



# Civil Resolution Tribunal

Date Issued: July 27, 2021

File: SC-2021-000439

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Scroggie v. Earl's Towing & Auto Wreckers Ltd.*, 2021 BCCRT 817

B E T W E E N :

TABATHA SCROGGIE

**APPLICANT**

A N D :

EARL'S TOWING & AUTO WRECKERS LTD.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Chad McCarthy

## INTRODUCTION

1. This is a dispute about motor vehicle damage. A tow truck operated by the respondent, Earl's Towing & Auto Wreckers Ltd. (Earl's), undisputedly backed into a car owned by the applicant, Tabatha Scroggie. Ms. Scroggie claims \$2,005.58 for car

damage resulting from the incident. Earl's says the incident was not its fault and disagrees with the claimed damage amount.

2. Ms. Scroggie is self-represented in this dispute. Earl's is represented by its principal, Earl Betker.

## **JURISDICTION AND PROCEDURE**

3. 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.
4. 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.
5. 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.
6. 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.

7. Earl's says that it does not owe Ms. Scroggie anything in part because she allegedly made "multiple slanderous comments on social media" and that Earl's was "willing to sue her for slander." However, there is no evidence that Earl's has filed a defamation claim in court. Earl's also makes no counterclaim in this CRT dispute and submitted no evidence or particulars of the alleged slander. Further, CRTA section 119(a) specifically excludes claims for libel and slander from the CRT's small claims jurisdiction. I find Earl's' unsupported slander allegations are not relevant to the issues in this dispute, and I make no findings about them.

## **ISSUE**

8. The issue in this dispute is whether Earl's is responsible for the damage to Ms. Scroggie's car, and if so, does it owe her \$2,005.58 in estimated repair costs?

## **EVIDENCE AND ANALYSIS**

9. In a civil proceeding like this one, as the applicant Ms. Scroggie must prove her claims on a balance of probabilities. I have read all the parties' submitted material but refer only to the relevant evidence and arguments needed to explain my decision.
10. Ms. Scroggie submitted video evidence of the incident. The video showed an initially stationary tow truck positioned approximately 4 metres from the rear of a motionless, white, snow-covered car, facing away from the car. The tow truck then reversed toward the car, and the right rear of the truck hit the right rear of the car, lifting the car body several centimetres and stopping the truck's motion. There is no dispute that the car was Ms. Scroggie's.
11. Earl's does not deny that the video showed its tow truck hitting Ms. Scroggie's car, and that the tow truck was being operated by an Earl's employee or principal. However, Earl's says that Ms. Scroggie's boyfriend was guiding the tow truck as it reversed and should pay any damages. Ms. Scroggie's boyfriend, RD, is not named as a party in this CRT dispute, and in particular Earl's did not file a third party claim against RD. Ms. Scroggie and RD provided written statements denying that RD

directed the tow truck driver. I find that the incident video briefly showed a person, whom I infer was RD, walking in front of the camera before the collision, but that person was facing away from the tow truck. I find that RD did not communicate with the tow truck driver and did not provide any driving guidance.

12. It is undisputed that Ms. Scroggie did not hire Earl's, and that someone else had engaged Earl's to tow a different nearby vehicle when the incident occurred. Section 193 of the *Motor Vehicle Act* says that a vehicle's driver must not cause it to move backwards unless the movement can be safely made. Having weighed the submitted evidence, I find that Ms. Scroggie's car was positioned close behind the tow truck and was plainly there to be seen, yet the Earl's driver reversed into the parked car. I find that this maneuver was negligent, and that Earl's is entirely responsible for its tow truck colliding with Ms. Scroggie's parked vehicle.
13. Ms. Scroggie submitted an undated photo of her car from before the collision which shows no obvious rear end damage. She also submitted a post-collision photo showing a broken right taillight lens, a cracked right rear bumper, and cracked and broken body panels surrounding the right taillight lens. Earl's does not directly deny that the collision caused this damage. I find that the collision caused the right rear damage shown in the photos, and that Earl's is responsible for that damage.
14. Earl's says that it gave Ms. Scroggie its insurance information, and that it "offered insurance" to Ms. Scroggie, which she "declined". Earl's does not say whether it made an insurance claim under its insurance policy for the damage it caused to Ms. Scroggie's car. Ms. Scroggie says that Earl's never provided her with any vehicle insurance information. Regardless, I find that the question of whether Ms. Scroggie's car damage was covered under an insurance policy does not affect whether Earl's was responsible for causing the damage, or the value of that damage.
15. Earl's says that it gave Ms. Scroggie's brother, DS, money and a replacement taillight to fix the car. In a written statement in evidence, DS denied receiving any money from Earl's or agreeing to fix the car. Earl's does not say how much money it allegedly

gave DS, and provided no evidence showing that it gave any money or parts to DS. I find that Earl's did not give any car repair money or parts to DS.

