



Civil Resolution Tribunal

Date Issued: July 31, 2020

File: SC-2019-010939

Type: Strata Property

Civil Resolution Tribunal

Indexed as: *Chan v. Tribe Management Inc.*, 2020 BCCRT 859

BETWEEN:

SHU HUNG CHAN

APPLICANT

AND:

TRIBE MANAGEMENT INC. and The Owners, Strata Plan EPS3470

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This dispute is about a parkade collision. The applicant, Shu Hung Chan (also known as Alex Chan), collided their car into a parkade wall in a building owned by the respondent strata corporation, The Owners, Strata Plan EPS3470 (strata). The respondent, Tribe Management Inc. (Tribe), is the strata's property manager.

2. Shu Hung Chan says Tribe and the strata negligently failed to warn drivers of the wall. Shu Hung Chan also says traffic pylons made it difficult to safely exit the parkade. Shu Hung Chan says this negligence caused the accident. Shu Hung Chan claims damages of \$4,066.55 for car repair costs.
3. Tribe and the strata deny Shu Hung Chan's claim. Tribe says they are not responsible for parkade maintenance. Tribe and the strata both say the driving conditions were safe and that Shu Hung Chan is solely responsible for the collision by driving carelessly.
4. Shu Hung Chan is self-represented. Tribe is represented by a business representative. The strata is represented by a strata representative.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 and strata property claims under section 121 of the Civil Resolution Tribunal Act (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT 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 CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. Though I found that some aspects of the parties' submissions called each other's credibility into question, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the CRT's mandate of proportional and speedy dispute resolution, I decided I can fairly hear this dispute through written submissions. The CRT 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 CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

7. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.
8. This dispute was filed with the CRT as a small claims dispute. I provided all parties an opportunity to provide further submission as to whether this dispute should be resolved within the CRT's strata property jurisdiction instead. All parties I submitted further submissions which I have considered.
9. I find that this dispute concerns the maintenance of the strata's common property parkade. As such, I find that this claim is within the CRT's strata property jurisdiction set out in section 1(2) and 121(1)(b) of the CRTA. So, I will decide this dispute according to CRT's strata property jurisdiction.

ISSUE

10. Do Tribe and the strata owe Shu Hung Chan damages for negligent parkade maintenance, and if so, how much?

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, Shu Hung Chan must prove their case on the balance of probabilities. While I have read all of the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision.
12. It is undisputed that Shu Hung Chan resides at the strata and parks their car in an underground strata parkade. To exit the parkade, Shu Hung Chan needed to turn right from a parking lane onto an exit ramp. A wall runs along the right side of the lane leading to the exit ramp.

13. All parties agree that the parkade flooded in November 2019 and drain lines were placed on the parkade surface to remove the water. Tribe says traffic pylons were placed to warn drivers of the drain lines and drain covers. At the time of the collision, 2 pylons were placed along the left edge of the turn where the parking lane joined the exit ramp.
14. The collision occurred on November 30, 2019 while Shu Hung Chan was driving toward the parkade exit ramp. Shu Hung Chan says that, while slowly turning their car right towards the exit ramp, the right side of their car impacted the corner of the parkade wall. There were no other cars involved in the collision.
15. Shu Hung Chan says Tribe's and the strata's negligence caused the accident. To prove negligence, Shu Hung Chan must show that Tribe and the strata owed a duty of care, they breached the standard of care, Shu Hung Chan sustained damage, and the damage was caused by their breach (*Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27, at par 33).
16. I am satisfied that the strata owed Shu Hung Chan a duty of care to ensure that the parkade was safely maintained. However, I find that Tribe did not owe this duty. Tribe's responsibility is based on their property management contract with the strata. Under this contract, Tribe does not have an obligation to maintain the parkade. Rather, Tribe's contractual responsibilities are limited to hiring contractors on the strata's behalf and this limited responsibility is not at issue in this dispute. As such, I find that Tribe does not owe Shu Hung Chan a duty of care to maintain the parkade and I dismiss Shu Hung Chan's claim against Tribe. However, I will continue my analysis of Shu Hung Chan's negligence claim against the strata.
17. The standard of care does not require perfection. Rather, the standard is what would be expected of an ordinary, reasonable, and prudent person in the same circumstances. One must look at the particular facts of the case to determine whether the strata acted reasonably.

