



Civil Resolution Tribunal

Date Issued: August 16, 2021

File: SC-2021-002371

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Craig v. Platinum Properties Inc.*, 2021 BCCRT 896

B E T W E E N :

SHEENA CRAIG

APPLICANT

A N D :

PLATINUM PROPERTIES INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This small claims dispute is about vehicle damage. The applicant, Sheena Craig, says that, while she was in a parking area owned by the respondent, Platinum Properties Inc. (Platinum), she drove over a metal grate that flipped up and damaged her car. She asks for an order that Platinum pay her \$2,230.33 for damages to her vehicle and the deductible she paid to her insurer, the Insurance Corporation of British

Columbia (ICBC). Platinum denies that it is responsible for Ms. Craig's claimed damages.

2. Ms. Craig originally named ICBC as a respondent, but later withdrew her claims against ICBC and proceeded against Platinum only. The style of cause above reflects the amended Dispute Notice.
3. Ms. Craig is self-represented. Platinum is represented by an employee.

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 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.
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.

ISSUE

8. The issue in this dispute is whether Platinum was negligent in maintaining the parking area such that it is responsible for the \$2,230.33 that Ms. Craig claims.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, an applicant must prove their claims on a balance of probabilities. The parties provided evidence and submissions in support of their respective positions. I have considered all of this information but refer to only the evidence and argument that I find relevant and necessary to provide context for my decision.
10. The incident that is the subject of this dispute occurred in the parking area of a building owned by Platinum. Platinum admits that there was an opening in the pavement in this area that was covered by an unsecured grate. Photos show a square metal grate covering a larger round hole. Some of the photos show the grate with an orange pylon placed on top of it, but others do not.
11. Ms. Craig says that she parked in a parking stall to pick up a relative who lives in the attached building. When she backed out of the parking stall, Ms. Craig drove over the opening. The parties agree that the grate struck the undercarriage of Ms. Craig's vehicle and damaged it. The parties disagree about whether the pylon was in place on the grate at the time of the incident.
12. Section 3 of the *Occupiers Liability Act* (OLA) provides that an occupier of a premises owes a duty to take care that a person and their property will be reasonably safe in using the premises. For the purpose of this decision, I accept that Platinum met the definition of an "occupier" in the OLA as it had responsibility for, and control of, the condition of the parking area.
13. The standard of care in occupiers' liability is reasonableness, not perfection, and the test of reasonableness is an objective one (see, for example, *Wilfong v. Stanger*,

2008 BCSC 1247 at paragraph 8). Therefore, the question is whether Platinum provided a reasonable warning of the hazard it admits was in its parking area.

14. According to Ms. Craig, there was no pylon on the grate when the incident occurred. A written statement from her passenger says “there was no pole” in the area. Ms. Craig says that the incident would not have happened if Platinum had repaired the hazard or taken reasonable steps to alert the public to it.
15. Platinum says that it clearly marked the hazard with a 3-foot tall orange pylon. It submits that, if Ms. Craig ran over the pylon, then she was negligent in her driving. Further, Platinum says that, if the pylon was removed by a third party, then that individual is responsible. Platinum’s position is that it met its duty when it marked the hazard.
16. Photos in evidence shows that the grate-covered hole was in an area with patches and other irregularities in the road surface. The grate itself appears to have been a similar colour to dirt in the area. While easily visible when marked with the pylon, I accept that the grate would be difficult to see if the pylon was not there. Therefore, a key consideration is whether the grate was marked with a pylon at the time of the incident.
17. Although Ms. Craig and her passenger say there was no pylon, Platinum says that Ms. Craig acknowledged that she ran over the pylon in a phone call with one of its employees. In a July 30, 2020 Incident Report, the employee documented that Ms. Craig “drove over the metal grate with the pylon on it”. I find that these are the employee’s words, not those of Ms. Craig, and that this does not amount to an admission from Ms. Craig that she ran over the pylon.
18. Another employee completed an Incident Report on June 7, 2021 about an August 2020 telephone call with “a gentleman from BCAA”. This report says that the employee told the caller that they did not know if the pylon was in place on the date of the incident as “it could have been stolen”. The employee documented that they

were later informed by maintenance staff that “the pylon was indeed in place that date and that it had simply been run over in the incident”.

19. The two people who witnessed the incident say there was no pylon. The fact that they could have an interest in the outcome affects the weight I give to their statements. Platinum did not provide statements from its maintenance staff and there is no indication that any staff witnessed the incident. There is no explanation about how the staff would have known how the incident occurred without witnessing it, and no information about any damage to the pylon that would suggest that it was run over. I also note that the Incident Report was written approximately 10 months after the conversation occurred, and that no explanation was provided for the delay. I find the absence of this information to be significant.
20. Based on the available evidence, I find that it is more likely than not that the pylon was not on the grate at the time of the incident. I find that the hazard was not marked adequately, and that the evidence before me does not support the conclusion that Ms. Craig should have been able to see and avoid it.
21. I also disagree with Platinum’s suggestion that placing a moveable pylon on top of the grate was, by itself, sufficient to ensure that the parking area was reasonably safe. I find that it was significant that the pylon was not fixed to the grate or anything in the surrounding area, which means that it could have been moved or knocked over by someone entering or exiting a parking spot. Further, as the area in question was not enclosed but an open driveway that appears to be accessible to the public, the pylon also could have been stolen by a third party. Platinum acknowledges this fact in its submissions. In addition, Platinum states in its submissions that the damaged area and pylon had been present “for quite some time prior to the incident”. I am not satisfied that, in these circumstances, placing a pylon on the grate without ensuring that it remained in place met the duty of care.
22. I find that Platinum did not ensure that its parking area was reasonably safe for people using the premises, and that this amounted to a breach of section 3 of the OLA.

23. The next consideration is damages. Although the parties agree that Ms. Craig's vehicle was damaged in the incident, they disagree about her entitlement to monetary damages. As noted, Ms. Craig claims \$2,230.00, which is the total estimated cost of repairs for her vehicle. Platinum says this is "far in excess" of Ms. Craig's deductible.
24. The estimate document in evidence shows that Ms. Craig paid a \$500 deductible. ICBC says it paid the remainder of the \$1,739.78 in repair costs. I note that, when taken together, the deductible and reported repair costs are \$9.78 higher than the cost shown on the estimate documentation. I find that nothing turns on this discrepancy. There is no indication that ICBC is pursuing a subrogated claim. I find that Ms. Craig is entitled to reimbursement of the amount she paid, but not the amount that was covered by her insurer as this was not a loss to her. As the evidence shows that Ms. Craig paid the \$500 deductible, I find that she is entitled to this amount.
25. I find that Ms. Craig is also entitled to pre-judgment interest under the *Court Order Interest Act*. Calculated from August 17, 2020 (when Ms. Craig paid the deductible) to the date of this decision, this equals \$2.24.
26. 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. As Ms. Craig was partially successful, I find that she is entitled to reimbursement of half of the \$125 she paid in CRT fees, or \$62.50. She did not claim any dispute-related expenses.

ORDERS

27. Within 30 days of the date of this decision, I order Platinum to pay Ms. Craig a total of \$564.74, broken down as follows:
 - a. \$500 as reimbursement for the insurance deductible,
 - b. \$2.24 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$62.50 in CRT fees.

28. Ms. Craig is entitled to post-judgment interest, as applicable.
29. 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.
30. 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.

Lynn Scrivener, Tribunal Member