



Civil Resolution Tribunal

Date Issued: March 12, 2019

File: SC-2018-005478

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Banks v. Escape Adventures Inc.*, 2019 BCCRT 302

B E T W E E N :

Mary Jane Banks

APPLICANT

A N D :

Escape Adventures Inc.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. This is a dispute about a personal injury. The applicant, Mary Jane Banks, went to the respondent Escape Adventures Inc.'s "Exit" room with her 2 sons for her birthday. She says she tripped on a hidden stair in the Exit room causing her to break her finger. She says she did not sign a liability waiver, and the respondent should have known the stair was a tripping hazard.

2. The applicant wants the respondent to pay her \$399 for the cost of repairing her ring after it was cut off at the hospital, \$135 for snow shoveling expenses, \$285.92 for house cleaning expenses, \$590.90 for 2.5 days of missed work, and \$25 for mileage and parking at the hospital, for a total of \$1,435.82.
3. The respondent says the applicant did not injure her finger on its premises, and that the applicant signed a waiver absolving it from liability for any injuries the applicant may have incurred.
4. The applicant is self-represented. The respondent is represented by an employee or principal.

JURISDICTION AND PROCEDURE

5. 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.
6. 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 "she said, they 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.

7. 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.
8. 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

9. The issues in this dispute are:
 - a. Did the applicant injure herself on the respondent's premises?
 - b. If so, to what extent if any is the respondent required to pay the applicant for the \$1,435.82 in costs she incurred from breaking her finger?

EVIDENCE AND ANALYSIS

10. In a civil claim like this one, the applicant must prove their claim on a balance of probabilities. This means I must find it is more likely than not that the applicant's position is correct.
11. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision. For the following reasons, I dismiss the applicant's claims.

Did the applicant injure herself on the respondent's premises?

12. It is undisputed that in February 2018 the applicant and her 2 sons went to the respondent's Exit room in Kelowna to celebrate her birthday. The respondent operates a room escape gaming facility where participants choose an adventure theme, then solve puzzles and find clues to escape the room within a specified time limit.
13. The applicant says she tripped on a hidden stair inside a dark room while playing the Exit game and injured her right ring finger. She and her sons continued playing the game, despite the applicant saying she was in pain. She says her injured finger became increasingly swollen and painful throughout the day, and the following day she went to the hospital and learned her finger was fractured. The applicant submitted medical reports and statements from both of her sons which are consistent with her version of events.
14. The respondent says the applicant did not injure herself at its premises. They submitted a statement from an employee T.R. who was working at the Exit room on the day of the incident. T.R. said the applicant never mentioned her injury, and that she continued playing the game for an additional 40 minutes after she says she was injured, implying that if she was truly injured she would not have been able to do so. The respondent says that since the applicant did not seek medical treatment for her broken finger until the day after she visited the Exit room she cannot prove her injury occurred on the respondent's premises.
15. On balance, I am satisfied the applicant has proven her injury occurred on the respondent's premises. The 3 people who witnessed the incident all gave consistent statements, and the video and photograph in evidence taken immediately after the incident support the applicant's claim. Given the nature of the injury, it is reasonable that the applicant waited until the next day to seek medical treatment. I find the applicant's injury occurred on the respondents' premises during the Exit game.

To what extent if any is respondent required to pay the applicant for the \$1,435.82 in costs she incurred from breaking her finger?

16. Section 3 of the *Occupiers Liability Act* requires the respondent to take reasonable care to ensure its property was reasonably safe in the circumstances. However, the respondent says it is not responsible for the applicant's injury because she signed a waiver of liability. The respondent submitted a document entitled "EXIT Canada Terms & Conditions Waiver Form," dated February 4, 2018. The document states, "I represent my group and myself that we understand and agree on the following conditions and rules..." It also states, "We are aware that our participation in EXIT Canada may pose the risk of injury or damage to ourselves and our apparel. EXIT Canada IS NOT responsible for any injuries to our physical condition...during our 45 minutes of game play. By signing this form, I acknowledge that I have read this EXIT Canada Terms & Conditions Waiver Form." The applicant's name is printed next to her signature at the bottom of the page among a list of other names and signatures. The respondent says its representative explained the waiver to the applicant.
17. The applicant says no one told her she was required to sign a waiver or explained it to her, and she did not know that what she signed was a waiver. She says she signed a piece of paper with a list of names on it, but she was told by T.R. that it was to acknowledge that the respondent would hold onto her credit card until after she and her sons completed the game. She says at that point she had a sense that something was wrong, and she thought it was strange that she would be required to sign her name to leave her credit card with the respondent, but she "went along" with it. She says there were a lot of papers on top of the page that she signed which were rolled back over the top of the clipboard, and that there was no visible wording on the paper she signed.
18. A statement from one of the applicant's sons says he recalled that the respondent told them about some rules and guidelines for the Exit game when his mom paid,

but neither of the applicant's son's statements indicate whether they recall being told about a waiver. It is undisputed that the applicant's sons did not sign the waiver.