18. Shu Hung Chan argues the strata breached the standard of care by failing to place a pylon at the corner of the wall to warn drivers. I am not satisfied that the standard of care required such a warning. I find that the wall is a large, permanent structure which would be readily visible to an alert driver. Also, the parkade photographs show that the location is well illuminated and the walls are brightly painted white. I find that the standard of care does not require warnings of such an obvious hazard.
19. Shu Hung Chan says a pylon was previously placed near the corner of the wall before the accident occurred. However, Shu Hung Chan says this pylon was not there at the time of the accident. Shu Hung Chan argues that the strata breached the standard of care by removing this pylon. The strata says there was never a pylon there. However, I do not find it necessary to resolve this discrepancy because, as discussed above, the standard of care does not require a wall warning. So, even if the strata had removed a pylon from the wall as Shu Hung Chan alleges, this was not a breach of the standard of care.
20. Shu Hung Chan also argues that the placement of the pylons on the left side of the lane made the turn to the exit ramp too narrow. Shu Hung Chan provided photographs of the accident location showing two pylons on the left edge of the lane, where the lane joins the exit ramp. For the reasons that follow, I am not satisfied that the placement of these traffic pylons breached the standard of care.
21. Shu Hung Chan did not provide any measurements showing the relative locations of the pylons or how much space was available between the pylons and the wall. Also, Shu Hung Chan did not provide any photographs showing the car at impact. Without measurements or photographs showing the clearance around Shu Hung Chan's car, I am unable to determine whether Shu Hung Chan had sufficient space to safely turn onto the exit ramp.
22. I have also considered Shu Hung Chan's re-enactment of the accident scene. Shu Hung Chan placed replica pylons in the parkade and took photographs and measurements. Shu Hung Chan says the replica pylons were placed in the same positions as the original pylons.

23. The strata says that Shu Hung Chan's re-enactment is not accurate. The strata says Shu Hung Chan placed the staged pylons closer to the wall than the original pylons. The strata says this makes the lane appear narrower than it actually was. Comparing the accident scene photographs to Shu Hung Chan's re-enactment photos, I find that Shu Hung Chan's staged pylons do appear to be closer to the wall than the original pylons were. Since I am not satisfied that the re-enactment is accurate, I do not find Shu Hung Chan's re-enactment photographs and measurements helpful. So, I do not give this evidence any weight.
24. I find that Shu Hung Chan has not provided sufficient evidence showing that the strata breached the standard of care. As such, I find that Shu Hung Chan has not proved the strata was negligent and I dismiss Shu Hung Chan's claim against the strata.
25. Further, even if I had found that the strata breached the standard of care, I would still dismiss this claim because Shu Hung Chan has not proved that the strata's conduct caused the accident. Rather, I find that it is more likely than not that Shu Hung Chan caused the accident by failing to watch out for and avoid the wall. If the traffic pylons prevented Shu Hung Chan from safely turning onto the exit ramp, then as the car's driver, Shu Hung Chan should not have proceeded.
26. For the above reasons, I dismiss Shu Hung Chan's claim of negligence. Given this, I do not need to consider the \$4,066.55 value of the claimed damages.
27. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. Shu Hung Chan was unsuccessful, so I dismiss their claim for CRT fees.
28. The strata claims \$600 in dispute-related expenses for the preparation of documentary evidence to defend itself in this claim. However, the strata did not provide a receipt or invoice proving this expense. Without supporting evidence, I find that the strata has not proved its claim for dispute-related expenses. Also, I

note that under sections 167 and 189.4 of the SPA, an owner who sues the strata is not required to contribute to the strata's expense of defending a CRT proceeding. So, I dismiss the strata's claim for dispute-related expenses.

29. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses to Shu Hung Chan.

ORDER

30. I dismiss Shu Hung Chan's claim and this dispute.

Richard McAndrew, Tribunal Member