



Civil Resolution Tribunal

Date Issued: May 6, 2022

File: SC-2021-008340

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Mugford (dba Sign Gypsies Greater Victoria) v. Masterton*,
2022 BCCRT 542

B E T W E E N :

JACQUELINE MUGFORD (Doing Business As SIGN GYPSIES
GREATER VICTORIA)

APPLICANT

A N D :

ANNE MASTERTON

RESPONDENT

A N D :

JACQUELINE MUGFORD (Doing Business As SIGN GYPSIES
GREATER VICTORIA)

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. The applicant (and respondent by counterclaim), Jacqueline Mugford (dba Sign Gypsies Greater Victoria), operates a yard greeting rental business. On October 28, 2021, Ms. Mugford was hired by a third party to place a large “Happy 80th Birthday” sign (Sign) on their family member’s front lawn. Ms. Mugford mistakenly placed the Sign on the adjacent lawn belonging to the respondent (and applicant by counterclaim) Anne Masterton. The Sign is comprised of individual letter and symbol signs.
2. Ms. Masterton admittedly had her family member help remove the Sign from her lawn and the family member folded the signs into a garbage bag and set it aside. Ms. Mugford alleges that in removing and bagging her Sign Ms. Masterton damaged it, which Ms. Masterton denies. Ms. Mugford claims \$2,850 in damages, for damage to the Sign and its stakes, an unspecified amount she says she refunded the neighbouring customer, loss of business and loss of future business. Ms. Mugford did not provide a breakdown.
3. As discussed below, Ms. Mugford counterclaims for \$3,000, for emotional distress and mental anxiety arising from the incident.
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). CRTA section 2 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. CRTA section 39 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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. 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. CRTA section 42 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.
9. Due to an internal technical error, CRT staff inadvertently failed to formally issue the counterclaim Dispute Notice for Ms. Masterton's counterclaim for \$3,000 and instead the issued Dispute Notice only set out Ms. Masterton's \$0.00 claim for dispute-related expenses. Ordinarily, I would not consider that \$3,000 claim without a Dispute Notice setting it out. However, here the parties both clearly addressed the substance of that \$3,000 counterclaim in the Tribunal Decision Plan document they both contributed to and which contains their submissions. So, bearing in mind the CRT's mandate that includes speed and efficiency, I directed CRT staff to issue the counterclaim Dispute Notice to the parties but did not seek further submissions, because as noted those submissions have already been provided.

ISSUES

10. The issues in this dispute are:

- a. Whether Ms. Masterton damaged Ms. Mugford's Sign when Ms. Masterton removed it from her own lawn,
- b. Whether Ms. Masterton is responsible to compensate Ms. Mugford for any damage to the Sign and for alleged lost business income, and
- c. Whether Ms. Masterton has proved Ms. Mugford caused her emotional distress and anxiety, and if so, whether Ms. Masterton is entitled to \$3,000 in damages as claimed.

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, as the applicant Ms. Mugford must prove her claim on a balance of probabilities (meaning "more likely than not"). Ms. Masterton must prove her counterclaim to the same standard. I have read all the parties' submitted evidence and arguments but refer only to what I find relevant to provide context for my decision.

Ms. Mugford's claim

12. As noted, Ms. Mugford was hired by Ms. Masterton's neighbour's family member to place the birthday Sign on the neighbour's lawn. Ms. Mugford admits she mistakenly placed the Sign on Ms. Masterton's lawn which was adjacent. For the purpose of this dispute, I accept Ms. Mugford's letter and symbol signs were damaged when they were bagged after removal from Ms. Masterton's lawn. The issue in this dispute is whether Ms. Masterton is responsible for that damage.

13. Section 3(1) of the *Occupiers Liability Act* (OLA) says an occupier of premises (here, Ms. Masterton) owes a duty to take reasonable care in the circumstances to see that a person and their property will be reasonably safe on her property.

14. However, section 3(3) of the OLA says an occupier has no duty of care to a person “in respect of risks willingly assumed” by that person other than a duty not to act with reckless disregard about the person or their property and not to create a danger with intent to do harm to them or their property. Ms. Mugford alleges Ms. Masterton was reckless and intentionally damaged her Sign. More on that below.
15. I note OLA section 3(3.2) says a trespasser is deemed to have willingly assumed the risks but that is only for certain types of premises that do not include Ms. Masterton’s residential property. So, while I find Ms. Mugford trespassed on Ms. Masterton’s lawn, I find she did not willingly assume the risks because I find she did not realize she was trespassing. Further, this is not a scenario such as a cliff-edged property where a trespasser willingly assumes the risks of falling off the cliff. Here, the relevant risk is damage to the Sign and I find Ms. Mugford did not willingly assume the risk of damage by mistakenly placing it on the wrong lawn.
16. In any event, I find Ms. Masterton’s duty under section 3 of the OLA, what is reasonable care in the circumstances, is fact dependent. Ms. Mugford put up the Sign on Ms. Masterton’s lawn and I find ought to have known it was not the intended lawn as, despite Ms. Mugford’s submission to the contrary, there were visible address number signs as shown in photos. I find Ms. Masterton was entitled to remove the Sign from her own front lawn and set it aside.
17. The issue here is whether Ms. Masterton’s removal method and bagging was unreasonable, bearing in mind I have accepted the Sign was damaged because the individual signs could not be re-used after being folded into the garbage bag. Ms. Masterton denies any unreasonable handling.
18. Ms. Mugford submitted a statement from PM, who is the son of the neighbour for whom the Sign was intended. After getting a call about the Sign being on the wrong lawn, PM says he arrived about half an hour later. PM said he found Ms. Masterton raking her leaves and he asked her about the Sign and Ms. Masterton replied that she “ripped it up and put it in the garbage” and said that the Sign should never have been placed on her lawn. PM wrote the Sign was destroyed and not reparable.

