



Civil Resolution Tribunal

Date Issued: March 4, 2021

File: SC-2020-008323

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Landels v. ICBC*, 2021 BCCRT 246

B E T W E E N :

JENNIFER LANDELS also known as JM LANDELS

APPLICANT

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA and
TANYA BALMES

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. The applicant, Jennifer Landels also known as JM Landels, boards horses on her property, which is accessed through an automatic gate. The respondent, Tanya

Balmes, boarded her horse there on May 15 and 16, 2020. As Ms. Balmes was leaving the property on May 16, 2010, the gate closed into her horse trailer.

2. Ms. Landels says that Ms. Balmes failed to follow Ms. Landels's directions and failed to exercise reasonable care as she drove through the gate. Ms. Landels claims \$4,223.21, the cost of a replacement gate. Ms. Landels also claims \$600 for lost pasturing income and increased hay costs.
3. Ms. Balmes says that there was no way for her to know that the gate would close into her trailer as she drove through. She asks that I dismiss Ms. Landels's claims.
4. The respondent, Insurance Corporation of British Columbia (ICBC), insures Ms. Balmes. ICBC says that it is not a proper respondent in this dispute.
5. Ms. Landels is self-represented. An ICBC adjuster represents ICBC and Ms. Balmes.

JURISDICTION AND PROCEDURE

6. 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.
7. 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. In some respects, both sides to this dispute call into question the credibility, or truthfulness, of the other. However, in the circumstances of this dispute, I find that it is not necessary for me to resolve the credibility issues that the parties raised. I therefore decided to hear this dispute through written submissions.

8. 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.
9. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to pay money or to do or stop doing something. The tribunal's order may include any terms or conditions the CRT considers appropriate.
10. I will first address ICBC's main argument that it is not a proper respondent. The CRT has consistently found that an insured may claim against ICBC if they believe that ICBC did not meet its statutory obligation to reasonably investigate an accident. I agree with this approach. It is unclear in this dispute whether Ms. Landels was insured by ICBC. In any event, she makes no claims about ICBC's investigations. Rather, Ms. Landels's claims are only about whether Ms. Balmes is liable for the accident and what Ms. Landels's damages are. Therefore, I agree that Ms. Landels has not made any claims against ICBC, and I dismiss her claims against ICBC.
11. I note that ICBC submitted an email into evidence that included a link to a cloud storage website. Ms. Landels had sent ICBC this link to share surveillance video of the incident. I cannot consider evidence stored on a cloud service because there is no way to know whether the files have changed since the parties last viewed them. So, I did not view the video. That said, I decided not to request a copy of the video because the parties' descriptions of the incident are essentially the same. I find that I can fairly decide this dispute without seeing the video.

ISSUES

12. The issues in this dispute are:
 - a. Is Ms. Balmes responsible for damaging the gate?
 - b. If so, what are Ms. Landels's damages?

EVIDENCE AND ANALYSIS

13. In a civil claim such as this, Ms. Landels as the applicant must prove her case on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
14. Most of the facts are not in dispute. Ms. Landels owns a property that includes horse stables for boarding. Access to the property is controlled by an automatic gate, which is triggered by a sensor. Ms. Balmes was boarding her horse with Ms. Landels for 2 nights while Ms. Balmes visited the area.
15. Ms. Balmes was first at Ms. Landels's property on May 15, 2020, presumably to drop off her horse. She had no issues with the gate. On the morning of May 16, 2020, Ms. Balmes picked up her horse from Ms. Landels's property to take it on a trail ride with her daughter, AB. Again, she had no trouble with the gate.
16. When Ms. Balmes returned from the trail ride with AB, she drove her truck and trailer through the gate and around a turnaround. She then pulled up to a barn to park while she unloaded her horse. She parked in what Ms. Landels calls the "sensor zone", so her truck and trailer triggered the sensor, opening the gate. The parties do not agree on how much time exactly Ms. Balmes was parked, but it was at least 12 minutes. I find that the exact amount of time does not matter.
17. The gate was still open when Ms. Balmes began to drive away. As she passed through, the gate began to close. The gate hit near the back of the horse trailer, damaging the gate beyond repair.
18. Ms. Landels claims that Ms. Balmes was negligent. The elements of a negligence claim are:
 - Ms. Balmes must owe Ms. Landels a duty of care.
 - Ms. Balmes failed to meet the applicable standard of care.
 - Ms. Balmes's failure caused Ms. Landels damage.

