Civil Resolution Tribunal

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File: SC-2021-005505

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Wang v. Canreal Management Corporation*, 2022 BCCRT 144

B E T W E E N :

MARCUS WANG and MOLLY NOSS

APPLICANTS

A N D :

CANREAL MANAGEMENT CORPORATION and MURRAYVILLE SHOPPING CENTRE LTD.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member: Laylí Antinuk

INTRODUCTION

1. This dispute is about car damage.

2. The applicants, Marcus Wang and Molly Noss, say their car was damaged in a parking lot (lot) owned by the respondent, Murrayville Shopping Centre Ltd. (Centre), and managed by the respondent Canreal Management Corporation (Canreal). The

applicants say a rebar protruding from a concrete curb stop in the lot caused their car damage. The applicants claim $4,920.96 for the car's inspection and repair.

3. The respondents admit that a rebar did protrude about 1 cm out of the curb stop. However, they say Mr. Wang drove into the visible curb stop without due care. So, they say Mr. Wang caused the car damage, not them.

4. Mr. Wang represents the applicants. Authorized employees or directors represent the respondents.

5. As explained below, I dismiss the applicants' claims.

JURISDICTION AND PROCEDURE

6. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims under section 118 of the *Civil Resolution Tribunal Act* (CRTA). 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 parties that will likely continue after the CRT process has ended.

7. The CRT has the discretion to decide how to hold the hearing. A hearing can occur by writing, telephone, videoconferencing, email, or a combination of these. I have decided that a written hearing is appropriate in this case. I find I am properly able to assess and weigh the documentary evidence and submissions before me. Keeping in mind the CRT's mandate, which includes proportionality and speedy dispute resolution, I see no reason for an oral hearing.

8. The CRT can accept any evidence that it considers relevant, necessary and appropriate, even if the evidence would not be admissible in court. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

9. Where permitted under CRTA section 118, the CRT may order a party to pay money, or to do or stop doing something. The CRT may also make an order that includes any terms or conditions that it considers appropriate.

ISSUE

10. The issue in this dispute is whether the respondents are responsible for the applicants' car damage and, if so, what remedy is appropriate?

EVIDENCE AND ANALYSIS

11. As the applicants in this civil proceeding, Mr. Wang and Mrs. Noss must prove their claims on a balance of probabilities (meaning "more likely than not").

12. I have reviewed all the parties' evidence and arguments. However, I will refer only to what I consider necessary to explain my decision. The respondents each filed an identical, detailed Dispute Response. However, only Canreal filed a brief submission, though both respondents had the opportunity to file submissions. Canreal also submitted 8 pieces of evidence on behalf of both respondents.

13. Both the Centre and Canreal say Canreal is the Centre's agent. The applicants do not dispute this. So, I find that the respondents are in a principal-agent relationship.

14. Under the common law, principals are generally responsible for their agents' actions if those actions are sufficiently connected to the agency relationship. This is called vicarious liability. Here, I find that Canreal's lot maintenance is sufficiently connected to its role as the Centre's agent. So, if Canreal improperly maintained the parking lot, the Centre is responsible for any resulting damages, not Canreal. Given this, I dismiss the applicants' claims against Canreal. This leaves the applicants' claims against the Centre.

15. While none of the parties specifically referred to it, I find that the *Occupiers Liability Act* (OLA) applies to this dispute. The OLA imposes a duty of care on the Centre to take reasonable care, in all the circumstances, to ensure the lot is reasonably safe.

This duty of care does not require the Centre to remove every possibility of danger. The test is one of reasonableness, not perfection. See *Fulber v. Brown's Social House Ltd.*, 2013 BCSC 1760 [*Fulber*] at paragraph 28.

16. To succeed in this dispute, the applicants must show that:

    a. There was a hazard in the lot,

    b. The hazard caused their car damage, and

    c. The Centre did not take reasonable steps to ensure that the hazard would not exist.

    See *Fulber* at paragraph 35.

17. As I explain below, I find that the applicants have not proven that a hazard in the lot caused their car damage.

18. It is undisputed that at about 4 pm on July 5, 2021, Mr. Wang pulled the applicants' car nose-first into a parking stall (Stall) in the lot. When attempting to back out of the Stall later, he says he heard "a very loud crunching, ripping sound." He looked at the car and saw the front right bumper "was completely pulled away, the connecting pieces were broken off and the whole bumper was misshapen." He then inspected the Stall's concrete curb stop and noticed a steel rebar sticking out of it. The respondents do not dispute any of this, so I accept it as fact.

19. Based on the photographic evidence, I find that the rebar in the Stall's curb stop protruded about 1 cm out the curb stop's top. The photos also show that this particular curb stop spans across 2 parking stalls, with half the curb stop in each stall. So, if 2 cars park nose-first in the 2 adjacent stalls that share the curb stop, the curb stop sits at the front right side of the Stall and the front left side of the adjacent stall. The photos show that there is no curb stop on the Stall's left side. For clarity, when I refer to right and left, I mean from the perspective of someone who pulls nose-first into the Stall.

