Civil Resolution Tribunal

Date Issued: February 4, 2022

File: SC-2021-005850

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Buraga v. Lo*, 2022 BCCRT 131

B E T W E E N :

ABIGAIL BURAGA

APPLICANT

A N D :

WINSON WEI-ZHE LO

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Eric Regehr

INTRODUCTION

1. Abigail Buraga and Winson Wei-Zhe Lo were both working out at a gym. Ms. Buraga's iPhone was beside her on the floor, lying face up. Mr. Lo was using a machine nearby. A round weight fell onto the floor and rolled onto Ms. Buraga's iPhone, damaging it beyond repair. Ms. Buraga says that Mr. Lo dropped the weight and is therefore responsible for the cost of a new iPhone.

2. Ms. Buraga initially claimed that a replacement iPhone would cost $950.88. Mr. Lo has already paid her $100, so she initially claimed $850.88 in this dispute. However, the cost of a replacement iPhone has since gone down to $581.28, so in her submissions she reduced her claim to $481.28.

3. Mr. Lo denies that he dropped the weight. He says that the weight was "squished" onto the rack and slipped off on its own. He says that this was out of his control. He asks that I dismiss Ms. Buraga's claim.

4. The parties are each self-represented.

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. In some respects, both parties of this dispute call into question the credibility, or truthfulness, of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision *Yas v. Pope*, 2018 BCSC 282, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.

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 pay money or to do or stop doing something. The CRT's order may include any terms or conditions the CRT considers appropriate.

9. I note that in her reply submissions Ms. Buraga argues that Mr. Lo agreed to pay to **replace** her old iPhone. She argues that this was a binding contract that the CRT should enforce. In her primary submissions, Ms. Buraga only said that Mr. Lo agreed to pay to **repair** the iPhone. She also did not argue that they had a binding contract in her primary submissions. I find that Mr. Lo did not have notice of this argument and did not have an opportunity to respond to it. I therefore find that it would be procedurally unfair to Mr. Lo to consider this argument, so I have not done so.

ISSUES

10. The issues in this dispute are:

    a. Did Mr. Lo drop a weight and damage Ms. Buraga's iPhone? If so, is he legally responsible for the damage?

    b. If so, what are Ms. Buraga's damages?

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, Ms. Buraga as the applicant must prove her case on a balance of probabilities, meaning "more likely than not". While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.

12. The parties were both working out at a gym on July 21, 2021. The parties agree that a 35-pound weight rolled onto Ms. Buraga's iPhone and damaged it beyond repair, but they dispute exactly what happened.

13. Ms. Buraga's account is as follows. She was standing next to a bench press machine talking to another gym user, AAF, who was waiting to use the same machine. Her iPhone was beside the machine on the floor, facing up. Mr. Lo was using an incline bench press machine about 1.5 meters away. Mr. Lo dropped a 35-pound round weight as he attempted to put it back on a rack. The weight rolled along the floor and eventually crushed Ms. Buraga's iPhone. The parties discussed the incident and Mr. Lo agreed it was his fault and agreed to pay the repair cost.

14. AAF provided a written statement for this dispute, which is as follows. AAF was standing beside Ms. Buraga to ask her how much longer she would be using the bench press machine. He saw a weight slip out of Mr. Lo's hands while Mr. Lo was re-racking weights and roll until it hit Ms. Buraga's iPhone. After the incident, AAF heard Mr. Lo agree to pay to fix the iPhone.

15. Mr. Lo denies dropping the weight. He admits that he was taking weights off the incline bench press machine when the weight in question fell, but he says it was not one of the weights he was using. He says that the weight in question was perched precariously on a weight rack nearby and fell off on its own, possibly due to floor vibrations.

16. It is undisputed that during the parties' discussion after the incident, Mr. Lo e-transferred Ms. Buraga $100. The parties also exchanged contact information.

17. Ms. Buraga texted Mr. Lo later that evening. She told him that the actual repair cost (a screen replacement) would be $259 plus tax. She said that Mr. Lo could send the remaining amount after she had the iPhone repaired. Mr. Lo responded that he did not feel that the incident was his fault because he did not drop a weight.

