



Civil Resolution Tribunal

Date Issued: March 9, 2022

File: SC-2021-005227

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Moncrieff v. Mann*, 2022 BCCRT 254

BETWEEN:

SYDNEY MONCRIEFF and DARREN MONCRIEFF

APPLICANTS

AND:

ZACHARY MANN

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This small claims dispute is about a collision between 2 Sea Doo personal watercrafts. The applicant, Darren Moncrieff, owns both watercrafts. The other applicant, Sydney Moncrieff, and the respondent, Zachary Mann, were operating the watercrafts at the time of the accident. The Moncrieffs say Mr. Mann rear-ended Ms. Moncrieff because he was following too closely and paying inadequate attention. The

Moncrieffs claim \$2,883.00 as reimbursement for fixing the seat of the watercraft operated by Ms. Moncrieff. In submissions the Moncrieffs requested \$4,261 instead and I discuss the discrepancy below.

2. Mr. Mann disagrees. He says Ms. Moncrieff is responsible for the accident, and so he owes nothing.
3. Ms. Moncrieff represents the Moncrieffs. Mr. Mann represents himself.
4. For the reasons that follow, I dismiss the Moncrieffs' claims.

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. Some of the evidence in this dispute amounts to a "she said, he said" scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38,

the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.

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.

Text Messages About Settlement Discussions

9. The text messages in evidence include settlement discussions. Neither party objected to the text messages as evidence. Settlement privilege normally protects documents and communications created for the purpose of settlement from production to other parties to the negotiations and to strangers. See *Middlekamp et al v. Fraser Valley Real Estate Board et al (1992)*, 1992 CanLII 4039 (BCCA) at paragraphs 18 to 20. For those reasons, I have decided not to rely on the discussions. In any event, I find nothing turns on this evidence.

ISSUES

10. The issues in this dispute are as follows:
 - a. Who is responsible for the collision?
 - b. What is the appropriate remedy?

BACKGROUND, EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the Moncrieffs as applicants must prove their claims on a balance of probabilities. This means more likely than not. I have read all the

parties' submissions but refer only to the evidence and arguments that I find relevant to provide context for my decision.

12. As noted above, Mr. Moncrieff owns 2 personal watercrafts. Ms. Moncrieff is a family member. On June 10, 2021, Ms. Moncrieff and Mr. Mann were each operating 1 of the 2 watercrafts. They collided, causing damage to the watercraft operated by Ms. Moncrieff. The parties did not say where the accident occurred. For the reasons discussed below, I find nothing turns on this.
13. In their application for dispute resolution, the Moncrieffs claimed \$2,883 to fix the seat. However, a June 16, 2021 invoice indicates the seat cost \$1,061.49 to repair. The Moncrieffs did not explain the discrepancy. In submissions they instead claimed \$1,061.49 for the seat. They also say they subsequently noticed additional damage to the gel coating of the damaged watercraft amounting to \$3,200. Mr. Mann disagrees the collision caused the gel coat damage. The Moncrieffs did not amend their Dispute Notice to include this claim so I find the claim for the gel coating is not properly before me. However, nothing turns on this given that I have dismissed this dispute.

Who is responsible for the collision?

14. Courts have previously considered the law of negligence in determining fault for accidents involving Sea Doo watercrafts. See, for example, *Field v. Poole*, 1994 CanLII 1171 (BCSC). In order to succeed in a negligence claim, the Moncrieffs must prove that 1) Mr. Mann owed them a duty of care, 2) Mr. Mann breached the standard of care, 3) the Moncrieffs sustained a loss, and 4) the loss was caused by Mr. Mann's negligence. See *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 at paragraph 3.
15. I find the CRT Vice Chair's comments in the non-binding decision of *Hall v. Prinz*, 2021 BCCRT 235, relevant to this dispute. As noted in *Hall*, I find that if the collision occurred in open water, the federal *Marine Liability Act* would apply. This would change the standard of care applicable to that of a competent seaperson in the

surrounding circumstances, rather than an ordinary person. However, the other elements that the Moncrieffs must prove are otherwise unchanged.

16. Having outlined the applicable law, I turn to the facts. The parties disagree on how the accident occurred. Ms. Moncrieff says the following. Both parties were travelling forward. Mr. Mann followed Ms. Moncrieff too closely so she could not see him in the rear-view mirror. When Ms. Moncrieff stopped, Mr. Mann rear-ended her. She says this was because he was not paying sufficient attention.
17. Mr. Mann disagrees and gives the following account. Both parties were travelling forward, with Ms. Moncrieff to his left. She then accelerated and turned right without warning, cutting in front of him. He says Ms. Moncrieff recklessly caused the accident through this maneuver.
18. There is no evidence that shows Ms. Moncrieff's version of events is more likely than that Mr. Mann's. There were no witnesses or video footage of the accident. The parties subsequently exchanged text messages, but Mr. Mann did not expressly admit to any negligence in the messages. There is no allegation that he was incapable of operating the watercraft. Mr. Mann's undisputed submission is that he has a "boating license and experience operating watercraft". I find I am left with an evidentiary tie about how the accident happened. As the applicants bear the burden of proof, I find it unproven that Mr. Mann breached the standard of care, either under the "competent seaperson" standard of the *Martine Liability Act* or otherwise.
19. I would also dismiss Ms. Moncrieff's claims in particular because there is no indication that she sustained a loss. She did not describe or claim for any personal injuries. It is undisputed that the damaged watercraft belongs to Mr. Moncrieff.
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. I dismiss the Moncrieffs' claims for reimbursement. Mr. Mann did not pay CRT fees. The parties made no claims for specific dispute-related expenses. So, I order none.

ORDER

21. I dismiss the Moncrieffs' claims and this dispute.

David Jiang, Tribunal Member