



Civil Resolution Tribunal

Date Issued: September 3, 2019

File: SC-2019-002515

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Brumby v. Mainroad Lower Mainland Contracting Ltd.*, 2019 BCCRT 1037

B E T W E E N :

TIM BRUMBY

APPLICANT

A N D :

MAINROAD LOWER MAINLAND CONTRACTING LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. The applicant, Tim Brumby, hit a pothole while driving on Highway 99 and damaged his car. He says the respondent, Mainroad Lower Mainland Contracting Ltd., was negligent in preventing and repairing potholes on the highway. He claims a total of

\$3,000: \$1,525 for the cost of towing his car, replacing the tires and repairing the rims, and \$1,475 for his time and the loss of use of his car during repairs.

2. The respondent says it fulfilled its contractual obligations to the Ministry of Transportation and Infrastructure (MOT) to patrol Highway 99 and repair any reported potholes within 24 hours.
3. The applicant is self-represented and the respondent is represented by an employee or principal.

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* (CRTA). 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 9.3 (2), in resolving this dispute the tribunal may make one or more of the following orders, where permitted under section 118 of the CRTA:
 - 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

- 8. The issue in this dispute is whether the respondent breached its obligation to repair potholes, and if so, whether it must pay the applicant \$3,000 for damage to his car, loss of use of his car, and for his time.

EVIDENCE AND ANALYSIS

- 9. In a civil claim like this one, the applicant must prove his claim on a balance of probabilities. This means I must find it is more likely than not that the applicant's position is correct.
- 10. The applicant made submissions but said he had no evidence to submit. I have only addressed the parties' submissions and the respondent's documentary evidence to the extent necessary to explain and give context to my decision. For the following reasons, I dismiss the applicant's claim.
- 11. The applicant says that on February 15, 2019, while travelling northbound on Highway 99 and exiting a tunnel, he struck a deep pothole damaging his car's tires and rims. He says he was travelling 35 kilometers per hour at the time, below the posted speed limit, and that traffic was heavy. He says that even if he had seen the pothole in advance he could not have avoided it.
- 12. It is undisputed that the respondent contracts with MOT to provide maintenance services on Highway 99, including repairing potholes. It is undisputed that under this contract when the respondent detects or receives a report of a pothole on a Class 1 highway (such as Highway 99) it has 24 hours to repair it.
- 13. The evidence indicates that the respondent received notice of the applicant's incident at 6:35 p.m. on February 15, 2019. The parties agree that on the evening of

February 15, 2019 the respondent patched the pothole at the north end of the tunnel on Highway 99 that is the subject of this dispute. The parties agree that the respondent's repair work satisfied its obligation to patch potholes under its contract with the MOT.

14. The applicant says the respondent was negligent in failing to prevent the pothole he hit. He says there are leaks at both ends of the tunnel causing excess water on the road, which contributes to potholes. He says the respondent's VP of Operations told him there is a problem with the water table pressure and inadequate construction of the tunnel area to control the water on the road, but the MOT does not want to pay for the necessary repairs. The applicant did not submit a statement from the respondent's VP of Operations or any other evidence to support this claim. The MOT is not a party to this dispute.
15. The respondent says that during the winter months at the tunnel entrances hydrostatic water pressure pushes through layers of concrete and asphalt, and the freeze-thaw cycle combined with heavy traffic causes conditions in which potholes can form within minutes. It says the type of repair that is required to "fix" the root cause of the potholes is beyond the scope of its maintenance contract with the MOT. I agree. On the evidence before me, the respondent's obligations with respect to preventing potholes extends to patrolling Highway 99 at least once every 24 hours, and the evidence shows the respondent fulfilled this obligation.
16. The applicant also says there should be a sign in the tunnel warning drivers of potholes. The respondent says that on several occasions it has discussed with the MOT the idea of posting signs at the entrances to the tunnel warning of potholes. The respondent says it was determined that adding further signage would confuse drivers as there are several other overhead signs in the area, and there is very limited space at the entrances to the tunnel. On the evidence before me I find there is no requirement in its maintenance contract with the MOT for the respondent to use signage to warn the public of potholes. It is undisputed that the respondent

does not own the relevant portion of highway, and therefore it does not have control over such decisions.

17. On balance, I find the applicant has not established that the respondent was negligent in preventing or failing to repair the pothole that he hit. Even if I had found the respondent negligent, I find the applicant has not proved that he incurred damages. The applicant says his car required a tow, and he had to replace all 4 tires and repair the rims. He says he made an insurance claim and paid a \$300 deductible. However, he provided no evidence of the extent of the damage to his car, the cost of repairing it, or his insurance claim, even though I expect such evidence would be easily obtainable.
18. The applicant is responsible for proving his claim. I find he has not done so, and I dismiss it.
19. Under section 49 of the CRTA 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 I find he is not entitled to reimbursement of his tribunal fees and he has not claimed any dispute-related expenses.

ORDER

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

Sarah Orr, Tribunal Member