



Civil Resolution Tribunal

Date Issued: June 6, 2022

File: SC-2021-005502

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Miller v. Ye*, 2022 BCCRT 664

BETWEEN:

LESLIE MILLER

APPLICANT

AND:

QUN YE

RESPONDENT

AND:

LESLIE MILLER

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This dispute is about boat damage. The applicant and respondent by counterclaim, Leslie Miller, moors his boat at a marina next to a boat owned by the respondent and applicant by counterclaim, Qun Ye. Mr. Miller claims that Mr. Ye's boat collided with his boat multiple times. Mr. Miller claims \$3,700 in boat damage.
2. Mr. Ye denies damaging Mr. Miller's boat. Mr. Ye says that he is not aware of his boat colliding with Mr. Miller's boat. Rather, Mr. Ye says that Mr. Miller's boat had collided with his. Mr. Ye counterclaims against Mr. Miller and says that Mr. Miller built a wood frame between their boats' mooring space which has damaged Mr. Ye's boat. Mr. Ye counterclaims for \$3,500 for boat damage. Mr. Miller denies the counterclaim.
3. Both parties are self-represented.

JURISDICTION AND PROCEDURE

4. 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.
5. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. Both parties requested an oral hearing. Mr. Miller said that he wants an oral hearing because he has limited technical skills. Mr. Ye said that he wants an oral hearing with a translator because he lacks English proficiency. However, I find that neither party has established that they are unable to fully participate in a hearing by written submissions with assistance. Further, though I find that some aspects of the parties' submissions called each other's credibility into question, I find I am properly able to assess and weigh

the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the CRT's mandate of proportional and speedy dispute resolution, I decided I can fairly hear this dispute through written submissions.

6. 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.
7. 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.

ISSUES

8. The issues in this dispute are:
 - a. Did Mr. Ye negligently damage Mr. Miller's boat? If so, how much does he owe Mr. Miller?
 - b. Did Mr. Miller negligently damage Mr. Miller's boat? If so, how much does he owe Mr. Ye?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, Mr. Miller, as the applicant, must prove his claim on a balance of probabilities, meaning "more likely than not". Mr. Ye has the same burden of proving his counterclaim. I have read all the parties' submissions and evidence but refer only what I find relevant to provide context for my decision.

Mr. Miller's claim

10. Mr. Miller says that he has moored his boat at the marina since 1973. Mr. Miller says that Mr. Ye's boat has been moored next to his boat during the 7 months prior to starting this dispute in August 2021. Mr. Miller says that Mr. Ye negligently operated and stored his boat and that Mr. Ye's boat collided with his boat "6 or 7 times".
11. I find that the federal *Marine Liability Act* (MLA) applies because the docking and mooring of boats relates to navigation, which is subject to federal maritime law. In *I sen v. Simms, 2006 SCC 41* at paragraph 25, the Supreme Court of Canada held that the launching and removing of pleasure craft is subject to federal maritime law. I find that docking and mooring boats are similarly subject to the MLA. This means that the provincial *Negligence Act* does not apply (*Ordon Estate v. Grail, 1998 CanLII 771* (SCC)).
12. I accept the negligence standard of care under the MLA and maritime law is that of a competent seaperson in the surrounding circumstances, not an ordinary person. Otherwise, the basic principles of negligence are the same. In particular, Mr. Miller must prove Mr. Ye owed him a duty of care, that he breached the applicable standard of care, and that the breach caused the claimed damage. Mr. Miller must also prove the damage was foreseeable.
13. I accept that as a boat owner and user of the neighbouring mooring slip, Mr. Ye owed Mr. Miller a duty to exercise the care of a competent seaperson to avoid damaging Mr. Miller's boat.
14. Mr. Miller argues that Mr. Ye breached the standard of care by failing to secure his boat while moored. In February 2021, Mr. Miller says he saw that Mr. Ye's boat had broken loose from 2 of its lines and his boat was colliding with Mr. Miller's boat. In contrast, Mr. Ye says that he always tightly fastened his boat and used 3 floating balls to keep his boat separated from Mr. Miller's boat.
15. Mr. Miller says that the general mooring practice is to use spring lines and bumpers to keep boats inside their dock space. I infer that Mr. Miller is claiming that Mr. Ye did

not use these devices. In the absence of photographs or further evidence, I find Mr. Ye's submission that he used floating balls to protect the boats to be equally as likely as Mr. Miller's submission he did not. Since Mr. Miller has the burden of proof, I find that he has not shown it is more likely than not that the Mr. Ye did not use protective bumpers.

