Civil Resolution Tribunal

Date Issued: September 12, 2019

File: SC-2019-003606

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Clegg v. City of Abbotsford*, 2019 BCCRT 1078

B E T W E E N :

JEFF CLEGG

APPLICANT

A N D :

CITY OF ABBOTSFORD

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Trisha Apland

INTRODUCTION

1. This dispute arises from a single motor vehicle accident in the respondent City of Abbotsford's arena parking lot. The applicant, Jeff Clegg, struck a post in the parking lot causing damage to his vehicle. The applicant claims the post posed a risk and should not have been there.

2. I infer the Insurance Corporation of British Columbia (ICBC) covered the cost of repairs to the applicant's vehicle, less a $500 deductible. The applicant claims reimbursement of the $500 ICBC deductible and $166 in insurance premium increases. The applicant does not claim against ICBC.

3. The respondent says the applicant is fully responsible for the collision and denies the applicant's claims.

4. The applicant is self-represented. The respondent is represented by lawyer Aniz Alani, the respondent's Director of Property, Risk Management & Legal Services.

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* (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.

6. 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.

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 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

9. The issue in this dispute is whether the respondent's post in its parking lot was an unreasonable hazard, and if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant bears the burden of proving his claims on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.

11. In the evening of December 22, 2018, the applicant collided with a post in the respondent's parking lot causing damage to the front of his vehicle. The applicant says it was dark and raining heavily so that the road surface glistened with water and visibility was poor. He says the painted road markings were worn and barely visible. He says cars were parked on both sides of the parking lot.

12. The respondent submits that at the time of the collision the post was marked with "highly reflected tape" and could be seen on reflection of car headlights. There is no dispute that the post was marked with reflective tape. However, its visibility is in dispute.

13. The applicant provided photographs of the post and parking lot in day light and in the dark. The day photographs show the post had a long strip of white reflective tape and that some of the road markings were worn. The applicant's night

photographs seem to show the post without headlights illuminating it and with some water glare on the pavement from rain. The respondent's photographs show the post on a clear night illuminated by headlights. The respondent's photographs show that the post is highly visible from a distance and close up when illuminated by headlights. I find the non-illuminated post is less visible, but nevertheless, still visible in the dark due to the long strip of white tape. In any event, I infer the post would have been illuminated by the applicant's headlights because he collided into it with his vehicle's front end. I find it more likely than not that the post would have been reasonably visible to a prudent driver approaching it head-on at the time of the collision.

14. The respondent explains that the post was positioned to control traffic and separate different areas of the parking lot. The applicant disputes that the post separated the parking lot. He says at the time of the collision the post was not attached to a second post by a chain and it should not have been there. I find the fact that the respondent had not used the post to separate the parking lot at the time of the collision does not mean that this was not its purpose. I accept that this was the post's purpose. The photographs show the post was secured in the concrete. Therefore, I find the post was not easily removed when not used as a separator. I find it reasonable that the post remained in place when not in use.

15. After the collision, the applicant wrote the respondent. In his February 11, 2019 letter the applicant wrote that his "primary focus while driving was watching for families and young children" while he attempted to park his vehicle. The applicant does not otherwise describe in the letter or his submissions exactly where he was looking when he collided with the post. The applicant does not describe exactly how he was driving, such as his rate of speed. The applicant also does not explain how the worn road markings might have caused him to collide with the post.

16. Based on the photographs, I find that the post was there to be seen. There is no evidence that the worn road markings contributed to the collision. I find the simple

facts that the post was there and that the applicant collided with it does not create a presumption of negligence.

17. To be successful in his claims, the applicant must establish the respondent was negligent. This means the applicant must establish that the respondent municipality owed a duty of care, the respondent failed to meet a reasonable standard of care, it was reasonably foreseeable that the respondent's failure to meet that standard could cause the applicant's damages, and the failure caused the claimed damages. In an action against a local government, the courts have recognized a policy defence. This essentially means that a local government is not liable where the loss comes from a reasonable policy decision made in good faith. However, a local government might be liable if it had policy in place but then failed to follow it.

18. In the matter before me, I find the respondent had a duty of care to take reasonable steps to ensure the parking lot was not hazardous for users (*Just v. British Columbia,* [1989] 2 S.C.R. 1228 (CanLII).

19. I infer the applicant's position is that the respondent's actions fell below the applicable standard of care by allowing a single post to stand in the parking lot and by failing to ensure the road markings were more visible.

20. The respondent argues that the applicant must provide more evidence than his personal opinion that it breached the standard of care. It says the placement and configuration of road barriers and parking lot maintenance involve subject matter that is technical and outside the knowledge and experience of an ordinary person. As such, it says expert evidence would be needed to establish the applicable standard of care and the breach. The applicant provided no expert evidence. I agree that the applicant would need more evidence than his personal opinion on the standard of care.

21. As mentioned, the applicant carries the burden of proof. I find the applicant has established neither the applicable standard of care nor that the respondent breached that standard in its placement or maintenance of the parking lot and post

22. I note that some point after the collision the respondent removed the post. However, I find the fact that the respondent took remedial steps does not establish negligence (see for example, *Bush v. Richmond (City),* [1999] B.C.J. No.3229).

23. Given my conclusion that the applicant has not proved a breach of the standard of care, I find I do not need to address the respondent's alternative argument that there can be no damages payable because ICBC did not advance a subrogated claim for damages on the applicant's behalf.

24. As a prudent driver, I find the applicant had a duty to keep a reasonable lookout for all possible obstructions so as to avoid a collision. I find the applicant has not established that the accident was caused by anything other than his failure to see the post before he struck it. Accordingly, I dismiss the applicant's claims.

25. 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. As the applicant is the unsuccessful party, I award him no fees or expenses. The respondent claims its external claims adjusting expenses. However, the respondent made no counter-claim, nor provided supporting evidence with respect to its alleged loss. I do not allow any award for the respondent's adjusting expenses.

ORDER

26. The applicant's claims and this dispute are dismissed.

Trisha Apland, Tribunal Member