



Civil Resolution Tribunal

Date Issued: June 21, 2022

File: SC-2021-007354

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *McCart v. Queensborough 16 Homes Ltd.*, 2022 BCCRT 718

B E T W E E N :

SHEENA MCCART

APPLICANT

A N D :

QUEENSBOROUGH 16 HOMES LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This dispute is about tire damage and utility expenses. The applicant, Sheena McCart, purchased a home constructed by the respondent, Queensborough 16 Homes Ltd. (Queensborough). Ms. McCart claims that Queensborough owes reimbursement of \$187.56 for city utility expenses incurred by Queensborough at Ms. McCart's address before she received possession of the property. Ms. McCart also

says that Queensborough negligently left debris in the alley next to her home, damaging 2 tires. Ms. McCart claims \$811.22 for tire replacement expenses. Ms. McCart also claims \$575 in unspecified general damages.

2. In its Dispute Response, Queensborough denies responsibility for the utility charge. However, in its submissions, Queensborough agrees to reimburse this expense. Queensborough denies responsibility for Ms. McCart's tire damage. Queensborough says it kept the alley free of debris.
3. Ms. McCart is self-represented. Queensborough is represented by an employee or principal.

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. 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. 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 in the interests of justice.
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.

Late Evidence

8. Ms. McCart submitted evidence late, consisting of city bylaw complaint records, which I find are relevant to this dispute. Further, I find that Queensborough was not prejudiced by this late evidence because it had an opportunity to respond. So, I have allowed Ms. McCart's late evidence and I have considered it in my decision.

ISSUES

9. The issues in this dispute are:
 - a. Does Queensborough owe Ms. McCart \$187.56 for reimbursement of utility charges?
 - b. Did Queensborough negligently damage Ms. McCart's tires? If so, how much does it owe her?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, Ms. McCart, as the applicant, must prove her claims on a balance of probabilities. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision. Queensborough did not provide any evidence though it had the opportunity to do so.
11. It is undisputed that Queensborough constructed Ms. McCart's home, which connects to an alley. By August 2021, Ms. McCart had moved into her home. However, Queensborough was still building other homes along the alleyway at that time.

Utility charges

12. Ms. McCart claims that a city utility invoice was issued to her address for services incurred by Queensborough before she received possession of her property. Ms. McCart provided a March 5, 2021 city utility invoice for \$187.56 that was charged to Queensborough, but delivered to her address. Ms. McCart says that she paid this invoice because the city told her that these utility charges would be applied to her property taxes if they were not paid. Ms. McCart provided a bank statement showing payment of this utility invoice on June 4, 2021.
13. In its Dispute Response, Queensborough said that it was not responsible for the utility charges. However, in its submissions, Queensborough says that it is now willing to pay the utility invoice. Since Queensborough agrees it owes reimbursement for these charges, I find that Queensborough owes McCart the claimed \$187.56.

Tires

14. Ms. McCart claims that Queensborough negligently left construction debris on the alley roadway, causing damage to her tires on August 16, 2021 and August 25, 2021. As a result, Ms. McCart claims that she had to replace 2 car tires.
15. To prove negligence, Ms. McCart must show that Queensborough owed her a duty of care, Queensborough breached the standard of care, Ms. McCart sustained the claimed damage, and the damage was caused by Queensborough's breach (*Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27).
16. I accept that as a developer building homes along the alley, Queensborough owed a duty to motorists, such as Ms. McCart, to exercise reasonable care to avoid leaving hazardous construction debris on the road.
17. Ms. McCart provided photographs showing large amounts of construction supplies left near the alley, with some debris on the alley's surface. Specifically, the photographs show small chunks of wood, screws and small, unidentifiable debris on the roadway. Queensborough argues that most of the debris was off the road surface,

which is consistent with the photographs. However, Queensborough admits that a small amount of construction debris was left on the road.

18. Ms. McCart says her car's front passenger side tire was punctured by a roofing staple on August 16, 2021. Ms. McCart provided an August 16, 2021 photograph showing an object, which appears to be a staple, lodged in her tire. Further GR, a car dealership service advisor, sent Ms. McCart an August 16, 2021 email saying that an electric staple was found in her tire. Based on Ms. McCart's submissions, the photograph and GR's email, I find that Ms. McCart's front passenger side tire was punctured by a staple on August 16, 2021.
19. Queensborough says that it cleaned the roadway continuously and none of the other 7 residents with homes along the alley complained about debris. However, Queensborough did not provide any evidence such as work logs, employee statements or photographs showing that it cleaned debris off the alley's roadway or the frequency of such alleged cleaning work.
20. On balance, based on the photographs showing construction debris on the side of the alley and on the alley surface, I find that Ms. McCart's tire was punctured on August 16, 2021 by a staple that was likely left by Queensborough's construction work. Further, I find that Queensborough breached the standard of care by failing to clear the staple from the alley surface.
21. Ms. McCart provided an undated email from GR saying that her tires are run-flat tires which should be replaced instead of repaired when damaged. As a car dealership service advisor, I am satisfied that GR has sufficient experience under CRT rule 8.3 to provide an expert opinion about Ms. McCart's tire repairs. Based on GR's email, I find that her front passenger tire needed to be replaced as a result of the staple puncture.
22. Ms. McCart provided an August 16, 2021 invoice for \$457.46 to replace the tire. Queensborough argues that Ms. McCart did not provide any other repair or replacement estimates. However, as discussed above, I find that the tire needed to