20. The applicants do not argue that the Stall's curb stop is a hazard and I find it obvious that it was not. I find that the curb stop was there to be seen. So, I find that the only potential hazard was the rebar. As a result, the applicants must prove that the rebar itself caused the damage at issue.

21. Mr. Wang argues that the rebar, rather than the curb stop, caused the applicants' car damage. He says this must be so because the damage is on the car's right side. However, as I have explained, the Stall only has a curb stop on its right-hand side. So, I do not accept that the car's right-side damage means the rebar, not the curb stop itself, caused the damage. Based on the location of damage and the Stall's curb stop, I find it equally likely that the curb stop, not the rebar, caused the damage.

22. The respondents argue that Mr. Wang caused the car's damage because he parked with his bumper over the curb stop. They say the curb stops are 6.25 inches high and provide a "physical reference to protect critical infrastructure" in the lot. The respondents argue that the applicants' car clearance from the ground is less than 6 inches, so Mr. Wang should not have driven his car so far into the Stall that its bumper sat above the curb stop. For support, they provide a Mercedes-Benz specification sheet for the applicants' car model. The specification sheet says that the minimum ground clearance of the car is 5.8 inches.

23. Mr. Wang does not dispute that he parked with his bumper over the curb stop. On the contrary, he says he often parks with the front bumper resting slightly or even completely over curb stops and argues that this is "careful and reasonable driving behaviour." He includes photos of other cars parked with their bumpers over curb stops to support his claim that it is reasonable to park this way. I do not accept that parking with one's bumper over the curb stop is careful and reasonable driving behaviour in any universal sense. Instead, I find that what is reasonable depends on the circumstances, in particular the height of one's bumper in comparison to the height of the curb stop. Further, I note that in a factually similar CRT case, a CRT vice chair found that it is **not** reasonable to expect to be able to park one's car right over a concrete curb stop. See *Symons v. Pender Island Recreation and Agricultural Hall*

Association, 2021 BCCRT 204 at paragraph 19. Though this decision does not bind me, I agree with the vice chair's finding and adopt it here.

24. Here, there is no evidence to establish the height of the applicants' bumper, or the height of the specific curb stop at issue. Mr. Wang says he called multiple Mercedes dealers and service departments, but no one could confirm the exact location on the car where the official minimum clearance height measurement of 5.8 inches from the car's specification sheet is taken. However, the applicants provided photos of the car parked with its bumper over other curb stops to show that the car's bumper clears the top of those curb stops. I find that these photos do not show the Stall's curb stop. I say this because these photos show a curb stop that spans a single parking stall, instead of being half in 1 stall and half in another.

25. The respondents both made arguments about the car's bumper height. Yet, without explanation, the applicants did not provide evidence to show their front bumper's height. When a party does not provide relevant evidence without a reasonable explanation, the CRT may draw an adverse inference against them, and I do so here.

26. An adverse inference allows a decision maker to assume that a party did not provide certain evidence because that evidence would not support their case. The applicants did not explain why they did not include any photographs (or other evidence) to show their bumper's height. I find that such evidence is clearly relevant and would not have been difficult to provide. I note that the applicants provided a photo of the rebar with a ruler next to it to show the rebar's height. So, I find that the applicants had the simple tools necessary to show their bumper's height. Yet, they did not provide this obviously relevant evidence. Additionally, in the photos that show the car's bumper hovering over a different curb stop (or stops), I find that the bumper sits extremely close to the curb stop(s).

27. Taking all this into account, I find on balance that the applicants' car has a relatively low bumper that, at best, just barely clears the average curb stop. Given this, I am not satisfied that the rebar, as opposed to the curb stop itself, caused the damage at issue. Further, even if the rebar caused the damage, I find that it was there to be

seen. I say this because I can see it clearly in photos taken several feet away from the Stall. I note that the car damage occurred during daylight hours, which is also when the photos were taken. As such, I find that Mr. Wang should have been paying attention to what was in front of him when he drove nose-first into the Stall and should have stopped in front of the curb stop, not with the car's bumper resting over top of it.

28. Overall, I am not satisfied that the rebar caused the car damage. Given the height of the applicant's front bumper, I find it equally likely that the curb stop itself caused the damage. I find that the curb stop was a visible barrier, entirely visible to Mr. Wang when he pulled his car nose-first into the Stall. While I recognize that rebar is not meant to protrude from concrete curb stops, I am not satisfied that the rebar caused the damage at issue. So, I dismiss the applicants' claims against the Centre. I find that they have not proven the Centre breached the OLA or caused their claimed damages.

29. 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. The applicants did not succeed in this dispute, so I dismiss their request for CRT fee reimbursement. The Centre paid no CRT fees and claims no dispute-related expenses, so I make no order for them.

ORDER

30. I dismiss the applicants' claims and this dispute.

Laylí Antinuk, Tribunal Member