



Civil Resolution Tribunal

Date Issued: June 4, 2020

File: SC-2019-009840

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Diamond MGD v. Xu*, 2020 BCCRT 624

BETWEEN:

DIAMOND MGD

APPLICANT

AND:

ZHI QING XU

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. The applicant, Diamond MGD, installed a glass and steel railing system in the custom-built home of the respondent, Zhi Qing Xu. The applicant says the respondent damaged the applicant's company iPad. The applicant claims \$3,334.79 for damage to the iPad.
2. The respondent denies damaging the iPad and asks that the claim be dismissed.
3. In an associated dispute the respondent's general contractor claimed the applicant's glass and steel railing system was deficient. That dispute is the subject of a separate decision.
4. The applicant is represented by an owner or principal. The respondent represents himself with a friend providing translation help.

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. 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. Most of the argument in this dispute amounts to a “he said, he said” scenario, with each party calling into question the credibility of the other. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required in all cases where credibility is in issue. I have considered the tribunal’s mandate of proportionality and a speedy resolution of disputes. I am satisfied that I can assess and weigh the evidence and submissions before me without holding an oral hearing.
8. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

ISSUE

9. The issue in this dispute is whether the respondent damaged the applicant’s iPad and, if so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

10. In a civil claim such as this the applicant has the burden of proving its claim, on a balance of probabilities. Neither party provided any evidence to the tribunal, despite being given the opportunity to do so, although both parties provided arguments. Although I have read all the arguments, I will only refer to that which is necessary to explain my decision.
11. The applicant was hired by a third party general contractor (GC) to install glass panels and railings at the respondent’s home in May 2019. In a separate dispute GC alleges the applicant’s work is deficient and that the applicant refused to repair the deficiencies (see SC-2019-008119).
12. In this dispute, the respondent admits that he is dissatisfied with the applicant’s installation of the glass railings in his home.
13. The parties agree that the respondent, GC’s representative, and the applicant’s employee (S) all met at the respondent’s home to discuss the glass panels and

railings. The applicant says this happened on September 18, 2019 and I accept that date, as the respondent does not dispute it.

14. The applicant says the respondent asked S for supplies and to change some of the glass panels for free. The applicant says S refused to make the requested changes and the respondent then grabbed S's iPad, raised it over his head, and smashed it to the ground. The applicant says GC's representative witnessed the event.
15. The respondent denies touching the iPad. He says that, after GC's representative left the meeting, the respondent asked S to leave his home several times. The respondent says when S was about to turn to the doorway, the iPad fell from S's hands onto the floor.
16. The parties agree that S called the police and the police attended at the home.
17. On balance, I find the applicant has failed to show that the respondent damaged the iPad. The applicant did not provide any evidence about the event, such as a statement from S or GC's representative. The mere fact that the police were called to the home, without further evidence, does not prove the applicant's claim. The applicant also did not provide any evidence of damages, such as photos of the alleged damage to the iPad or an invoice for the cost of needed repairs.
18. As noted above, it is up to the applicant to prove that it is more likely than not that the respondent damaged the applicant's iPad. As the parties disagree on what happened at the respondent's home, it is up to the applicant provide some evidence supporting its version of the event. The applicant has not provided this evidence, despite being provided the opportunity to do so. Therefore, I find the applicant has failed to prove that the respondent damaged its iPad.
19. I find the applicant's claim must be dismissed.

20. 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. As the applicant was unsuccessful in its claim, it is not entitled to reimbursement of its tribunal fee. Although successful, the respondent did not pay any fees.

ORDER

21. I dismiss the applicant's claim and this dispute.

Sherelle Goodwin, Tribunal Member