



# Civil Resolution Tribunal

Date Issued: February 25, 2019

File: SC-2018-005509

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Marine Chrysler Dodge Jeep Ltd v. Jack Cewe Ltd. et al*, 2019 BCCRT 215

**B E T W E E N :**

Marine Chrysler Dodge Jeep Ltd

**APPLICANT**

**A N D :**

Jack Cewe Ltd. and City of New Westminster

**RESPONDENTS**

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## **REASONS FOR DECISION**

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Tribunal Member:

Eric Regehr

### **INTRODUCTION**

1. The applicant, Marine Chrysler Dodge Jeep Ltd, owns a 2017 Jeep Grand Cherokee. The respondent, the City of New Westminster (City), hired the respondent, Jack Cewe Ltd. (contractor), to repave the road in front of the applicant's driveway. The applicant alleges that the ramp the contractor built

between the applicant's driveway and the road collapsed and caused damage to the Jeep. The applicant claims \$3,300.44, the cost to repair the Jeep.

2. The contractor did not respond to this dispute, as discussed below. The City submits that it is not responsible for any damage caused by its contractor.
3. The applicant and the City are each represented by an employee.

## **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. 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.
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 make one or more of the following orders:
  - a. order a party to do or stop doing something;
  - b. order a party to pay money;

- c. order any other terms or conditions the tribunal considers appropriate.

## **ISSUES**

8. The issues in this dispute are:
  - a. Is the contractor in default? If so, what remedy is appropriate?
  - b. Is the City responsible for the damage to the applicant's vehicle?

## **EVIDENCE AND ANALYSIS**

9. In a civil claim such as this, the applicant must prove its case on a balance of probabilities. While I have read all of the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision.
10. The City hired the contractor to perform road repairs. On October 24, 2017, the applicant says that it was notified that the road work on its street would limit access to its driveway. The applicant was told to remove any vehicles from its driveway early in the day before the driveway was blocked. It is not clear from the evidence whether it was the City or the contractor who told the applicant to remove its vehicles.
11. The applicant needed the Jeep that day, so it exited the driveway early on October 24. The applicant says that the contractor's workers were present. The applicant says that the contractor had constructed a temporary ramp between the driveway and the road.
12. The applicant says that one of the contractor's trucks was partially blocking the driveway, so the applicant had to exit on the left side of the driveway to clear the truck. While exiting the driveway, the temporary ramp collapsed under the Jeep's left front tire, causing the truck to drop down and strike the curb. The impact damaged the Jeep's front bumper.

13. The applicant provided photographs from October 24, 2017, that show the temporary gravel ramp that it says collapsed. The applicant also provided an invoice establishing repair costs of \$3,300.44 as claimed.

***Is the contractor in default? If so, what remedy is appropriate?***

14. The tribunal issued the applicant's Dispute Notice on July 31, 2018. Under the tribunal rules, the applicant had until October 30, 2018, to provide the Dispute Notice to the respondents.

15. The applicant provided a copy of the Dispute Notice to the contractor's registered office by registered mail on August 2, 2018. Under the tribunal's rules, a respondent must respond to a Dispute Notice within 14 days of receiving it. The contractor did not file a Dispute Response.

16. Tribunal rule 76 says that if a party named as a respondent to a dispute fails to respond to a properly delivered Dispute Notice by the date shown on the notice, that party is in default. Having reviewed the evidence, I am satisfied, on a balance of probabilities, that the contractor is in default. In that circumstance, the tribunal will generally assume that the party in default is liable, and will resolve the dispute without that party's participation.

17. I see no reason to depart from that general rule in this dispute. I find that the contractor is liable for the \$3,300.44 claimed, plus court ordered interest from the date of the damage.

***Is the City responsible for the damage to the applicant's vehicle?***

18. The remaining question is whether the City is also liable for the damage to the Jeep. The applicant makes 2 arguments.

19. First, the applicant asserts that the City should have to pay for the repairs because the City hired the contractor. However, the City is not legally responsible for all of

the contractor's acts and omissions just because the City hired the contractor to do road work on its behalf.

20. Rather, in order for the City to be liable, the applicant must prove that the City was negligent or liable under the *Occupiers Liability Act*. The applicant has not pointed to any action or omission by the City that caused or contributed to the incident. The applicant does not say that the City did anything wrong or that it should have done anything differently. There is no suggestion that the City played any role in constructing the temporary ramp. The applicant simply asserts that the City should be responsible for what its contractors do. I reject this argument.
21. As for the *Occupiers Liability Act*, section 5 says that an occupier is not liable for damage caused by an independent contractor as long as the occupier exercised reasonable care in selecting the contractor. There is no suggestion that the City failed in this regard.
22. Second, the applicant argues that the City has an obligation to provide taxpayers with access to roadways from their properties. The applicant says that because the contractor partially blocked access to its driveway, the City breached this obligation. The applicant provided no legal authority for the proposition that a municipality must, at all times, ensure that each of its residents has unfettered access to a street from their driveways. In any event, if such an obligation exists, the applicant does not explain how this alleged breach resulted in the damage to the Jeep. The applicant says that the Jeep was damaged because the contractor built a poorly constructed temporary ramp. I reject this argument.
23. I dismiss the applicant's claims against the City.
24. 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. I find the applicant is entitled to reimbursement of \$125 in tribunal fees from the contractor. The applicant did not claim any dispute-related expenses.

## ORDERS

25. Within 30 days of the date of this order, I order the contractor to pay the applicant a total of \$3,483.03, broken down as follows:
- a. \$3,300.44 as reimbursement for damage to the Jeep,
  - b. \$57.59 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$125 in tribunal fees.
26. The applicant's claim against the City is dismissed.
27. The applicant is entitled to post-judgment interest, as applicable.
28. 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.
29. 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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Eric Regehr, Tribunal Member