



# Civil Resolution Tribunal

Date Issued: March 22, 2022

File: SC-2021-004650

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Zhu v. Yard-At-A-Time Concrete (1988) Ltd.*,  
2022 BCCRT 312

BETWEEN:

ZHI JUN ZHU

**APPLICANT**

AND:

YARD-AT-A-TIME CONCRETE (1988) LTD.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Trisha Apland

## INTRODUCTION

1. The applicant, Zhi Jun Zhu, says a concrete truck driven by an employee of the respondent, Yard-At-A-Time Concrete (1988) Ltd. (Yard), damaged his ironware grate over a ditch in a laneway behind his home. Mr. Zhu seeks \$1,000 to repair the damage.

2. Yard denies that its truck drove over the grate or damaged it. It also says it signed a liability waiver with Mr. Zhu's neighbour's contractor, relieving Yard from any liability for damage to curbs, sidewalks, driveways, or other property.
3. Mr. Zhu is self-represented. Yard is represented by an employee.
4. For the reasons that follow, I find Mr. Zhu has not proven that Yard damaged the grate and I dismiss his claim.

## **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 and their witnesses. 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 do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

## **ISSUE**

9. The issue in this dispute is whether Yard damaged the grate and if so, whether it must pay Mr. Zhu the claimed damages.

## **EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, the applicant Mr. Zhu must prove his claims on a balance of probabilities, which means “more likely than not”.
11. 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.
12. In the laneway immediately behind Mr. Zhu’s home there is a ditch partially covered by a rectangle black iron grate. The grate is there so that Mr. Zhu can drive his truck over the ditch to park in his carport. While the ditch may or may not be on Mr. Zhu’s property, there is no dispute that Mr. Zhu owns the grate.
13. On June 3, 2021, Yard delivered concrete to one of Ms. Zhu’s neighbours. Mr. Zhu says Yard’s concrete truck drove over his grate and damaged it, which Yard denies.
14. On June 4, 2021, Mr. Zhu emailed Yard to report that its driver damaged his grate without “notice”. He attached a photograph that shows the grate is slightly curved or bowed and alleged Yard’s driver caused this damage.
15. Mr. Zhu submitted “Google Street Views” taken 9 months earlier in September 2020 that show the grate was originally fairly level and not curved in the middle. Based on the Google photographs, I accept the grate was fairly level in September 2020 and was damaged by the time Mr. Zhu took the June 4, 2021 photograph. However, I find the photographs do not prove the grate was damaged on June 3, 2021 or that it was

Yard who damaged the grate. I find the grate could have become damaged by anyone within the preceding 9 months.

16. As set out in a “Post Incident Interview Report”, Yard interviewed its driver, “DB” on June 7, 2021 after Mr. Zhu told it about the damaged grate. The interview report states that DB told the interviewer he was assigned to unload concrete into a concrete pump in the back laneway. He positioned his truck and prepared to back up to the “hopper”, noticed a black grate in the lane at the end of an adjacent property and “made a mental note to steer clear of it”. After the client signed the delivery ticket, DB stated that he backed up to the pump by a “placer”, discharged his drum, and pulled up the lane to wash his chute, while avoiding the grate. DB stated: “At no point did my tires come into contact the grate in the alley way, I didn’t want it to break and get my truck stuck” (as written). There is no dispute that the cement truck weighed 16,000 kgs.
17. Mr. Zhu alleges DB was not telling the truth in his interview. He relies on a signed November 13, 2021 statement from his neighbour “AP”, prepared for this proceeding. AP stated: “It was a concrete truck from [Yard] that damaged steel grate at Zhu’s side on June 3, 2021” (as written). AP said nothing more about how the damage happened.
18. On balance, I prefer DB’s more detailed statement about what happened on June 3, 2021. I find DB’s statement is reasonably plausible and consistent with the surrounding evidence. For example, the photographs show the ditch is fairly deep and the black grate is relatively small but visible. I find it probable that DM, as a professional driver, would attempt to avoid driving over it with his cement truck. Also, I find the fact that the grate is only slightly curved, and not broken, suggests a 16,000 kg cement truck never drove on it. I am persuaded that DM never drove over the grate.
19. I note that in his reply argument, Mr. Zhu does not dispute Yard’s assertion that garbage and recycling trucks use that same laneway and that the grate damage could have happened by one of these trucks. Instead, Mr. Zhu says that if I accept the grate

damage was caused by a city truck then he apologizes to Yard and will “sue Burnaby City Hall”. From this, I find Mr. Zhu is not sure himself who damaged the grate.

20. I find Mr. Zhu has not proven on a balance of probabilities that it was Yard who damaged the grate. So, I find Yard is not responsible to pay for the damage and I dismiss Mr. Zhu’s claim.
21. As this resolves the matter, I find no need to discuss the third-party liability waiver Yard signed with Mr. Zhu’s neighbour’s contractor.
22. 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 and dismiss Mr. Zhu claim for reimbursement. As the successful party, I find that Yard is entitled to reimbursement of the \$50 CRT fee it paid to set aside a default order. Yard did not claim any other expenses.

## **ORDERS**

23. Within 30 days of the date of this order, I order Mr. Zhu to pay Yard a total of \$50.00 for reimbursement of the CRT fee.
24. Yard is entitled to post-judgment interest, as applicable.
25. I dismiss all of Mr. Zhu’s claims against Yard.
26. 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.
27. 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.

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Trisha Apland, Tribunal Member