



Civil Resolution Tribunal

Date Issued: March 1, 2021

File: SC-2020-005805

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hall v. Prinz*, 2021 BCCRT 235

B E T W E E N :

FRANCIS HALL

APPLICANT

A N D :

GEBHARD PRINZ

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about boat damage. The applicant, Francis Hall, alleges a boat owned by the respondent, Gebhard Prinz, broke away from its mooring during a March 15, 2020 storm, and damaged Mr. Hall's boat and mooring. Mr. Hall claims \$4,200 for repairs to his boat.

2. Mr. Prinz says Mr. Hall is responsible for his own boat's damage, and denies Mr. Prinz's boat broke free from its mooring. Mr. Prinz further says Mr. Hall's boat was inadequately moored and also moored too close to Mr. Prinz's boat.
3. Mr. Hall is self-represented and Mr. Prinz is represented by Karl Hauer, a lawyer.

JURISDICTION AND PROCEDURE

4. 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.
5. 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 able to assess and weigh the documentary evidence and submissions before me.
6. 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.
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. As discussed below, while federal maritime law applies to Mr. Hall's claim, the CRT has jurisdiction to resolve this dispute as a claim for damages under section 118 of the CRTA.

ISSUE

9. The issue in this dispute is whether Mr. Prinz is responsible for damage to Mr. Hall's boat, and if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, as the applicant Mr. Hall must prove his claims on a balance of probabilities. I have read all the evidence and submissions before me, but refer only to what I find relevant to provide context for my decision.
11. Mr. Hall's boat is called the *Flying J*. Mr. Prinz's boat is called the *Nembu Set*. The boats were moored in open water near the Oak Bay Marina. It is undisputed the 2 boats collided during a March 15, 2020 storm, when they were unoccupied and anchored close by each other.
12. Mr. Hall says the *Nembu Set's* mooring came loose and so Mr. Prinz is responsible for his claimed boat damage. In contrast, Mr. Prinz says Mr. Hall recklessly anchored the *Flying J* within the *Nembu Set's* swing-circle, despite Mr. Prinz's repeated warnings not to do so. So, Mr. Prinz says Mr. Hall is responsible for the damage.
13. Mr. Prinz says he securely moored the *Nembu Set*. He says he used five 45-gallon drums, each filled with concrete weighing more than 1,000 pounds. He says the mooring consisted of 2 chains: a longer, 90-foot chain and a shorter, 50-foot chain. He says the purpose of the 2-chain set up was for the shorter chain to bear the boat's applied forces, unless and until that chain failed and then the 90-foot chain would anchor the boat.
14. It is undisputed that Mr. Prinz's 50-foot chain broke free during the storm, and so his boat had drifted to the extent the 90-foot chain allowed. Mr. Prinz says the mooring system functioned as intended, and given the 90-foot chain still anchored the *Nembu Set*, the boat in fact did not break free from its mooring. Mr. Prinz also says given Mr. Hall's expressed concern that the *Nembu Set's* mooring may have dragged anchor

(moved), Mr. Prinz checked with a laser range finder and determined there was no movement since its original 2010 construction.

15. At the same time, Mr. Prinz argues that Mr. Hall improperly used light-weight mooring to secure the *Flying J*, which might have caused it to move since its initial installation. In contrast, Mr. Hall argues that Mr. Prinz failed to heed warnings to check his moorings before the storm, and that the *Nembu Set* did actually break free, with its chains getting entangled in the *Flying J's* moorings.
16. It is undisputed that federal maritime law applies to this dispute, and in particular the federal *Marine Liability Act* (MLA), as the collision occurred in open water. In other words, as set out in *Ordon Estate v. Grail*, 1998 CanLII 771 (SCC), the provincial *Negligence Act* does not apply.
17. I accept the negligence standard of care under the MLA and maritime law is that of a competent seaperson in the surrounding circumstances, not an ordinary person (see *Ordon and Isen v. Simms*, 2006 SCC 41 at paragraphs 23 to 25). Otherwise, the basic principles of negligence are still the same. In particular, Mr. Hall must prove Mr. Prinz owed him a duty of care, that he breached the applicable standard of care, and that the breach caused for claimed damage. Mr. Hall must also prove the damage was foreseeable.
18. It is undisputed Mr. Prinz owed others using the mooring area a duty of care, including Mr. Hall. It is also undisputed that Mr. Hall's boat was damaged as a result of the collision. However, this is not the end of the matter.
19. Here, the dispute turns on whether Mr. Prinz breached the applicable standard of care and whether any such breach caused the collision. The answer to this question turns on whether Mr. Prinz properly moored his boat, a subject I find is not within ordinary knowledge and so it requires expert evidence (see *Bergen v. Guliker*, 2015 BCCA 283). Given this and my discussion below, I find it unnecessary to detail the parties' evidence about their respective boat's mooring.

20. The parties variously criticize the other's maritime knowledge. However, neither party qualifies as an expert under the CRT's rules, since as interested parties they are not neutral. Mr. Hall submitted an undated and unsigned statement from his friend, John David Taggart, who appears to live on a boat in the marina. Mr. Taggart refers to having documented "boats and moorings" in Oak Bay and having been called upon to submit reports to local officials at the beginning and end of a boating season. No such reports are in evidence. I find Mr. Taggart's description of his documentation is not sufficient to establish he is qualified to give an opinion about whether either party breached the applicable standard of care in how they moored their respective boats. Mr. Taggart provided no evidence of any credentials or training to qualify him as an expert in boat moorage. The fact that Mr. Taggart may choose to observe and report on boats in the marina does not in itself qualify him as an expert under the CRT's rules. Further, Mr. Taggart refers to having been cordial and "even friends" with Mr. Prinz before the boat collision. There is also a tone of advocacy in Mr. Taggart's letter, which I find together with his relationships with the parties suggests he is not sufficiently neutral to give an expert opinion, even if he was qualified.
21. Based on my findings above about Mr. Taggart's evidence and Mr. Hall's own evidence, I find there is no expert evidence before me, which as noted I find would be required to establish that Mr. Prinz's boat's mooring did not meet the standard of a competent seaperson. So, I find Mr. Hall has not proven Mr. Prinz is liable in negligence under federal maritime law or under common law negligence principles. Given my conclusions above, I find I do not need to address Mr. Hall's claimed damages in any detail. I dismiss Mr. Hall's claim for compensation for boat damage.
22. 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. Mr. Hall was unsuccessful so I dismiss his claim for reimbursement of CRT fees and expenses. Mr. Prinz did not pay fees or claim dispute-related expenses.

ORDER

23. I order Mr. Hall's claims and this dispute dismissed.

Shelley Lopez, Vice Chair