



Civil Resolution Tribunal

Date Issued: March 5, 2021

File: SC-2020-007877

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Titan Window Films Ltd. v. Ivanhoe Cambridge Inc.*, 2021 BCCRT 251

B E T W E E N :

TITAN WINDOW FILMS LTD.

APPLICANT

A N D :

IVANHOE CAMBRIDGE INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about responsibility for vehicle damage.
2. The applicant, Titan Window Films Ltd. (Titan), says that its truck was damaged by an overhanging pipe bracket while parking in a mall parkade operated by the

respondent, Ivanhoe Cambridge Inc. (Ivanhoe). Titan says the parkade's clearance height does not meet city bylaw requirements. Titan also says Ivanhoe negligently positioned the clearance height sign at the parkade entrance, so its truck roof did not hit the sign upon entry to notify the driver that the truck would not clear all structures within the parkade. Titan claims \$1,438.76 for repairs to the truck's roof.

3. Ivanhoe denies it is responsible for damage to Titan's truck. Ivanhoe says it provided sufficient notice of the parkade's height restrictions and the truck's driver failed to keep a reasonable lookout to avoid a collision with the overhanging pipe bracket.
4. Titan is represented by its owner, Douglas Ritch. Ivanhoe is represented by an employee.

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, and I find that there are no significant issues of credibility or other reasons that might require an oral hearing. 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.

ISSUE

9. The issue in this dispute is whether Ivanhoe was negligent in failing to sufficiently warn drivers about its parkade's height restrictions, and if so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant Titan must prove its claims on a balance of probabilities. I have read all of the parties' evidence and submissions, but I address them only to the extent necessary to explain my decision.
11. On January 13, 2020, Mr. Ritch's son, JR, drove Titan's 2018 Chevrolet Silverado K3500 truck into the Mayfair Mall parkade in Victoria, British Columbia. Titan says that as JR reversed the truck into a parking stall, a pipe bracket hanging lower than others impacted the truck's roof, causing damage.
12. It is undisputed that there are hanging signs at each entrance to the parkade, stating the parkade's maximum clearance height is 6 feet, 4 inches (1.93 metres). Titan provided a photograph that shows the pipe bracket measures slightly above 6 feet, 4 inches (1.945 metres) from the floor, which Ivanhoe does not dispute.
13. Titan also provided a photograph that shows the sign at the parkade entrance JR used, is positioned at about 6 feet, 6¼ inches (1.99 metres) from the ground. Another of Titan's photographs shows its truck was able to drive under the sign without contacting it. Additionally, Ivanhoe's incident report includes a photograph I infer was taken by a mall employee, showing that the truck did not contact the sign when driving

under it. Based on this photographic evidence, I find that at the parkade entrance JR used, the height clearance sign is positioned about 2 inches higher than the parkade's stated maximum clearance height.

14. Titan says Ivanhoe is responsible for its truck damage because the entrance sign was not positioned to hang at the parkade's stated maximum clearance height, so JR did not know the truck may not clear all structures within the parkade. Titan says this discrepancy provided an unsafe environment for people using the parkade.
15. In order to prove Ivanhoe was negligent, Titan must show: Ivanhoe owes Titan a duty of care, Ivanhoe failed to meet a reasonable standard of care, it was reasonably foreseeable that Ivanhoe's failure to meet the standard of care could cause Titan's damages, and the failure did cause the claimed damages: see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 at paragraph 3.
16. I note that Ivanhoe does not dispute that it is an "occupier" of the parkade, as defined in the *Occupiers Liability Act* (OLA). Section 3 of the OLA requires Ivanhoe to take reasonable care, in all of the circumstances, to ensure the parking lot they provided was reasonably safe to its public users.
17. I accept that Ivanhoe owed Titan a duty of care. I find the question here is whether Ivanhoe breached the applicable standard of care in terms of providing reasonable warning of the parkade's maximum clearance height.
18. Titan argues that the parkade's maximum clearance height violates City of Victoria Zoning Bylaw 2018, which provides that all underground or covered parking spaces must have a minimum height clearance of 2.1 metres (6 feet, 10.6 inches). Ivanhoe says the parkade was completed before Zoning Bylaw 2018 was adopted, so it does not apply. Ivanhoe says the parkade was designed and constructed according to the 2012 BC Building Code, which required a minimum overhead height of 6 feet, 6 inches (2.0 metres), and the City of Victoria issued an occupancy permit for the parkade after all signage was installed. Ivanhoe submits that the parkade generally has a vertical height of 6 feet, 7 inches, except for small portions where the

