



Civil Resolution Tribunal

Date Issued: January 30, 2019

File: SC-2018-004551

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Epplette v. Persoon*, 2019 BCCRT 115

B E T W E E N :

Jaden Epplette

APPLICANT

A N D :

Nathaniel Persoon

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. This is a dispute about a damaged cell phone. The applicant, Jaden Epplette, says the respondent, Nathaniel Persoon, pushed him into a pool which damaged his cell phone. The applicant wants the respondent to pay him \$600 to replace the phone and \$125 to reimburse him for the cost of a temporary phone.

2. The respondent says the applicant lost his balance and fell into the pool. He says he should not have to pay the applicant anything because it is not his fault the applicant's phone was damaged.
3. Both parties are self-represented.

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 118 of the *Civil Resolution Tribunal 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. 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 demeanor 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. 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 the recent decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal's process and 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.

ISSUES

8. The issue in this dispute is whether the respondent was responsible for damaging the applicant's cell phone, and if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

9. In a civil claim like this one, the applicant must prove their claim on a balance of probabilities. This means the tribunal must find it is more likely than not that the applicant's position is correct.
10. Both parties made submissions, though neither of them submitted evidence. I have only addressed the submissions to the extent necessary to explain and give context to my decision. For the reasons that follow, I dismiss the applicant's claim.
11. It is undisputed that both parties were at a mutual friend's gathering in Whistler on May 26, 2018 next to a pool. The applicant says he was playing tag with some children when the respondent pushed him into the pool fully clothed. The applicant says his cell phone, an iPhone 6s Plus, sustained water damage and no longer works. He submitted no photographs of the phone or other evidence to prove the type of phone he has, its value, or the extent of its damage. The applicant says he had to buy another "smart" phone as it was required for his work, though he did not submit a receipt. The applicant says he received multiple Instagram messages from the respondent saying he had bought the applicant an older replacement phone, but those messages are not in evidence. In the Dispute Notice the applicant says there

was a witness who could support his version of events, but there is no witness statement in evidence.

12. The respondent says he was playing drinking games with the applicant at their friend's gathering, and at one point they both reached for a ball that had fallen on the ground. The respondent says he got to the ball first, and the applicant lost his balance and fell into the pool. The respondent says he did not make contact with the applicant before he fell into the pool and that both parties had consumed alcohol at the time. The respondent does not deny that the applicant's cell phone is broken, but he says it was not his fault.
13. On balance, I find the applicant has not established that the respondent pushed him into the pool. Both versions of events are reasonable, however it is the applicant's responsibility to prove his claim. The applicant says his friend witnessed the events, but he failed to provide a statement from the friend. While it is understandable that a witness may not want to get involved in a dispute between friends, this does not relieve the applicant of his responsibility to prove his claim.
14. Even if I did prefer the applicant's version of events, I find he has not proven that he suffered damages. He did not submit evidence of the make or model of his phone, its value, or the extent of its damage, although such evidence should have been available. He did not submit receipts to prove the cost of a temporary phone or a replacement phone. In all the circumstances, I find there is insufficient evidence to prove the applicant's claims, and I dismiss them.
15. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. Since the applicant was unsuccessful he is not entitled to reimbursement of his tribunal fees. He has not claimed any dispute-related expenses. The respondent has not incurred any tribunal fees or claimed any dispute-related expenses.

ORDERS

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

Sarah Orr, Tribunal Member