Civil Resolution Tribunal

Date Issued: December 14, 2020

File: SC-2020-005697

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Van Unen v. Brantal Contracting Ltd*., 2020 BCCRT 1410

B E T W E E N :

THOMAS VAN UNEN

APPLICANT

A N D :

BRANTAL CONTRACTING LTD. and INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENTS

REASONS FOR DECISION

Tribunal Member: Richard McAndrew

INTRODUCTION

1. This small claims dispute is about alleged rock damage to a car. The applicant, Thomas Van Unen, says rocks coming from a truck owned and operated by the respondent, Brantal Contracting Ltd. (Brantal) damaged his car. Mr. Van Unen requests $1,351.75 for repair costs.

2. Brantal denies responsibility. Brantal says it adequately secured its load and Mr. Van Unen has not proved that Brantal caused the damage.

3. The respondent insurer, Insurance Corporation of British Columbia (ICBC), internally concluded that Brantal was not at fault for the alleged damage. ICBC says Mr. Van Unen carries only basic insurance through ICBC and his comprehensive auto insurance is provided through a private insurer who is not named in this dispute. ICBC says it satisfied its statutory obligations in investigating the accident and it is not a proper party to the claim.

4. Mr. Van Unen is self-represented. An ICBC adjuster represents both respondents.

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 of the *Civil Resolution Tribunal Act* (CRTA). Section 2 of the CRTA states that 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 the dispute's parties that will likely continue after the CRT process has ended.

6. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.

7. Section 42 of the CRTA says 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.

8. 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.

9. In its Dispute Response, ICBC argues it is not a proper party to Mr. Van Unen's claim, and that the dispute should be against Brantal only. I agree. Although Mr. Van Unen has named ICBC as a respondent, Mr. Van Unen does not make any specific allegations against ICBC in the Dispute Notice or in his submissions. I note that previous decisions have found that ICBC can be a proper party in disputes where it is alleged that ICBC acted unreasonably in investigating an accident and assigning fault (see *Innes v. Bui,* 2010 BCCA 322). However, in this dispute Mr. Van Unen makes no allegations that ICBC breached its duty of good faith by acting unfairly in the investigation of his claim. Mr. Van Unen's Dispute Notice and submissions do not refer to ICBC's conduct at all. In the absence of allegations against ICBC, I find that ICBC is not a proper party to this dispute and I dismiss Mr. Van Unen's claim against ICBC.

ISSUE

10. The issue in this dispute is whether Brantal is responsible for the alleged damage to Mr. Van Unen's car, and if so, how much must Brantal pay Mr. Van Unen?

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicant, Mr. Van Unen, must prove his claims on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and argument that I find relevant to provide context for my decision.

12. Mr. Van Unen says the incident occurred on a highway on June 15, 2020. Mr. Van Unen says rocks fell from Brantal's truck and damaged his car. Brantal says its truck was in the vicinity pulling a trailer unit loaded with 3 inch aggregate. However, Brantal denies damaging Mr. Van Unen's car.

13. Mr. Van Unen says that Brantal negligently failed to secure its load causing multiple half inch rocks to escape Brantal's truck and hit his car. Mr. Van Unen say these rocks caused at least 10 chips in his car hood's and front fender's paint.

14. To prove negligence, Mr. Van Unen must show that Brantal owed Mr. Van Unen a duty of care, Brantal breached the standard of care, Mr. Van Unen sustained damage, and the damage was caused by Brantal's breach (see *Mustapha v. Culligan of Canada Ltd.,* 2008 SCC 27, at par 33).

15. I accept that Brantal owed Mr. Van Unen a duty of care to ensure that its aggregate transportation on public highways did not damage his car.

16. Mr. Van Unen says Brantal breached the standard of care by failing to secure its load. The standard of care expected of Brantal is not perfection. Rather, the standard is what would be expected of an ordinary, reasonable, and prudent person in the same circumstances. I must look at the particular facts in this dispute to determine whether Brantal acted reasonably.