mechanical pipes hang at 6 feet, 4 inches. So, I find there are at least portions of Ivanhoe's parkade where its maximum height clearance does not comply with the Building Code, and the parkade height overall does not comply with the current bylaw.

19. As both parties acknowledge, a failure to comply with a bylaw (or Building Code) is not determinative, though in certain circumstances it can be evidence in support of a negligence claim. Clearly Ivanhoe is not expected to renovate its parkade to comply with the new height requirements in Zoning Bylaw 2018. However, I find Ivanhoe ought to have taken precautions where its parkade's clearance does not comply with the applicable Building Code or bylaws.
20. Ivanhoe provided several photographs showing signs at each parkade entrance, and at various other places within the parkade, which all state the maximum vehicle height is 6 feet, 4 inches (1.93 metres). Ivanhoe also says some of its hanging height clearance signs are positioned at 6 feet, 4 inches from the ground. However, I note that Ivanhoe does not particularly dispute that the sign at the entrance JR used was positioned higher, which is what I have found above.
21. Titan provided evidence that several other Victoria area parkades have clearance heights of 6 feet, 6 inches (2.0 metres), which I infer was the minimum height clearance in Victoria's previous bylaw. Each of the other parkades appear to have their respective entrance signs positioned at the stated maximum clearance height, which Ivanhoe does not dispute.
22. Titan argues that many people may be unaware of their vehicle's height, so they rely on a parkade's clearance height sign to be positioned at the maximum clearance height. That way, if a vehicle impacts the sign, the driver can reverse out of the parkade without damaging their vehicle. Titan points to City of Chilliwack Zoning Bylaw 2020, No. 5000, which says off-street parking structures must have a visible horizontal bar that will not damage motor vehicles, suspended from the doorway, 2.5 centimetres lower than the minimum vertical clearance within the structure. It is undisputed that there is no similar bylaw in Victoria.

23. I accept that hanging clearance height signs at parkade entrances are generally set at about the stated clearance height. However, there is no bylaw or other regulation in Victoria that says such signs must be positioned at the stated clearance height (or below it). In other words, I find there is no guarantee or warranty for drivers that the signs will be positioned exactly at the parkade's maximum clearance height. So, I find drivers should be relying on the height stated on the sign, not whether their vehicle hits the sign.
24. Further, I find that drivers have an obligation to know their vehicle's height, particularly when entering parkades or other covered structures with height clearance warnings. The photographs of Titan's truck show it is a large pickup truck, and given it impacted the pipe bracket, I find the truck's height is over 6 feet, 4 inches. I find it is unreasonable for drivers of large vehicles, such as Titan's, to rely on hitting a hanging sign to provide them with notice of their truck's height clearance. I find JD ought to have known the truck's height and relied on the sign's stated clearance in determining whether it was safe to enter the parkade.
25. Given Titan's truck stands over 6 feet, 4 inches, I find JD should not likely have entered the parkade, and he did so at his own risk. I find Ivanhoe had sufficient signage to notify the public about the parkade's (and pipe bracket's) clearance height, despite it being lower than the applicable Building Code and city bylaws.
26. On balance, I find Titan has not proven Ivanhoe was negligent or that it failed to take reasonable care in all of the circumstances. I dismiss Titan's claims.
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. Titan was unsuccessful so is not entitled to reimbursement of its CRT fees. Ivanhoe did not pay any CRT fees or claim any dispute-related expenses, so I make no order.

ORDER

28. I dismiss Titan's claims, and this dispute.

Kristin Gardner, Tribunal Member