



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Jahromi v. Caterina Restaurant Corp.*, 2022 BCCRT 896

B E T W E E N :

SHAHED FOROUGHJI JAHROMI

APPLICANT

A N D :

CATERINA RESTAURANT CORP. and MCDONALD'S
RESTAURANTS OF CANADA LIMITED/LES RESTAURANTS
MCDONALD DU CANADA LIMITÉE

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about motor vehicle damage. The applicant, Shahed Foroughi Jahromi, drove his Toyota Highlander through the drive-through lane of a restaurant owned by the respondent, Caterina Restaurant Corp. (Caterina). Caterina

undisputedly operates the restaurant under the terms of a franchise agreement with the respondent, McDonald's Restaurants of Canada Limited/Les Restaurants McDonald du Canada Limitée (MRCL). Mr. Jahromi's vehicle struck the wall of Caterina's building while in the drive-through lane. He says the respondents were negligent and failed to adequately maintain the snowy drive-through lane, which caused him to hit the wall. He claims \$1,200 in damages: \$1,105.44 for estimated front bumper repair costs, and \$94.56 for 2 hours of personal time spent corresponding with repair shops and pursuing an estimate.

2. Caterina says Mr. Jahromi's driving caused the collision, and drive-through lane conditions did not contribute to it, so it owes nothing. MRCL says it is only Caterina's franchisor and is not responsible for maintaining the drive-through lane, so it is not a proper respondent to the dispute and, in any event, owes nothing.
3. Mr. Jahromi is self-represented in this dispute. The respondents are each represented by an authorized employee or principal.

JURISDICTION AND PROCEDURE

4. These are the formal 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.

ISSUES

8. The issue in this dispute is whether the respondents' allegedly negligent drive-through lane maintenance contributed to Mr. Jahromi's vehicle striking a wall, and if so, whether they owe \$1,200 for vehicle damage and related personal time.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, as the applicant Mr. Jahromi must prove his claims on a balance of probabilities, meaning "more likely than not." I have read the parties' submissions and evidence, but refer only to the evidence and arguments I find relevant to provide context for my decision.
10. The undisputed evidence is that the Caterina drive-through lane was snowy at the time Mr. Jahromi used it. Mr. Jahromi says that his vehicle slipped, which caused it to strike the wall of Caterina's building. He says that leaving the lane in that condition was negligent and contrary to the British Columbia *Occupiers Liability Act* (OLA).
11. To prove negligence, Mr. Jahromi must prove that the respondents owed him a duty of care, they breached the standard of care, and that the breach caused or contributed to reasonably foreseeable vehicle damage (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 at paragraph 3).
12. Further, under OLA section 3(1), an occupier of premises owes a duty to take reasonable care in all the circumstances, to see that a person and their property on

the premises will be reasonably safe. The OLA defines an occupier as a person who is in physical possession of premises, or has responsibility for and control over the condition of, activities conducted on, and persons allowed on, those premises.

13. First, Mr. Jahromi says that Caterina was responsible for drive-through lane maintenance, and says the respondents, collectively, are liable for his vehicle damage. However, Mr. Jahromi does not specify how MRCL is allegedly responsible for maintaining Caterina's drive-through lane.
14. I find the submitted evidence does not show that MRCL was an occupier of Caterina's premises, including its drive-through. Further, Mr. Jahromi does not directly dispute MRCL's submission that the respondents' franchise agreement prohibited Caterina from acting as an agent of MRCL. He also does not directly dispute that MRCL was not responsible for drive-through maintenance under the respondents' premises lease agreement, the franchise agreement, or otherwise. Overall, I find there is no evidence before me showing that MRCL owed a duty of care to Mr. Jahromi for the condition of the Caterina drive-through lane, either under the OLA, common law negligence, or another legal theory. I dismiss Mr. Jahromi's claims against MRCL.
15. Turning to Caterina, it was undisputedly in physical possession of the restaurant premises. So, I find that under the OLA, Caterina was an occupier of the drive-through lane. I find that this means Caterina owed Mr. Jahromi a duty of care to ensure that he and his vehicle were reasonably safe in using the drive-through lane.
16. The next question is, did Caterina meet the required standard of care? Mr. Jahromi cites the decision *Waldick v. Malcolm*, 1991 CanLII 71 (SCC), [1991] 2 SCR 456, involving a pedestrian slipping and falling in an Ontario parking area. That decision considered duty of care provisions under the Ontario *Occupiers' Liability Act* that are similar to those in the OLA. However, I find that the circumstances of that case were different than those in this dispute, as they involved a duty of care to a pedestrian using a private, rural, residential parking area after an ice storm. So, I find I am not bound by the outcome in *Waldick*, because under OLA section 3(1) the standard of care depends on the all the circumstances, which are different here.