18. On July 25, 2021, Ms. Buraga texted Mr. Lo that she had taken the iPhone to the Apple Store and found out that it could not be fully repaired. The parties' text messages indicate that Ms. Buraga's iPhone still partially worked even though the screen was badly damaged. However, there was more damage than just the screen. She asked Mr. Lo for $850.88, the $950.88 it would cost to replace the iPhone less the $100 he had already paid. Mr. Lo refused.

19. On November 8, 2021, Ms. Buraga went back to the Apple Store to get written confirmation that the iPhone could not be fully repaired. Ms. Buraga provided the Apple Store receipt, which confirms that the front cameras and internal compass were also broken. The Apple Store receipt also said that the cost of a replacement iPhone had fallen to $581.28. I infer from Ms. Buraga's submissions that she has not yet purchased a replacement iPhone.

20. Faced with conflicting accounts and with no video evidence, it is impossible to know with certainty what happened. Mr. Lo argues that I should disregard AAF's statement because it is not plausible or believable that AAF actually saw Mr. Lo drop the weight. He says that AAF had no reason to be watching Mr. Lo. He says that AAF likely only started paying attention once the weight had fallen, and then assumed that Mr. Lo had dropped it. For her part, Ms. Buraga says that Mr. Lo was in AAF's field of vision and was less than 2 meters away. Mr. Lo does not dispute this point. While I take Mr. Lo's point that AAF had no reason to be intently watching Mr. Lo before the weight fell, I find that it is entirely plausible that AAF saw what happened since AAF was so close and it was in AAF's field of vision. On balance, I give significant weight to AAF's statement about what happened.

21. I also find Mr. Lo's behaviour after the incident suggests that he dropped the weight. Mr. Lo does not deny AAF's and Ms. Buraga's evidence that he agreed to pay to repair the iPhone. I find he likely would not have made this offer if he truly had nothing to do with the weight falling. I also find it unlikely he would have paid Ms. Buraga $100 on the spot.

22. Weighing that evidence, I find it more likely than not that Mr. Lo dropped the weight that broke Ms. Buraga's iPhone. The next question is whether dropping the weight was negligent. To prove negligence, Ms. Buraga must prove the following:

    a. Mr. Lo owed Ms. Buraga a duty of care,

    b. Mr. Lo breached the applicable standard of care, causing damage.

    c. The damage was a reasonably foreseeable consequence of the negligent act.

23. I find that Ms. Buraga has proven negligence. I find that a gym user owes a duty of care to other gym users to take reasonable care when handling weights. I find that accidentally dropping a weight falls below that standard. I find that it is reasonably foreseeable that by dropping a heavy weight, a gym user could damage someone else's personal property. I note that Mr. Lo appears to accept in his submissions that if I determine that he did drop the weight, he should be held responsible for the iPhone damage.

24. Turning to damages, I find that awarding Ms. Buraga the full cost of a new iPhone would overcompensate her, even though it is the same model. The proper measure of damages is the amount of money it would take to put Ms. Buraga in the same position she would be in if Mr. Lo had never dropped the weight. If the incident had never happened, Ms. Buraga would have her old iPhone, not a brand new one. So, I find she is entitled only to the market value of her iPhone when it was damaged. This legal concept is called "betterment".

25. There is no evidence before me about the age or condition of Ms. Buraga's old iPhone. Based on the fact that it can still be purchased new from the Apple Store, I find that it was likely a relatively recent model. However, I find that any phone loses value as soon as it is no longer brand new. On a judgment basis and accounting for the $100 Mr. Lo already paid, I find that $300 will adequately compensate Ms. Buraga for the damaged iPhone.

26. The *Court Order Interest Act* (COIA) applies to the CRT. However, I find that because Ms. Buraga has not replaced the iPhone, I find she is not entitled to interest.

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. Ms. Buraga was partially successful, so I find she is entitled to reimbursement of half of her $125 in CRT fees, which is $67.50. She did not claim any dispute-related expenses. Mr. Lo did not claim any dispute-related expenses or pay any CRT fees.

ORDERS

28. Within 30 days of the date of this order, I order Mr. Lo to pay Ms. Buraga a total of $367.50, broken down as follows:

    a. $300 in damages,

    b. $67.50 for CRT fees.

29. Ms. Buraga is entitled to post-judgment interest under the COIA, as applicable.

30. 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.

31. 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.

Eric Regehr, Tribunal Member