



# Civil Resolution Tribunal

Date Issued: August 24, 2020

File: SC-2020-002591

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Fontana v. Lusa Enterprises Ltd.*, 2020 BCCRT 940

BETWEEN:

SALLY FONTANA and BLAIR FONTANA

**APPLICANTS**

AND:

LUSA ENTERPRISES LTD.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Lynn Scrivener

## INTRODUCTION

1. This dispute is about tire damage. The applicants, Sally Fontana and Blair Fontana, say that their vehicles' tires were damaged by screws they say came from a construction site operated by the respondent, Lusa Enterprises Ltd. (Lusa). The Fontanas ask for an order that Lusa reimburse the \$1,129.94 cost of 6 replacement

tires. Lusa denies that the screws came from its construction site or that it is responsible for the damage to the Fontanas' tires.

2. The Fontanas are self-represented. Lusa is represented by its principal.

## **JURISDICTION AND PROCEDURE**

3. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 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.
4. The CRT 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 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.
6. 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.

## **ISSUES**

7. The issues in this dispute are:

- a. Whether Lusa is responsible for the damage to the Fontanas' tires, and
- b. If so, what is the appropriate remedy.

## **EVIDENCE AND ANALYSIS**

8. In a civil dispute like this, the Fontanas bear the burden of proof on a balance of probabilities. The Fontanas provided evidence and both parties provided submissions in support of their positions. While I have considered all of this information, I will refer to only what is necessary to provide context to my decision.
9. The Fontanas live next door to a lot where Lusa was building a house. There is no dispute that the tradespeople who worked on the site parked on the street nearby.
10. On October 2, 2019, the Fontanas say they parked their vehicles on the street near the boundary between their property and the construction site. They later discovered 6 screws embedded in the tires of 1 vehicle and 7 screws in the tires of the other. Photographs provided in evidence confirm that screws were embedded in the tires. The screws have round heads, pointed ends, and appear to be rather short. On October 4, 2019, the Fontanas say that they found a matching screw near the curb in front of their house.
11. The Fontanas replaced their tires at a cost of \$1,129.94, which they say represents a reduced cost due to some warranty coverage. They asked Lusa to reimburse them for the damage, but the parties did not come to an agreement.
12. In their submissions, the Fontanas express the view that the screws that damaged their tires must have come from the construction site or the contractors who worked on it. The Fontanas describe the construction site as messy and say that debris made its way from the site to the street on several occasions. They also say that vehicles filled with construction supplies regularly unloaded in this area, and it would be easy for materials to fall out unnoticed. The Fontanas submit that it is reasonable to conclude that the screws were related to the construction site. Their position is

that Lusa, as the general contractor, is responsible for the site, the damage to their tires, and for their claimed \$1,129.94.

13. Lusa denies that it is responsible for the damage to the Fontanas' tires or their replacement cost. Lusa says that the type of screws shown in the photographs provided by the Fontanas were not used on its construction site. Lusa suggests that, if any materials did fall out of contractors' vehicles, this would have occurred in front of the jobsite and would have damaged the contractors' tires as well. According to Lusa, nobody else experienced tire damage during the construction process.
14. Although not stated explicitly, the Fontanas' position is that Lusa was negligent. To be successful in an action for negligence, the Fontanas must establish all of the following: that Lusa owed them a duty of care, that Lusa breached the standard of care, that they sustained damage, and that the damage was caused by Lusa's breach (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27). As noted, the Fontanas must establish these factors on a balance of probabilities.
15. There is no dispute that the Fontanas' tires were damaged. The key issue in this dispute is causation, and the Fontanas must establish that Lusa was responsible for the damage. For the reasons set out below, I find that they have not done so.
16. While I accept that contractors' vehicles parked on the street, I find that this does not establish that the screws were deposited on the road by contractors or others associated with the jobsite. I note that the street is public rather than private, so other residents, visitors, and commercial vehicles drive and park on it. Further, a messy jobsite does not prove the source of the screws.
17. Although the Fontanas noticed damage to their vehicles after they parked near the home, this does not establish that the screws entered their tires at or near that location. I find that the fact that the Fontanas found a screw on the roadway nearby is not determinative, and does not alter my conclusion.

18. Based on the evidence before me, I find that the Fontanas have not established that Lusa was negligent or that its conduct caused the damages they claim. Accordingly, I dismiss the Fontanas' claim for reimbursement of the \$1,129.94 tire replacement cost.

19. Under section 49 of the CRTA and CRT rules, the CRT generally will order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. As the Fontanas were not successful, I dismiss their claim for reimbursement.

## **ORDER**

20. I dismiss the Fontanas' claims and this dispute.

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Lynn Scrivener, Tribunal Member