17. Mr. Jahromi suggests that Caterina should have cleared all the snow from the drive-through, and that it did not have or follow a drive-through “winter maintenance system.” I know of no authority that says the applicable standard of care in these circumstances requires the occupier to clear all snow from the drive-through and implement a winter maintenance system. Consistent with section 3 of the OLA, I find the required standard of care was to ensure that the drive-through was reasonably safe to use in the circumstances.
18. Caterina says the drive-through was safe to use, despite the fact that the lane was not snow-free. Mr. Jahromi undisputedly used the drive-through on the evening of December 31, 2021. Caterina says that 993 cars used its drive-through that day, and there were no issues except for Mr. Jahromi’s collision. Mr. Jahromi does not directly dispute this submission, so I accept it as fact. Mr. Jahromi does say a surveillance video showed that other vehicles slipped “at times,” but as discussed below I find the video does not show significant slipping among other vehicles. I find the lack of other proven incidents among the hundreds of cars using the drive-through supports a finding that it was reasonably safe to use. Further, other than saying it was snowy and slippery, Mr. Jahromi submitted no evidence that supported Caterina’s drive-through being excessively slippery or presenting an unreasonable risk to its users in the circumstances. Mr. Jahromi also submitted no evidence of the type and age of tires on his vehicle, or his vehicle’s general fitness for snowy conditions.
19. Caterina submitted surveillance video showing the drive-through lane at the time of the accident. The lane was straight and level. The ground was snowy, but the snow in the vehicle tracks had been compacted or moved to the sides of the lane. There were vehicles both in front of and behind Mr. Jahromi’s vehicle. I find the video does not show any of those other vehicles slipping or exhibiting significant difficulties. I find the video supports that the drive-through was reasonably safe to use when driven with reasonable care and attention for the conditions. More on that below.

20. Overall, I find the submitted evidence does not show that the drive-through was not reasonably safe at the time of Mr. Jahromi's collision. So, I find the evidence does not show that Caterina failed to maintain the lane to the applicable standard of care.
21. Further, based on the surveillance video, I find that Mr. Jahromi's own driving actions, and not the road conditions, caused his vehicle to strike the wall, as I will now explain.
22. I find the video shows that, as Mr. Jahromi came to a stop at the pick-up window, he turned his front tires to the left, toward the wall adjacent to the drive-through lane. He pulled forward slightly with the tires turned left, which moved the vehicle slightly left, before he came to a complete stop and picked up his food. As noted, the lane is straight. I find the video shows that Mr. Jahromi then kept his wheels turned left and accelerated. I find the acceleration appeared to be quite brisk for the conditions, and that the vehicle lurched to the left and appeared to contact the wall.
23. In its submissions, Caterina alleged that Mr. Jahromi's turned wheels caused the accident. Mr. Jahromi does not comment on why he turned the wheels and accelerated despite the lane being straight. On the evidence before me, I find that Mr. Jahromi struck the nearby wall because he left the pick-up window with his wheels turned sharply left, and because he accelerated too rapidly, especially considering the obviously snowy conditions. I find this left him with no time to stop or turn and avoid colliding with the wall. I find the evidence does not show that unreasonably poor lane maintenance contributed to the collision. So, I find that Caterina's allegedly substandard road maintenance did not cause the collision or resulting bumper damage.
24. For the above reasons, I find Caterina is not liable in negligence, or under the OLA, for Mr. Jahromi's front bumper damage and 2 hours of personal time communicating with repair shops. I dismiss Mr. Jahromi's claims totalling \$1,200.

CRT Fees and Expenses

25. Under section 49 of the CRTA, and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable

dispute-related expenses. However, neither party paid CRT fees, and neither claims CRT dispute-related expenses. So, I order no reimbursements.

ORDER

26. I dismiss Mr. Jahromi's claims, and this dispute.

Chad McCarthy, Tribunal Member