17. Mr. Van Unen says the truck's cover was loose, allowing rocks to escape. Brantal says the load was fully tarped and secured. Brantal also says this type of trailer was unable to carry aggregate near the tailgate.

18. Although Mr. Van Unen and Brantal provide conflicting submissions about the truck's cover, Mr. Van Unen provided photographs which he says show that the truck's cover was loose. I disagree. I find that the photographs do not show that the cover was loose or show any coverage gaps where rocks could escape. Since I do not accept the photographs as proof that the truck's cover was not secured, I am left with an evidentiary tie between the parties, and because Mr. Van Unen has the burden of proof, I find that Mr. Van Unen has failed to prove that Brantal breached the standard of care by failing to secure its load.

19. Mr. Van Unen also says that Brantal admitted liability. Specifically, Mr. Van Unen says he went to Brantal's office immediately after the alleged incident and spoke with CF, a Brantal employee. Mr. Van Unen says CF allegedly admitted that loose rocks can

sometimes fall off Brantal's trucks. Since Brantal did not dispute these comments, I am satisfied that CF did say this. However, I find that these comments do not prove that Brantal breached the standard of care because there is no evidence before me that CF was involved with, or had any knowledge of, the loading or operation of Brantal's truck allegedly involved in this incident. I find that CF's comments relate to the transportation of aggregate in general, and not to Mr. Van Unen's specific claim. As such, I do not find CF's comments helpful in my determination of whether Brantal's truck allegedly involved in this dispute was operated negligently.

20. Mr. Van Unen also says CF accepted responsibility for the damage but she said his losses needed to be processed under his insurance, not Brantal's insurance. Since this submission was not disputed, I accept that CF said this. CF can have apparent or ostensible authority to act as Brantal's agent if it was reasonable for Mr. Van Unen to infer from Brantal's conduct that it consented to such an agency relationship (See *Siemens v. Howard*, 2018 BCCA 197). Since CF was Brantal's employee, and Brantal did not dispute that she was authorized to act as its agent, I am satisfied that CF was Brantal's agent and CF's statements are binding on Brantal. However, I do not find CF's statement helpful because it is contradictory. It is unclear what CF is accepting responsibility for since CF said the losses will not be claimed under Brantal's insurance. Further, while Brantal did not expressly address CF's comments, Brantal does say that there is no evidence that the rocks came from its truck. Since CF's comment is contradictory, and Brantal has denied causing the damage, I find that CF's comments are not an admission that Brantal negligently caused the alleged car damage.

21. For the above reasons, I find that Mr. Van Unen has failed to prove that Brantal breached the standard of care and Mr. Van Unen's claims against Brantal must be dismissed. However, even if Mr. Van Unen had proved that Brantal had breached the standard of care, I would still dismiss his claims because he has not proved that Brantal caused the alleged damage or the extent of his losses.

22. Brantal says the 3 inch aggregate it was transporting is much larger than the half inch rocks Mr. Van Unen described hitting his car. Brantal says that if its 3 inch aggregate had hit Mr. Van Unen's car, there would have been much more severe car damage. I note that the photographs appear to show very small chips in the paint, without dents or car body damage. Although neither party provided expert physics evidence, on judgement, I find it more likely that not that Brantal's 3 inch aggregate would have caused more extensive damage than the surface damage shown in the photographs if it had struck Mr. Van Unen's car. So, I find that Mr. Van Unen has not proved that Brantal caused Mr. Van Unen's car damage.

23. Further, Mr. Van Unen claims $1,351.75 for repair costs but has not provided a receipt or estimate supporting this amount. In the absence of evidence, I find that Mr. Van Unen has not proved his damages.

24. For the above reasons, I dismiss Mr. Van Unen's claim against Brantal. 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. Since Mr. Van Unen was unsuccessful, I dismiss his claim for CRT fees. Brantal and ICBC did not claim reimbursement of CRT fees or dispute-related expenses, so none are ordered.

ORDER

25. I dismiss Mr. Van Unen's claims and this dispute.

Richard McAndrew, Tribunal Member