16. Further, I find that Mr. Miller has not proved that Mr. Ye breached the standard of care by not using spring lines to secure his boat. I find that expert evidence is needed is needed to establish whether Mr. Ye negligently failed to secure his boat. I say this because the standard of care required for mooring boats is outside the knowledge or expertise of an ordinary person (see *Bergen v. Guliker*, 2015 BCCA 283 at paragraph 119). There are exceptions to this general rule requiring expert evidence if the alleged breach relates to something non-technical or if the breach is so egregious that it is obvious (see *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196 at paragraph 112). However, I find that these exceptions do not apply here because I find that the type and use of lines to secure boats are technical and the evidence does not show that the lines used by Mr. Ye was egregious deficient. So, I find that expert evidence is required to prove that Mr. Ye negligently secured his boat.
17. However, Mr. Miller has not provided any evidence showing that Mr. Ye's method of securing his boat was below the standard of care, other than his own submission. Though Mr. Miller has owned his boat since 1973, I find that he has not established that he has sufficient boating expertise to provide an expert opinion, as required by CRT rule 8.3(3). Further, even if Mr. Miller did have sufficient boating expertise, I would not consider Mr. Miller's submissions as expert evidence because CRT Rule 8.3(7) says an expert's role is to assist the CRT and not to advocate for either side. This means that the expert must be neutral. As the applicant, Mr. Miller is not neutral. While CRT Rule 1.2(2) allows me to waive the application of a rule, I find that it would be inappropriate in this dispute to consider Mr. Miller's expert opinions because he is a party. For the above reasons, I give Mr. Miller's opinions about how Mr. Ye's boat should have been secured no weight.

18. In the absence of evidence showing that Mr. Ye breached the standard of care by failing to properly secure his boat, I find Mr. Miller has not proved that Mr. Ye moored his boat negligently. Further, Mr. Miller has not provided any evidence showing that his boat was damaged as a result of Mr. Ye's alleged failure to secure his boat.
19. Mr. Miller also says that Mr. Ye crashed his boat into Mr. Miller's boat while Mr. Ye was docking. Mr. Miller provided a November 10, 2021 statement from his mechanic, JP. JP wrote that they were on Mr. Miller's boat performing engine repair work on March 16, 2021 while moored at the marina. JP says that Mr. Ye's boat collided with Mr. Miller's boat while docking. JP says that they assume that Mr. Ye was the individual operating the boat. Mr. Miller provided a photograph of his boat which appears to show some surface damage at his boat's stern.
20. Mr. Miller says that Mr. Ye's boat had white paint and wood splinters on its rubbing strake after the collision, which Mr. Miller says matches Mr. Miller's boat. A rubbing strake is a protective strip that runs alongside boats. However, Mr. Miller did not provide a supporting photograph of Mr. Ye's boat's rubbing strake.
21. Mr. Miller says that after this, Mr. Ye's boat struck his boat several times on unspecified dates, eventually causing a hole in Mr. Miller's boat's hull. Mr. Miller says that no other boats were moored beside his boat so the damage must have been caused by Mr. Ye's boat. Mr. Miller says that he hired Crescent Beach Marina Co. (1967) Ltd. (Crescent Beach) to repair the his boat. Mr. Miller provided an April 22, 2021 invoice from Crescent Beach charging \$952.45 for boat repairs.
22. Mr. Ye does not respond to directly JP's statement. Rather, Mr. Ye denies colliding with Mr. Miller's boat and he says that he could not have caused the alleged boat damage to Mr. Miller's boat because he had not even used his boat before Mr. Miller repaired it. However, Mr. Ye did not say when he started operating his boat or provide any evidence showing when he started using the boat.
23. On balance, I find JP's statement credible and, based on JP's statement, I find that Mr. Ye collided his boat into Mr. Miller's boat on March 16, 2021 while docking. In

doing so, I find that Mr. Ye breached the standard of care required of a competent seaperson. Based on Mr. Miller's boat photograph, I am satisfied that Mr. Ye damaged Mr. Miller's boat in the collision. Further, based on Crescent's invoice I find that Mr. Ye's negligent docking of his boat caused Mr. Miller to incur \$952.45 in repair expenses. So, I find that Mr. Ye owes damages of \$952.45 for colliding his boat into Mr. Miller's boat on March 16, 2021.