be replaced and could not be repaired. Further, in the absence of evidence showing that the dealership's \$457.46 replacement price was excessive, I find that this fee was reasonable.

23. Queensborough also argues that Ms. McCart did not provide evidence showing the age and wear of her tires. However, Ms. McCart says that her tires were new and she provided a photograph showing that her car's odometer had travelled 17,965 kilometers by August 16, 2021. Since neither party provided any evidence showing the expected lifespan of these tires, I find that I am unable to determine whether the tires had likely incurred significant wear and tear with that mileage. So, I find Queensborough is responsible for the full replacement cost of the tire.
24. Based on the above, I find that Queensborough negligently caused the August 16, 2021 tire puncture and that it owes Ms. McCart \$457.46 to replace her tire.
25. Ms. McCart says that after she replaced the front passenger side tire, the replacement tire was punctured by a screw on August 25, 2021. Ms. McCart provided multiple August 25, 2021 photographs showing an object that appears to be a screw lodged in her tire. Further, GR sent Ms. McCart an August 25, 2021 email saying that a screw was found in the tire. Based on Ms. McCart's submissions, the photographs and GR's email, I find that Ms. McCart's front passenger side tire was punctured by a screw on August 25, 2021.
26. Ms. McCart's spouse, EM complained to the city about the alley debris on August 16, 2021. EM wrote an undated email statement saying that the city told them that there was an ongoing problem with construction debris near their home and that others have complained. The city's records show that the city asked Queensborough to clean the site and the sidewalk on August 16, 2021. Further, the city's records show that it inspected the site on August 20, 2021 and the city noted the roadway had been cleared. Queensborough argues that its compliance with the city's instructions shows that it appropriately maintained the site.

27. However, Ms. McCart provided photographs taken August 24, 2021 and August 25, 2021 which still show some debris on the road, including a screw. Based on the photographs I find that there was still construction debris on the alley surface on August 25, 2021 and that this likely caused Ms. McCart's second tire puncture.
28. Based on GR's opinion that Ms. McCart's tire damage could not be repaired, I find that her front passenger tire needed to be replaced again as a result of the August 25, 2021 screw puncture.
29. Ms. McCart provided an August 25, 2021 car dealership invoice for \$353.76 to replace the tire. The invoice says that the car dealership gave Ms. McCart a discount because the tire had been recently replaced. Since Queensborough did not provide any evidence showing that the August 25, 2021 invoice was excessive, I find that this replacement charge was reasonable.
30. Based on the above, I find that Queensborough negligently damaged Ms. McCart's replacement tire and that it owes her a further \$353.76 in damages for the screw puncture.
31. Ms. McCart did not provide any evidence or submissions explaining the basis for her claim for \$575 in unspecified general damages. So, I find this claim for damages to be unproven and I do not grant this relief.
32. Based on the above, I find that Queensborough owes Ms. McCart \$187.56 for reimbursement of utility charges and \$811.22 for tire damage.

CRT fees, expenses and interest

33. The *Court Order Interest Act* (COIA) applies to the CRT. Ms. McCart is entitled to pre-judgment interest on the utility invoice from June 4, 2021, the date she paid it. Further, Ms. McCart is entitled to pre-judgment interest on each of the tire replacement invoices from August 16, 2021 and August 25, 2021, the invoice dates. This equals a total of \$3.09.

34. 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 Ms. McCart was partially successful, I find the applicant is entitled to reimbursement of one-half of her CRT fees. This equals \$67.50. Neither party claimed reimbursement of dispute-related expenses.

ORDERS

35. Within 30 days of the date of this order, I order Queensborough to pay Ms. McCart a total of \$1,069.37, broken down as follows:

- a. \$998.78 in damages,
- b. \$3.09 in pre-judgment COIA interest, and
- c. \$67.50 in CRT fees.

36. Ms. McCart is entitled to post-judgment interest, as applicable.

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