16. Ms. Scroggie submitted a December 14, 2020 repair estimate from High Caliber Auto Collision & Repair Ltd. (High Caliber). The estimate was for repairing and repainting her car's right quarter panel, rear bumper, and right taillamp assembly, which totalled \$2,033.75 after sales taxes. Ms. Scroggie does not explain why she claims \$2,005.58, which is less than the estimate's total.
17. I find the estimate is consistent with the damage caused by the Earl's tow truck, apart from an unexplained "Clean For Delivery" and "Interior Sanitization" charge of \$39.76, which I find totalled \$44.53 after sales taxes. I find that this charge is for cleaning "for delivery," after the repair work is completed. Ms. Scroggie does not explain why an interior cleaning will be needed following exterior bodywork repairs, such as, for example, Covid-19 pandemic concerns or other reasons. I find the evidence fails to show that an interior sanitization will be reasonably required or is sufficiently connected to the collision damage repairs. So, subtracting the cleaning charge from the estimate, I find that the collision damage repairs estimated by High Caliber total \$1,989.22.
18. Earl's disagrees with the repair estimate. I find Ms. Scroggie has established that Earl's is responsible for her car's collision damage, and has provided evidence showing that the cost of repairs will be \$1,989.22. Given these findings, I find that the burden of proof shifts to Earl's to prove that the damages are worth a different amount.
19. Earl's says that Ms. Scroggie's car is worth only \$1,000, and that the collision damage is worth approximately \$400, including about \$300 for replacement parts. However, Earl's provided no evidence supporting these alleged values, such as used vehicle pricing information, other repair estimates, parts and labour pricing information, or other evidence. Earl's also does not explain why it thinks the High Caliber estimate is inaccurate or unreasonable. Earl's says it was willing to give Ms. Scroggie \$500 for the car damage, but I find this does not prove the value of the damage. So, I give Earl's' unsupported submissions about the value of Ms. Scroggie's car and the

collision damage little weight, because I find that they are purely speculative. I find that Earl's has not met its burden of proving a different value for the collision damage.

20. In its submissions, Earl's suggests that it should pay less or nothing for the collision damage because Ms. Scroggie or DS owes Earl's an unspecified amount for other, unrelated towing services. Ms. Scroggie and DS deny owing Earl's anything. Earl's provided no evidence showing that Ms. Scroggie or DS ordered any Earl's towing services or that they owe Earl's anything. Further, and as noted, Earl's did not file a counterclaim. I find the evidence fails to show that any towing service amount should be set off against the collision damages Earl's owes Ms. Scroggie.
21. On the evidence before me, I find that the reasonable estimated cost of repairing the collision damage to Ms. Scroggie's car is \$1,989.22. So, I find that Earl's is responsible for damages totalling that amount. I allow Ms. Scroggie's claim for \$1,989.22.

## **CRT FEES, EXPENSES, AND INTEREST**

22. The *Court Order Interest Act* (COIA) applies to the CRT as if it were a court. The COIA says that the CRT must add pre-judgment interest to a pecuniary judgment, meaning a judgment for money, at a rate it considers appropriate in the circumstances. However, section 2(a) of the COIA says that the court must not award pre-judgment interest on those parts of an order that are for a pecuniary loss arising after the date of the order.
23. In this case, I find that although Ms. Scroggie's car was damaged, she has not yet had it repaired. So, I find that she has not yet suffered an out-of-pocket, pecuniary loss because of the car damage. So, under COIA section 2(a), I order no pre-judgment interest. However, Ms. Scroggie is entitled to any applicable post-judgment interest.
24. 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 not to follow that general rule. I find Ms. Scroggie was largely successful in her claims, so she is entitled to reimbursement of the \$125 she paid in CRT fees. Neither party claimed CRT dispute-related expenses.

## **ORDERS**

25. Within 30 days of the date of this order, I order Earl's to pay Ms. Scroggie a total of \$2,114.22, broken down as follows:

- a. \$1,989.22 in damages, and
- b. \$125 in CRT fees.

26. Ms. Scroggie is entitled to post-judgment interest, as applicable.

27. Under section 48 of the CRTA, the CRT will not provide the parties with the Order giving final effect to this decision until the time for making a Notice of Objection under section 56.1(2) has expired and no Notice of Objection has been made. The time for filing a Notice of Objection is 28 days after the party receives notice of the CRT's final decision. The Province of British Columbia has enacted a provision under the *COVID-19 Related Measures Act* which says that statutory decision makers, like the CRT, may waive, extend, or suspend mandatory time periods. This provision is in effect until 90 days after June 30, 2021, which is the date of the end of the state of emergency declared on March 18, 2020, but the Province may shorten or extend the 90-day timeline at any time. A party should contact the CRT as soon as possible if they want to ask the CRT to consider waiving, suspending, or extending the mandatory time to file a Notice of Objection to a small claims dispute.

28. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a Notice of Objection has passed. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

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Chad McCarthy, Tribunal Member