19. Ms. Mugford also submitted a statement from DM, for whom the Sign was intended. He attached black and white photos, which show the assembled sign on Ms. Masterton's lawn. The sign was very large and appeared to span the entire width of her lawn.
20. I find DM's account inconsistent with PM's. DM says he observed Ms. Masterton standing on the lawn holding a garbage bag with her family member "folding individual greeting symbols prior to stuffing each into the garbage bag". DM added that Ms. Masterton deposited the filled garbage bag at the western edge of her property and the Sign's "metal supports" were placed next to the garbage bag.
21. Based on DM's own description of what he directly observed, I find Ms. Masterton did not carelessly or recklessly "shove" the signs into a garbage bag. Rather, I find it was her family member who is not a party to this dispute that actually placed the items into the garbage bag, by "folding" them first.
22. Given DM's own observation, I do not accept PM's account that Ms. Masterton said she had "ripped up" the signs. The photos in evidence do not show the Sign's letters being ripped, but rather with one bend or crease in each.
23. Further, based on Ms. Mugford's submitted photos of the signs after they had been removed from Ms. Masterton's lawn, I cannot conclude Ms. Masterton or her family member had been negligent or unreasonable in their handling them, even if they were actually damaged in the removal and bagging process. The letters, while as noted have crease marks, appear tidily folded and the metal stakes stacked outside the bag. I do not find it necessarily obvious that the signs, which appear to be some sort of coated cardboard or plastic, would be damaged by folding. Given the overall Sign's size, I find Ms. Masterton and her family member reasonably concluded folding the individual signs into a large garbage bag was reasonable.
24. I acknowledge Ms. Mugford had a sign that also said on the back "don't move/touch" but there is no evidence Ms. Masterton or her family member saw that instruction. I also find Ms. Masterton had no obligation to leave this significantly

large “Happy 80th Birthday” Sign on her front lawn, which had been left without her permission or knowledge.

25. In short, I find it unproven Ms. Masterton breached OLA section 3 in her handling of the Sign and its removal from her lawn. I find this means Ms. Masterton is not responsible for any damage to the Sign. As noted, in any event it was Ms. Masterton’s family member who folded the signs into the garbage bag. That family member is not a party to this dispute.
26. Given my conclusions above, I do not need to consider the claimed damages in any detail. I dismiss Ms. Mugford’s claim.

Ms. Masterton’s counterclaim

27. As noted, Ms. Masterton claims \$3,000 for emotional distress and mental anxiety. As also noted above, the sign removal incident occurred on October 28, 2021. Ms. Masterton alleges PM was confrontational with her when he approached her after she had removed the Sign. Ms. Masterton also says Ms. Mugford harassed her after she discovered the Sign was damaged.
28. In support, Ms. Masterton submitted screenshots of 5 “private caller” calls to her phone on October 28 and 29, 2021. She also submitted 2 prescription receipts from February 2022. Finally, she submitted annotated copies of Ms. Mugford’s submitted copies of emails between Ms. Mugford and the neighbour’s family.
29. I find none of the submitted evidence supports a compensable claim for emotional distress and mental anxiety. While Ms. Masterton says she has had recurring nightmares since the October 2021 incident, she submitted no medical records. Based on the evidence before me, I find Ms. Masterton has not proved anything more than an inconvenience and minor upset, which I find is not compensable. In addition, there is no recognized tort of harassment in BC, so I find nothing turns on whether Ms. Mugford did call Ms. Masterton’s home 5 times on October 28 and 29 or if Ms. Mugford attended Ms. Masterton’s home upset about her signs.

30. Further, Ms. Masterton's evidence shows she was partially upset by PM's alleged confrontation with her and not the Sign placement itself. Anything PM might have said is not Ms. Mugford's responsibility. In terms of Ms. Mugford's placement of the Sign in the first place, I also find emotional distress and anxiety not reasonably foreseeable from her simple mistake in placing them on the wrong lawn.
31. In short, while I do find that Ms. Mugford likely ought to have known she had the wrong lawn (given the visible address signs), I accept her placement of the Sign on Ms. Masterton's lawn was an honest mistake. I find Ms. Mugford's mistake does not rise to the level of compensable negligence and find Ms. Masterton has not proved her claimed damages. Finally, while Ms. Mugford did trespass on Ms. Masterton's property by placing the Sign on it, Ms. Masterton did not claim any remedy for trespass. Even if she had, I would have awarded only nominal damages in the circumstances above. I dismiss Ms. Masterton's counterclaim.
32. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. As both parties were unsuccessful, I dismiss their claims for reimbursement of CRT fees and dispute-related expenses.

ORDER

33. I order Ms. Mugford's claim, Ms. Masterton's counterclaim, and this dispute are dismissed.

Shelley Lopez, Vice Chair