



# Civil Resolution Tribunal

Date Issued: June 8, 2021

File: SC-2020-009671

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ramsey v. Nordmanner Marine Services Inc.*, 2021 BCCRT 632

B E T W E E N :

NEIL RAMSEY and LINDA RAMSEY

**APPLICANTS**

A N D :

NORDMANNER MARINE SERVICES INC.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Leah Volkers

## INTRODUCTION

1. This dispute is about a sail's damaged UV cover. The applicants, Neil Ramsey and Linda Ramsey, say that the respondent, Nordmanner Marine Services Inc.

(Nordmanner), got grease on their sail's UV cover while completing other sailboat repairs. The Ramseys claim \$749 for the UV cover's replacement costs.

2. Nordmanner denies getting grease on the UV cover and says it should not be responsible for the replacement costs.
3. The Ramseys are represented by Neil Ramsey. Nordmanner is represented by an employee, AA.

## **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. Some of the evidence in this dispute amounts to a "he said, he said" scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.

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.

### ***Preliminary Issue***

8. In its response submissions, Nordmanner says “we are demanding in return that he [Mr. Ramsey] not slander us online”. First, I note that Nordmanner did not file a counterclaim in this dispute, and so I find I cannot address this late claim.
9. Second, I note that ordering someone to do something, or to stop doing something, is known as “injunctive relief”. This includes an order that Mr. Ramsey not slander Nordmanner online. Injunctive relief is outside the CRT’s small claims jurisdiction, except where permitted by section 118 of the CRTA. There are no relevant CRTA provisions here that would permit me to grant the injunctive relief sought by Nordmanner, even if a counterclaim was filed. Plus, defamation is expressly outside the CRT’s jurisdiction under section 119 of the CRTA. So, I decline to address Nordmanner’s request.

### **ISSUE**

10. The issue in this dispute is whether Nordmanner is responsible for the UV cover’s grease stain, and if so, what is the appropriate remedy.

### **EVIDENCE AND ANALYSIS**

11. In a civil proceeding like this one, as the applicants the Ramseys must prove their 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. It is undisputed that the sail's UV cover is grease-stained. However, the cause of the grease stain is disputed. The Ramseys say Nordmanner caused the grease stain because it failed to remove the sail before lowering the sailboat's mast. The Ramseys say when the mast was lowered, the sail was resting against a pulley and cables that were covered in grease. The Ramseys also say the sail touched the ground when the mast was lowered and was placed on dirty creosote saturated wood blocks. Nordmanner disputes this and says the sail never touched the pulley and cables. Nordmanner admits the sail touched the ground, but says AA and Mr. Ramsey inspected the sail after it touched the ground and there was no grease stain on it at that time.
13. It is undisputed that Nordmanner offered to help the Ramseys with the grease stain when it was identified. However, I find this does not prove Nordmanner caused the grease stain. Nordmanner says the Ramseys did not mention the grease stain until several days after the mast was lowered. Nordmanner also says Mr. Ramsey worked on the mast himself and left the sail on the ground without a protection. Nordmanner says this is when Mr. Ramsey noticed the grease stain.
14. The Ramseys did not provide any evidence about when they first noticed the grease stain, or any evidence of the grease stain itself, including where it was located on the sail's UV cover. In their submissions, the Ramseys say "the only source of grease was the crane pulley" used when the mast was lowered, and "the only people in contact with that pulley were Nordmanner employees".
15. In evidence is a video of the mast being lowered. The Ramseys say the video shows the pulley against the sail without protection. Nordmanner disputes this. I cannot tell from the video whether the sail is protected, whether the pulley and cables were greasy, or whether they contacted the sail while the mast was being lowered. The video does not show the UV cover's grease stain after the mast is lowered.

16. Where a dispute's subject matter is technical or beyond common understanding, expert evidence is required to help the decision-maker determine the appropriate standard of care (see *Bergen v. Guliker*, 2015 BCCA 283, paragraphs 124 to 131). I find the same principle applies in determining whether Nordmanner lowering the mast could have caused the UV cover's grease stain.
17. Here, there is no expert evidence. So, I find that I am left with a "he said, he said" situation where the Ramseys say Nordmanner caused the grease stain when lowering the mast and Nordmanner says it did not. As the onus is on the Ramseys, as the applicants, to prove their case, I find they have not done so, and I dismiss their claims.
18. 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. I see no reason in this case not to follow that general rule. As the Ramseys were unsuccessful, I dismiss their claim for CRT fees. Nordmanner did not pay any CRT fees, so I award none.

## **ORDER**

19. I dismiss the Ramseys' claims and this dispute.

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Leah Volkens, Tribunal Member