



Civil Resolution Tribunal

Date Issued: May 7, 2019

File: SC-2018-008716

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Diep v. Wuolle*, 2019 BCCRT 541

B E T W E E N :

Bao Ton Diep

APPLICANT

A N D :

Alexander Wuolle

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This is a dispute about damage to a sailboat. The applicant, Bao Ton Diep, says that the respondent, Alexander Wuolle, crashed the applicant's sailboat into a rock. He seeks \$5,000 in damages. The respondent denies that he is responsible for the damages claimed by the applicant.

2. The parties are self-represented.

JURISDICTION AND PROCEDURE

3. 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* (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.
4. 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.
5. 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.
6. Under tribunal rule 9.3(2), 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.

ISSUE

7. The issue in this dispute is whether the respondent is responsible for the \$5,000 claimed by the applicant for damage to his sailboat.

EVIDENCE AND ANALYSIS

8. In a civil dispute such as this, an applicant bears the burden of proof on a balance of probabilities. The parties have provided evidence and submissions in support of their respective positions. While I have considered all of this information, I will refer to only that which is necessary to provide context to my decision.
9. The applicant purchased a sailboat in another jurisdiction with the intention of relocating it to British Columbia. The respondent accompanied the applicant on the trip to pick up the boat. There was no written agreement about the respondent's role and he was not paid for the trip.
10. As the parties sailed towards British Columbia, they discussed the intended route and direction of travel, with reference to a GPS application on the applicant's phone. At approximately 11:00 p.m., when the applicant was below deck and the respondent was at the helm, the boat struck some rocks. The applicant says this incident caused damage to his newly acquired boat.
11. The applicant says the respondent agreed to help him relocate the boat as he had lots of sailing experience and the applicant had never been on a small boat before. In the applicant's view, the respondent took on responsibility for the boat by giving suggestions and orders that the applicant followed "without question". He says the respondent had "complete control" of the boat.
12. According to the applicant, the respondent "cut a corner around the coast" and caused the crash. The applicant states that there was no reason for the boat to be where it was as the rocky shore was marked on the map. He says that the respondent ignored the agreed-upon course, drove the boat to the shore, and hit the rocks at full speed.

13. The applicant wants the respondent to pay \$5,000 to bring the boat back to the state it was in before it crashed. He provided invoices for hardware, lifting the boat out of the water, and yard charges totalling \$4,512.28. The applicant also claims for his own time at a rate of \$20 per hour. It would appear that the applicant's claim of losses exceeds the tribunal's jurisdictional limit, and he has waived recovery of the excess over the tribunal's maximum of \$5,000.
14. The respondent says that the applicant was solely responsible for the vessel as its owner, operator and skipper. He states that he agreed to be a companion and passenger, but not a crew member or operator, and did not contract with the applicant to deliver the boat safely. The respondent submits that the applicant did not follow marine law or various legal requirements concerning the boat, including failing to secure a licence or insurance. Further, the respondent says that the applicant did not determine that he was qualified to take the helm of the boat as required by Transport Canada regulations, and had taken the GPS-based map below deck and left him with no functioning navigational equipment.
15. I find that the evidence does not support the conclusion that the respondent purposely deviated from the planned route or intentionally ignored the rocks as suggested by the applicant. I am satisfied that the respondent did not deliberately run the boat aground. Further, despite the applicant's perception that the respondent was in a "senior" position, I am satisfied that the respondent did not agree to take "complete control" of the boat.
16. That said, the respondent was at the helm of the boat at the time the boat ran aground and may bear some liability if he was negligent in the operation of the boat. To be successful in an action for negligence, the applicant must establish that the respondent owed him a duty of care, that the respondent breached the standard of care, that the applicant sustained damage, and that the damage was caused by the respondent's breach (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27).
17. The British Columbia Supreme Court has acknowledged that the test of negligence under maritime law is determined by the actions of the ordinary mariner, rather than

the ordinary person: *Atkinson (Guardian ad litem of) v. Gypsea Rose (Ship)*, 2014 BCSC 1017 at paragraph 87). In that same judgment, the Court referenced *Boleslaw Chrobry (The)*, [1974] 2 Lloyd's L.R. 308 at 316, which states that "seamen under criticism should be judged by reference to the situation as it reasonably appeared to them at the time, and not by hindsight".

18. I am satisfied that the respondent owed a duty of care to the applicant while driving his boat, and that the applicable standard of care is that of an ordinary mariner acting reasonably carefully for the safety of the vessel and its passengers. In determining whether he breached that standard, I will consider what reasonably appeared to the respondent prior to the incident.
19. The respondent's evidence contains a February 10, 2019 letter from a marine consultant, Mr. T, who is a captain and an accredited marine surveyor. Mr. T stated that there were strong currents and a rip tide at the location where the incident occurred, and the individual driving the boat would not have been able to determine the vessel's actual position. According to Mr. T, the boat was pointing north but was actually heading in a north/north east direction due to the tidal currents. He stated that a GPS would have showed the vessel's easterly track, while a compass would only indicate the vessel's heading and not its actual position. Mr. T also stated that the incident occurred near a bluff, which "makes it very difficult to judge distance offshore visually as the lights are 150' high up on a bluff". In Mr. T's view, "everything would have appeared normal from the helm on a dark evening".
20. The applicant disputes Mr. T's expertise and the relevance of his opinion as he is "not a legal expert". He also disagrees with Mr. T's characterization of the tide, which he says was an ebb or slack tide, as evidenced on a chart provided in to support of this position. The applicant says that the respondent had a compass and could have asked for the GPS or the nautical charts that were in the cabin of the vessel. Given the clear weather, almost full moon and slow speed at which they were travelling, the applicant says that there was no valid reason for the respondent to be so close to the shore such that they encountered rocks.

21. It does not appear that the parties had information about the tides, or their possible effect on navigation, prior to starting the trip. Although in hindsight this may have been important information to have, I do not find that the nature of the tide is determinative of what reasonably appeared to the respondent at the time of the incident. The applicant's position is that the respondent should have known that he was too close to shore, even though it was dark. Mr. T's opinion is that the topography of the land and location of the lights on shore would have made it difficult to judge distance and that, in the circumstances, everything would have appeared "normal at the helm on a dark evening".
22. I find the evidence of the marine consultant to be persuasive, and I accept it as expert evidence under rule 8.3. Although the applicant questions his expertise, I am satisfied that a marine captain is well-placed to comment on the experience and requirements of an ordinary mariner. I also note that the applicant admits that he is a relatively inexperienced mariner.
23. Based on the evidence before me, I find that the applicant has not established that the respondent's actions did not meet the standard of an ordinary mariner in these particular circumstances. As the respondent's negligence has not been proven, I dismiss the applicant's claims for damages against him.
24. Under section 49 of the Act, and tribunal rules, as the applicant was unsuccessful, I dismiss his claim for reimbursement of tribunal fees and dispute-related expenses.

ORDER

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

Lynn Scrivener, Tribunal Member