19. The applicant says that after the incident she made several attempts to obtain the document she signed from the respondent without success. She suggests that the respondent doctored the waiver for this dispute, and that this explains why the waiver was not previously available to her. However, I find the applicant has not substantiated this claim. The fact that the respondent did not send the applicant the complete signed waiver document through correspondence after the incident does not mean it did not exist. The correspondence suggests the respondent's representative did not understand what the applicant was requesting.
20. The respondent says its policy is to fulfill its legal requirement to ensure players know they take full responsibility for themselves when playing the Exit game. The respondent says there is video footage of its employee explaining the waiver to the applicant, but they did not provide that footage. However, based on the angle of the other video footage in evidence of the respondent's lobby, the fact that this footage has no volume, and the fact that the parties agree the applicant did sign a document, I find such footage would not assist me in determining whether the respondent told the applicant about the waiver.
21. It is reasonable that someone participating in the Exit room, a game requiring participants to attempt to "escape" through a series of puzzles and clues, would expect to sign a waiver of liability. The waiver in this case is half a page in length. I find the wording is clear and straightforward, and it would not take anyone more than a few minutes to review the waiver and sign it.
22. On balance, I find the respondent told the applicant about the waiver. Although the waiver does refer to charging the applicant for violating any of the stated rules, there is no reference in the document to holding a player's credit card. I find it unlikely the respondent would tell the applicant the form was about a credit card when that is not mentioned anywhere in the document. Given the nature of the Exit game, it is reasonable the applicant would have expected some inherent hazards in choosing

to play such a game. Given the respondent's policy, the fact there is evidence the respondent gave the applicant and her sons instructions and explained the rules, and the fact that the applicant did sign a document, I find it more likely than not that the respondent told the applicant about the waiver.

23. There is no general requirement for the party tendering a waiver to take reasonable steps to ensure the signing party reads and understands its terms. However, such an obligation does arise in circumstances where a reasonable person should have known the party signing the waiver was not consenting to its terms. Factors to consider when determining whether this obligation arises include the effect of the exclusion clause in relation to the nature of the contract, the length and format of the contract, and the time available for reading and understanding it. (See *Karroll v. Silver Star Mountain Resorts*, 1998 CanLII 3094 (BC SC)). In that case the purpose of the contract was to permit the party to engage in dangerous activity. The court found a reasonable person would not have known the party signing the waiver did not intend to agree to it.
24. The applicant says she was told she was signing to acknowledge she had given the respondent her credit card, but she also says she felt something about that was wrong, but that she just "went along" with it despite her concerns. If the applicant had legitimate concerns about what she was signing, it was her responsibility to review the document or ask questions before signing her name. Even if, as she claims, there were many papers on top of the waiver which were rolled over the back of a clipboard, I find it unlikely such a roll of papers would cover half a page. The waiver of liability is the last paragraph on the waiver, meaning it would have been the most easily visible part of the document if it was covered with the papers in the manner the applicant alleges. In all the circumstances, I find the respondent's waiver of liability is enforceable.
25. Regardless of the waiver of liability, I find the applicant has not established that the respondent was negligent or failed to take reasonable care to ensure its premises were reasonably safe in the circumstances, as required by section 3 of the

Occupiers Liability Act. The standard of care under the *Occupiers Liability Act* is the same standard of care at common law for negligence, which is to protect others from an objectively unreasonable risk of harm (see *Agar v. Weber*, 2014 BCCA 297). The applicant says the stair she tripped on was an obvious tripping hazard, and both of her sons said the stair was hidden, however there is no photograph of the stair or the Exit room in evidence. She says the room was too dark and that the respondent gave her and her sons only 2 flashlights for 3 people. The respondent says that if the applicant was not comfortable with the amount of light in the room she should have asked for an additional flashlight or declined to participate.

26. As stated above, given the nature of the Exit game, it is reasonable the applicant would have expected some inherent hazards in choosing to play such a game. There are no photographs of the Exit room or the stair in evidence, and there is insufficient detail about the layout of the room or the amount of light available during game play to establish that the stair posed an unreasonable hazard in the circumstances.
27. The applicant has the burden of proving her claim, and I found she has not done so. While it is unfortunate that the applicant tripped and injured herself while playing the Exit game, I find there is no legal basis requiring the respondent to pay for the applicant's injury-related expenses.
28. 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. The applicant is not entitled to her tribunal fees, and she did not claim and dispute-related expenses.

ORDER

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

Sarah Orr, Tribunal Member