitled to reimbursement of $125 in tribunal fees.

ORDER

22. I dismiss the applicant's claims and this dispute.

Shelley Lopez, Vice Chair