24. Mr. Miller also says that within a week after completing the above repairs, Mr. Ye's boat collided with his boat again. In support of this claim, Mr. Miller says that 2 unidentified witnesses say that they heard Mr. Ye's nephew say that Mr. Ye's boat struck Mr. Miller's boat. I find that this is double hearsay since Mr. Miller is repeating a conversation that was described to him. While hearsay evidence is admissible in CRT proceedings, I find this double hearsay statement is unreliable since Mr. Miller did not hear the conversation directly and he has not provided supporting witness statement. So, I give this evidence no weight.
25. Mr. Miller also argues that Mr. Ye must have caused the damage because Mr. Ye's boat was the only boat moored next to his. However, Mr. Ye claims that Mr. Miller failed to secure his own boat causing Mr. Miller's boat to collide with Mr. Ye's boat. Without other evidence about these alleged collisions while the boats were each moored, I find that Mr. Miller has not proved that this damage resulted from Mr. Ye's negligence rather than his own boat coming loose from its moorings.
26. For the above reasons, I find that Mr. Ye owes Mr. Miller \$952.45 in damages for negligently colliding with Mr. Miller's boat while docking on March 16, 2021. However, I find that Mr. Miller has not proved that Mr. Ye negligently failed to secured his boat or negligently collided his boat with Mr. Miller's boat on other occasions.

Mr. Ye's counterclaim

27. Mr. Ye says that Mr. Miller's boat has collided with his boat while moored. Mr. Ye also says that Mr. Miller negligently built a wood frame in the mooring space between their boats to keep Mr. Miller's boat upright during low tide.

28. Mr. Ye says that Mr. Miller negligently installed the wood frame causing Mr. Miller's boat to collide with his boat and causing Mr. Ye's boat to collide with the frame. Mr. Miller says that the wood frame does not interfere with Mr. Ye's boat since it is only 5 inches away from Mr. Miller's boat and there is a 5 foot space between the boats.
29. I find that Mr. Ye has not proved that Mr. Miller negligently installed the wood frame or failed to secure his boat. For the reasons discussed above, I find that expert evidence is needed to determine whether Mr. Miller's installation of his mooring frame or his method of securing his boat breached the standard of care (see *Bergen*, cited above). However, Mr. Ye has not provided any supporting expert evidence.
30. Mr. Ye provided multiple close-up photographs which he says shows damage with red paint marks on his boat's hull. Mr. Ye says that these red paint marks match Mr. Miller's wood frame. Based on the photographs, I am satisfied that Mr. Ye's boat has sustained some hull damage. However I am unable to determine whether this red paint transferred from Mr. Miller's wood frame. Further, even if there was impact between Mr. Ye's boat and the wood frame, I find that this does not prove that Mr. Miller was negligent because I find that this impact could have as likely resulted from Mr. Ye's own failure to secure his boat or dock his boat properly.
31. For the above reasons, I find that Mr. Ye has not proved that Mr. Miller was negligent and I dismiss his counterclaim.

CRT fees, expenses and interest

32. The *Court Order Interest Act* (COIA) applies to the CRT. Mr. Miller is entitled to pre-judgment interest on the \$952.45 in damages from March 16, 2021, the date of the collision, to the date of this decision. This equals \$5.52.
33. 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. Since Mr. Miller was partially successful, I find that he is entitled to reimbursement of one-half of his CRT fees. This is \$87.50. Since Mr. Ye unsuccessful, I find that he is

not entitled to reimbursement of his CRT fees. Neither party claimed reimbursement of dispute-related expenses.

ORDER

34. Within 30 days of the date of this order, I order Mr. Ye to pay Mr. Miller a total of \$1,045.47, broken down as follows:
- a. \$952.45 in damages,
 - b. \$5.52 in pre-judgment COIA interest, and
 - c. \$87.50 in CRT fees.
35. Mr. Miller is entitled to post-judgment interest, as applicable.
36. I dismiss Mr. Ye's counterclaim.
37. 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.
38. 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.

Richard McAndrew, Tribunal Member