



Civil Resolution Tribunal

Date Issued: November 2, 2022

File: SC-2022-001516

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Golden v. AAA Brian's Towing Ltd.*, 2022 BCCRT 1205

B E T W E E N :

BRAD GOLDEN

APPLICANT

A N D :

AAA BRIAN'S TOWING LTD. and ASSOCIATED PROPERTY
MANAGEMENT (2001) LTD.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. This dispute is about reimbursement of towing charges.
2. The applicant, Brad Golden, says the respondent, AAA Brian's Towing Ltd. (AAA), unlawfully towed his car from a visitor's parking lot in a residential complex. Mr. Golden claims reimbursement of \$504 he paid in towing charges.

3. AAA says it has a contract with the respondent, Associated Property Management (2001) Ltd. (Associated), to tow unpermitted vehicles from that complex. AAA says the property manager (H) asked AAA to tow the vehicle, because the vehicle did not have a permit.
4. Associated denies requesting the tow or any other involvement in this matter. It says H is a strata council member.
5. Mr. Golden represents himself. The respondents are each represented by an owner or employee.

JURISDICTION AND PROCEDURE

6. 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.
7. 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.
8. 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.

9. 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

10. The issues in this dispute are:
 - a. Did AAA unlawfully tow Mr. Golden's vehicle?
 - b. Is Associated responsible for having the vehicle towed?
 - c. Is Mr. Golden entitled to the claimed \$504?

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one the applicant must prove his claim on a balance of probabilities (meaning "more likely than not"). I have read all the parties' submissions and weighed the evidence, but only refer to that which is relevant to explain my decision. I note that AAA did not provide any evidence, despite having the opportunity to do so.
12. Mr. Golden says he visited friends staying in a unit in the "Treetops complex" at a ski hill on February 24, 2022. He says his friends directed him to a visitors' parking area where he parked and then went skiing. Mr. Golden acknowledges he did not display a permit or pass in his vehicle. He says he was not aware that he needed one.
13. It is undisputed AAA towed Mr. Golden's vehicle later that same day.

Did AAA unlawfully tow Mr. Golden's vehicle?

14. Mr. Golden says AAA had no authority to tow his vehicle, as he was parked in a visitors' parking spot at Treetops.

15. As noted above, AAA says it towed an Audi/ A4 vehicle at the request of H, the Treetops manager. AAA says H sent photos of the vehicle and asked that it be towed because it did not have a parking pass.
16. Based on a series of emails submitted by Associated, as well as photos of the complex, I find it likely that Treetops is a residential complex governed by a strata corporation (strata). I further find that H is likely a member of the strata council, who called AAA to request Mr. Golden's vehicle be towed. For the below reasons, I find AAA was entitled to rely on H's authority to have the car towed.
17. Parking-lot law involves the law of bailment, the law of contract, and the law of trespass (see *Webster v. Robbins Parking Service Ltd.*, 2016 BCSC 1863, citing *Graham v. Impark*, 2010 ONSC 4982 (CanLII)).
18. I find the law of bailment is not relevant here as Mr. Golden does not claim any damage to his vehicle or lack of proper care.
19. I agree with Mr. Golden that the law of contract does not apply here. I find Mr. Golden did not give or pay anything to pay in the parking spot. Here, the agreement or contract about parking was between the strata and the owners or tenants in the building, none of which are parties to this dispute.
20. I find H's authority to have Mr. Golden's vehicle towed was based on the law of trespass. In the absence of legislation otherwise, an owner of private property is entitled to have a vehicle towed from its property, if not parked properly with permission (see *Webster*). I find the visitors' parking area is likely common property, belonging to the Treetops strata. My finding is based on Associated's submitted emails discussing Treetops' parking policy, bylaws, and a parking map showing the visitors' parking lot requiring a Treetops' parking pass. On balance, I find Mr. Golden parked on private property belonging to the Treetops' strata.
21. Based on Associated's photos, I find the strata posted a sign at the entry to Treetops, stating "Permit Parking Only", as well as a second sign within the complex. I also find the strata provided parking policy information and parking passes to all residents and

owners for visitors' use. It is undisputed Mr. Golden did not display, or have, a parking permit. I find Mr. Golden trespassed by parking in the strata's parking lot without authority to do so.

22. As a strata council member, I find H likely had the authority to act on the strata's behalf (see section 26 of the *Strata Property Act*). I further find AAA relied on H's authority to have Mr. Golden's car towed. AAA's invoice indicates the vehicle was towed based on the phone call and photos provided, because it had no visitor's parking pass displayed. I find AAA correctly relied on H's authority to have Mr. Golden's vehicle towed from the Treetops' strata property.
23. To the extent Mr. Golden argues AAA was negligent in relying on H's tow request, I find such an argument must fail, as explained below.
24. To prove that AAA was negligent, Mr. Golden must show it owed a duty of care, it failed to meet the reasonable standard of care, and that failure caused Mr. Golden's reasonably foreseeable damages.
25. I accept AAA owed a duty of care toward the owners of vehicles it was towing. Specifically, I find AAA owed a duty to ensure it towed the correct vehicle, and that the person asking for the tow had the authority to do so. I find the applicable standard is that of a reasonable tow truck driver.
26. As noted above, I find H had authority to direct AAA to tow Mr. Golden's vehicle and that AAA was entitled to rely on that authority. I accept AAA's submissions that it received photos from H, and that it towed the vehicle H complained of, because it did not have a valid parking pass. So, I find AAA was not negligent in relying on the information H provided in towing Mr. Golden's vehicle.
27. Contrary to Mr. Golden's argument, I find AAA did not owe a duty to warn him before towing, only to tow if the vehicle created a significant hardship or inconvenience to someone else, or to tow the vehicle to a more convenient location for Mr. Golden. Mr. Golden has provided no reasonable basis for these expectations.

28. On balance, I find AAA met the standard of care required in meeting its duty, and so it was not negligent. I dismiss Mr. Golden's claim against AAA.

Is Associated responsible for having the vehicle towed?

29. Mr. Golden makes no specific argument about how Associated is responsible for the towing costs. As noted, I find Associated did not ask AAA to tow the vehicle. So, I find no basis for Mr. Golden's claim against Associated and dismiss it.

30. As noted, Mr. Golden did not name the strata corporation as a respondent in this dispute. However, even if he had, on the evidence before me I would find the strata was not negligent in deciding to have Mr. Golden's vehicle towed. Based on Associated's photos, I find the strata posted a sign at the entry to Treetops, stating "Permit Parking Only", as well as a second sign within the complex. I also find the strata provided parking policy information and parking passes to all residents and owners for visitors' use. I find the strata met the standard of care in warning visitors about the need for parking permits. So, I would have found the strata was not negligent.

31. 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. As Mr. Golden was not successful in his claims, he is not entitled to reimbursement of his paid CRT fees. Neither of the successful respondents paid CRT fees or claimed dispute-related expenses.

ORDER

32. I dismiss Mr. Golden's claims and this dispute.

Sherelle Goodwin, Tribunal Member