



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Zhang v. Dalyce Gaye Ayton (dba Ayton Books) et al*, 2019 BCCRT 400

B E T W E E N :

Sean Zhang

APPLICANT

A N D :

Dalyce Gaye Ayton (Doing Business As Ayton Books) and Intact Insurance Company And, In French, Intact Compagnie D'assurance

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about an alleged trip and fall injury. The applicant, Sean Zhang, says that on September 12, 2018 he was in a bookstore and tripped on books on the

floor, and suffered a concussion and injury to his back. The bookstore is owned by the respondent Dalyce Gaye Ayton (Doing Business As Ayton Books), which operates under the name BookLovers (Ms. Ayton or BookLovers). The applicant claims \$4,999 in damages for the claimed head injury.

2. The respondent Intact Insurance Company And, In French, Intact Compagnie D'assurance (Intact) was added as a party at its request and in accordance with the rules of the Civil Resolution Tribunal (tribunal), because Intact is the insurer for BookLovers and is exposed to paying damages if BookLovers is found liable in this dispute.
3. The respondents deny the incident occurred at all, and say that if it did, BookLovers was not negligent.
4. Mr. Zhang is self-represented. BookLovers is represented by Ms. Ayton and Intact is represented by an employee, Steven Hawley.
5. For the reasons that follow, I dismiss the applicant's claims.

JURISDICTION AND PROCEDURE

6. These are the tribunal's formal written reasons. The tribunal has jurisdiction over small claims brought under section 118 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.
7. 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.

8. 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.
9. 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

10. The issues in this dispute are whether the respondent BookLovers was negligent in leaving a stack of books on the floor and whether the applicant tripped over them and sustained injuries. If so, the further issue is whether the applicant has proved the claimed damages.

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.
12. The facts leading up to the applicant's alleged trip and fall are undisputed and are supported by video footage in evidence. On September 12, 2018, shortly before 6

p.m. the applicant entered the BookLovers book shop. The applicant says he went inside to find what he was “looking for”. The applicant never explained what that was.

13. The applicant stated that “apparently there were books all over the floor and in the walkway where I tripped and fell on my head and back injuring both”. The applicant says he was later diagnosed with a concussion “and more”. I find the applicant’s evidence not credible, as discussed below.
14. It is uncontested that BookLovers closed at 6 p.m. BookLovers says when the applicant entered the store he went directly to the center of the store out of sight of the sales desk and sat down in a chair, refusing any assistance when greeted by staff. At closing time, Ms. Ayton went to tell the applicant it was closing time and found him lying on the floor, with his head facing southward. The applicant saw Ms. Ayton and clutched his back and said he had tripped over a stack of books while walking around the corner of a bookcase while reading a magazine. None of this is disputed, and I accept it. It is consistent with a note the applicant handwrote in a guest book at BookLovers that said he tripped while reading.
15. The parties’ dispute first turns on whether Mr. Zhang tripped at all. The respondents point to the stack of books, photographed by Mr. Zhang after his alleged fall, and it is intact. I note the stack of books, along with others, is neatly stacked along the edge of the shop’s aisle or walkway. The respondents say if the applicant had tripped on the stack, the books would have likely shifted and fallen. I agree. This conclusion leads me to find the applicant’s evidence less credible.
16. The respondents also say that if the applicant had tripped as alleged, he would have been facing northward, not southward. The applicant did not address this, which I find also hurts his credibility.
17. The respondents rely on video footage of the applicant after he left BookLovers at just after 6 p.m. I place little weight on this video, which does show the applicant

walking in largely the same manner as he did when he entered, but I acknowledge he clutches his back at times.

18. For my purposes below, I will assume the applicant tripped over a stack of books at BookLovers. There are several reasons why I find this claim must be dismissed, bearing in mind also my conclusion about the applicant's lack of credibility.
19. First, the applicant does not address Intact's assertion that the applicant has 4 claims with Intact, 2 are alleged concussions with April 13 and October 14, 2018 injury dates. Intact says this history is evidence of fraud. I recognize there is a high burden to prove fraud and while I find the evidence before me falls short, I find the applicant has not met his burden of proving he was concussed or otherwise injured in BookLovers' shop. The fact that the applicant had other concussion injuries causes me to place little weight on his doctor's very brief September 13, 2018 note that the applicant was suffering the effects of a concussion the day before and could not work.
20. Second, by the applicant's own evidence, he tripped over the book stack while he was reading. I find this shows the applicant was not taking sufficient care in the surrounding circumstances. Section 3 of the *Occupier's Liability Act* says an occupier (BookLovers) owes a duty to take care in all the circumstances is reasonable that a person is reasonably safe on the premises. However, section 3(3) states an occupier owes no duty where a person willingly assumes risks, unless the occupier intends harm or shows reckless disregard that I find is not the case here.
21. I find by choosing to read and walk through the bookstore aisles, which the applicant would have seen were narrow and had some stacks of books neatly stacked at the aisle edge, the applicant willingly assumed the risk of tripping over something.
22. At the same time, I find that in all of the circumstances of BookLovers, and having reviewed the photos, having books neatly stacked to the side of the walkway was

not unreasonable or below the standard of care. Put another way, there is no evidence BookLovers showed reckless disregard.

23. Third, the applicant failed to provide any evidence to support his damages claim. He refused to provide Intact with a signed authorization to release his medical records, submitting only that a lawyer told him not to do so. The applicant provided no other evidence to support his position. Apart from the brief medical letter stating he was suffering from a concussion and was unable to work, the applicant provided no medical records to support the claimed injury, its effects, or that it was related to a fall at BookLovers. There is no evidence before me as to wage loss and no evidence as to the impact the alleged concussion had on the applicant's life, either at all or as distinct from his other alleged concussion injuries. Quite apart from my conclusions above, I would dismiss the applicant's claim for failure to prove damages.

24. As the applicant was unsuccessful, he is not entitled to reimbursement of tribunal fees.

ORDER

25. I order the applicant's claims, and this dispute, dismissed.

Shelley Lopez, Vice Chair