- The damage was a reasonably foreseeable consequence of Ms. Balmes's negligent act or omission.

19. In the circumstances, it is clear that Ms. Balmes owed Ms. Landels a duty of care as a visitor to Ms. Landels's property. The next question is whether Ms. Balmes failed to meet the applicable standard of care. I find that this means that Ms. Landels must prove that Ms. Balmes did not drive with reasonable care and attention in the circumstances. Ms. Landels makes 3 arguments on this point.
20. First, Ms. Landels's says that when the parties first met on May 15, 2020, she told Ms. Balmes to "stay left" when leaving through the gate. Ms. Landels says that she told Ms. Balmes that this was important so that the sensor would "work properly". She says that because of where Ms. Balmes parked, she was not far enough left as she drove through the gate.
21. Ms. Balmes denies being told this. Ms. Balmes says that there were no signs or other written instructions about the gate's operation, which is undisputed.
22. Ms. Landels's argument on this point is essentially that by failing to follow Ms. Landels's directions about staying left, Ms. Balmes did not act reasonably. However, even if Ms. Landels did tell Ms. Balmes to stay left, Ms. Landels does not explain how staying left would have avoided the incident. She does not say that Ms. Balmes driving farther left would have kept the gate open longer.
23. I also find that Ms. Landels's directions did not warn Ms. Balmes about the possibility of the gate closing while a vehicle drove through the gate. Ms. Landels's directions were about how to make the sensor "work properly". I find that being told to stay left in order to make the sensor work properly would not cause a reasonable person to expect the gate to close on them if they were too far to the right.
24. Second, Ms. Landels says that after spending so much time in the sensor zone, Ms. Balmes should have reversed and waited for the gate to close. Then, she could have reactivated the gate and had plenty of time to pass through without incident. Implicitly, Ms. Landels says that Ms. Balmes should have known that because her

truck had kept the gate's sensor tripped for at least 12 minutes, the gate would begin to close when she moved out of the sensor zone.

25. Ms. Balmes says that she had no idea that the gate would start closing when she started driving. She says that she assumed that the gate would have a safety sensor to prevent it from closing into a moving vehicle. Ms. Landels says that if Ms. Balmes was not familiar with how the gate operated, she should have been more cautious.
26. I agree with Ms. Balmes. First, I note that she was not at her truck for most of the time that her truck was parked. According to AB, they took the horse to her paddock, got her settled in, and gave her some hay. So, Ms. Balmes had no way to know that the gate had been open the entire time she was gone.
27. More importantly, I disagree that the fact that the gate had stayed should have alerted Ms. Balmes that it would close when she began moving. Ms. Landels says that Ms. Balmes saw the gate close automatically twice before the incident. While this is true, I find that it does not support Ms. Landels's position because both times the gate stayed open while Ms. Balmes passed through it. So, I find that it was reasonable for Ms. Balmes to assume that the gate would remain open as she passed through it. As mentioned above, she had no issues with the gate suddenly closing during her other 2 trips to the property. Also, there are no signs advising visitors how the gate operated or warning that it could shut unexpectedly in certain circumstances.
28. Finally, Ms. Landels says that the gate exists to prevent horses from escaping the property. She says that Ms. Balmes should have known better than to leave the gate open, unattended, while she unloaded her horse. I find that the evidence does not support this conclusion. The map of the Ms. Landels's property in evidence shows that the paddocks and other areas where the horses may be freely roaming are themselves fenced in. Ms. Landels does not explain why horses would be loose in the parking area such that the open gate would allow them to escape. While it may be sensible for Ms. Landels to have the gate generally closed as a second

layer of protection, I find that Ms. Landels has not proven that having the gate open for around 12 minutes created a measurable risk that a horse would escape. So, I find that Ms. Landels has not proven that Ms. Balmes's failure to make sure that the gate was closed before settling her horse in was unreasonable.

29. For these reasons, I find that Ms. Landels has not proven that Ms. Balmes was negligent. Given this conclusion, I do not need to address the parties' arguments about Ms. Landels's claimed damages. I dismiss Ms. Landels's claims for the cost of a replacement gate, lost income, and increased hay costs.

30. 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. Ms. Landels was unsuccessful so I dismiss her claim for CRT fees and dispute-related expenses. Neither respondent claimed any dispute-related expenses or paid any CRT fees.

ORDER

31. I dismiss Ms. Landels's claims, and this dispute.

Eric Regehr, Tribunal Member