



# Civil Resolution Tribunal

Date Issued: September 3, 2021

File: SC-2020-008557

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Calinisan v. City of Vancouver*, 2021 BCCRT 969

BETWEEN:

RAY JANNE CALINISAN

**APPLICANT**

AND:

CITY OF VANCOUVER

**RESPONDENT**

AND:

PEDRE CONTRACTORS LTD.

**RESPONDENT BY THIRD PARTY CLAIM**

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## REASONS FOR DECISION

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Tribunal Member:

Richard McAndrew

## **INTRODUCTION**

1. This dispute is about alleged pothole damage to a car. The applicant, Ray Janne Calinisan, says that his 2015 Audi S4 vehicle (car) was damaged by potholes on a roadway in the respondent municipality, City of Vancouver (Vancouver). Mr. Calinisan claims \$4,999 for damage to his tires and car, damages for loss of use of the car, car inspection expenses, towing expenses, and insurance expenses.
2. Vancouver denies Mr. Calinisan's claims. Vancouver says it was not negligent and it did not owe a Mr. Calinisan a duty to maintain the road. Vancouver says an independent contractor, Pedre Contractors Ltd. (Pedre), was performing sewer maintenance and it was responsible for the road's condition. Vancouver says that, if it is found liable to Mr. Calinisan, that Pedre is responsible for reimbursing it. Vancouver makes a third party claim against Pedre for contribution and indemnity. Mr. Calinisan does not make any claims against Pedre.
3. Pedre says that it was not negligent. However, Pedre admits that it owes Vancouver reimbursement if Vancouver is found liable to Mr. Calinisan.
4. Mr. Calinisan is represented by his father, RC. Vancouver is represented by in-house lawyer, Joelle Michaud. Pedre 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. 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.

## **ISSUES**

9. The issues in this dispute are:
  - a. Did Vancouver negligently fail to maintain the roadway causing damage to Mr. Calinisan's car?
  - b. Did Vancouver negligently fail to supervise Pedre's work?
  - c. If Vancouver owes Mr. Calinisan damages, must Pedre reimburse Vancouver?

## **EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, Mr. Calinisan, as the applicant, must prove his claim on a balance of probabilities. Vancouver must prove its third party claim against Pedre to the same standard. 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.
11. Mr. Calinisan says he drove through a construction site on a Vancouver roadway in the evening of October 11, 2020. He says it was dark and raining. Mr. Calinisan says he drove over large potholes with sharp edges which immediately punctured both

driver's side tires. Mr. Calinisan says that there were no signs or warnings of the danger.

12. To prove negligence, Mr. Calinisan must show that Vancouver owed him a duty of care, Vancouver breached the standard of care, Mr. Calinisan sustained the claimed damage, and the damage was caused by Vancouver's breach (*Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27).
13. Vancouver says it has made a policy decision to address roadway defects on a reactive basis when these are reported as opposed to carrying out formal periodic inspections of roadways. Vancouver says it received no notice of a roadway defect at this location before the incident. Since Mr. Calinisan does not dispute these submissions, I accept them as accurate.
14. Vancouver argues that it cannot be held liable for acting according to its policy decision and relies on the CRT decision in *Dyal v Township of Langley*, 2018 BCCRT 469 (CanLII). In the decision in *Dyal*, a vice chair decided a case with similar facts to this one, which is not binding on me but which I find helpful as it sets out the law applicable to this dispute. In that case the vice chair relied on *Barratt v. Corporation of North Vancouver*, 1980 2 SCR 418, in which the Supreme Court of Canada held that the municipality was not negligent for failing to maintain a pothole which caused a cyclist to suffer injuries. The court held that the municipality's method of exercising its power to maintain its roads was a policy matter to be determined by the municipality. The court held that if the municipality's employees acted negligently in implementing its policy then the municipality could be liable, but the municipality would not be liable because it decided to implement one policy over another. In *Dyal*, the vice chair found that the municipality was not responsible for the pothole damage because the applicant had not proved that the pothole had been reported to the municipality.
15. As stated above, it is undisputed that Vancouver was not notified of the potholes before the incident. So, I find that Mr. Calinisan has not proved that Vancouver was negligent in implementing its complaint-based policy for repairing potholes.

16. Mr. Calinisan also argues that Vancouver had a duty to supervise Pedre's work to ensure road safety. Vancouver denies this duty. Vancouver says that Pedre was solely responsible for road safety during its work. Vancouver provided permits issued to Pedre which authorized it to perform the work and said that Pedre was required to ensure the area's safety and have a traffic plan. Vancouver says that Pedre was acting as an independent contractor that was hired by another entity to perform sewer maintenance, not Vancouver. Since Mr. Calinisan does not dispute this submission, I accept it as accurate.
17. A defendant's responsibility for its independent contractors' negligence was discussed in the Supreme Court of Canada's decision in *Lewis (Guardian ad litem of) v. British Columbia*, 1997 CanLII 304 (SCC). In *Lewis*, the court found that a defendant may be held responsible for its independent contractor's negligent work in certain circumstances. The Supreme Court of Canada said that the relationship between the parties needed to be examined to determine whether it is appropriate to hold a defendant liable for the negligence of its independent contractors.
18. In the circumstances here, I find that Vancouver did not owe a duty to supervise Pedre. I reach that conclusion because I find that Vancouver had a minimal relationship with Pedre. As discussed above, Vancouver did not hire Pedre and there is no evidence before me showing that Vancouver was involved with Pedre's sewer maintenance work. Further, although Pedre's work involved a roadway, I find that the evidence does not establish that this work was inherently dangerous or that Vancouver had a statutory duty to maintain the roadway. I find that Mr. Calinisan has not proved that Vancouver had a duty to supervise an independent contractor that it did not hire, such as Pedre.
19. For the above reasons, I find that Vancouver was not negligent and it is not responsible for Mr. Calinisan's alleged losses. Based on this finding, and since Mr. Calinisan does not make any claims against Pedre, I find it unnecessary to consider the parties' other arguments. I dismiss Mr. Calinisan's claims against Vancouver. This

means that Vancouver has no loss to recover from Pedre, so I dismiss Vancouver's third party claim against Pedre.

***CRT fees and dispute-related expenses***

20. 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. Since Mr. Calinisan was not successful in his claims, I dismiss his request for reimbursement of CRT fees. Further, since Vancouver's third party claim was dismissed above, I also dismiss Vancouver's request for reimbursement of CRT fees. There were no requests for reimbursement of dispute-related expenses.

**ORDER**

21. I dismiss Mr. Calinisan's claims, Vancouver's third party claim and this dispute.

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Richard McAndrew, Tribunal Member