



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Archondous v. The Owners, Strata Plan BCS3022*, 2023 BCCRT 596

B E T W E E N :

JASON ARCHONDOUS

APPLICANT

A N D :

The Owners, Strata Plan BCS3022

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Christopher C. Rivers

INTRODUCTION

1. This dispute is about boat damage from an automatic traffic gate. The applicant, Jason Archondous, was towing their boat while leaving property owned by the respondent, The Owners, Strata Plan BCS3022 (the strata). Mr. Archondous drove partway through the gate, before stopping to wait for traffic to clear. Their boat and

trailer remained in the gate's operating space. As they began to move forward, the gate closed, hitting their boat and damaging its fiberglass. Mr. Archondous says the gate was not installed or operating properly and claims \$3,516.80 for the cost of repairing their boat.

2. The strata says Mr. Archondous did not exercise reasonable care in towing their boat. It says the gate was installed and operating properly and it was Mr. Archondous's own actions that caused the damage. The strata asks that I dismiss the claim.
3. Mr. Archondous is self-represented. The strata is represented by the strata council president.

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.
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.
8. In their application for dispute resolution, the applicant incorrectly named the respondent as BCS 3022, whereas based on section 2 of the *Strata Property Act*, the strata's correct legal name is The Owners, Strata Plan BCS3022. Given the parties operated on the basis that the strata's correct name was used in their documents and submissions, I have exercised my discretion under CRTA section 61 to direct the use of the strata's correct legal name in these proceedings. Accordingly, I have amended the style of cause above.

ISSUE

9. The issue in this dispute is whether the strata was negligent in its installation, operation, or maintenance of the exit gate.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, Mr. Archondous, as the applicant, must prove their claims on a balance of probabilities. This means "more likely than not". 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.
11. I find Mr. Archondous has not proved their claim. My reasons follow.
12. On April 23, 2022, Mr. Archondous was visiting the strata's property with their truck, boat, and trailer. While leaving the strata property, Mr. Archondous had to drive through an automatic exit gate that prevented vehicles from entering the driveway from the road.
13. It is undisputed that the exit gate featured three different sets of working sensors. First, the gate opening was triggered by an in-driveway sensor 40 feet before the gate. The sensor was activated when a vehicle drove over it while leaving the strata

property. The gate opened by swinging back towards the vehicle, allowing the vehicle to then pass through. Once open, the gate would initially remain open for 10 seconds.

14. Second, the gate had infrared sensors located beside its base. These sensors were mounted at a height of 14 inches on one side and 10 inches on the other side. If the infrared beam was broken, the timer would reset for a further 10 seconds once the beam was re-established.
15. Third, the gate had an impact sensor that would cause the gate to automatically re-open if it hit an object while closing.
16. Finally, at the relevant time, it also undisputed that the gate had non-operational perimeter loop sensors. Loop sensors detect metal objects within a given perimeter around the gate and prevent the gate from closing if metal is present. The strata says it stopped using the loop sensors in 2016 when it installed the infrared sensors. I discuss this further below. The strata has since re-activated the loop sensors.
17. In this case, Mr. Archondous drove their truck through the gate and came to a stop. It is undisputed that their boat and trailer remained in the open gate's space. Mr. Archondous says they waited for traffic to clear from the road, and when they drove forward, the gate began to close, hitting their boat.
18. The strata says that by driving forward while the gate was closing, Mr. Archondous prevented the impact sensor from being able to work. The boat's forward motion caused the gate to jam against the fiberglass, preventing the gate from re-opening, and damaging the boat as Mr. Archondous drove forward. The strata says that if Mr. Archondous had remained stationary, the gate would have impacted the boat's side, and then re-opened, causing little or no damage. Mr. Archondous does not dispute this point.
19. While Mr. Archondous does not use the word "negligent" specifically in their argument, I find they are claiming the strata was negligent in its installation or operation of the exit gate.

20. To prove negligence, Mr. Archondous must show: (a) the strata owed Mr. Archondous a duty of care, (b) the strata breached the standard of care, (c) that Mr. Archondous suffered damage, and (d) the damage was caused by the strata's breach.
21. I find it clear the strata owed Mr. Archondous a duty of care to ensure the exit gate was installed correctly and operated as expected.
22. Mr. Archondous alleges that the strata breached the duty of care by not properly maintaining the loop sensors, not installing the infrared sensors correctly, not having proper warning signs in place, and not having enough space for a truck and trailer to both safely clear the gate and check for oncoming traffic. I will address each of these arguments in turn.
23. Mr. Archondous argues that the loop sensors should have been operational and that the infrared sensors were installed incorrectly. I infer they argue the strata council's decision to re-activate the loop sensors is an admission that the loop sensors should have been active at the time.
24. The strata says the gate and sensors were installed and maintained in keeping with current safety standards. It says the gate operated as expected at the time of the incident. The strata advises that the infrared sensors were installed to replace the loop sensors in 2016, and says it only re-activated the loop sensors after the incident out of an abundance of caution. The strata does not address whether they made this decision on their own or with the assistance of a gate company.
25. Where a matter is outside ordinary knowledge, a party must provide expert evidence in support of their position. See: *Bergen v. Guliker*, 2015 BCCA 283. I find information about the need for certain sensors, their standards of installation, and whether they should have been installed differently to prevent the gate from damaging the boat are issues outside of ordinary knowledge. As the applicant, Mr. Archondous must provide this expert evidence to support their claim, and they have not done so.
26. I note the strata provided a report from Ron Pankonin, the contractor it hired to inspect and repair the gate and sensors. The report says the gate complied with current

safety standards, which is consistent with the strata's position. However, contrary to CRT rule 8.3, the report did not include any information about Ron Pankonin's qualifications, such as job title, years of experience, or field of expertise. In the complete absence of any information about Ron Pankonin's background or qualifications, I do not accept the report as expert evidence. I note nothing in my decision turns on the report's contents, as the burden of proof is on Mr. Archondous and not the strata.

27. Next, Mr. Archondous argues that there should have been signs in place to warn that the gate may close on a vehicle towing a trailer. However, Mr. Archondous admits they have been through the gate with the boat and trailer on many previous occasions. So, I find they either knew or should have known the gate closes automatically. I note Mr. Archondous does not argue that they drove forward to escape the closing gate or because they were worried the gate would damage their boat on initial impact. They also do not say that they had previously waited in the gate space without incident.
28. Instead, as Mr. Archondous waited for traffic to clear, I find they had an obligation to ensure they did not drive forward while the automatic gate was in the way. I find that even without a warning sign, it was unreasonable for Mr. Archondous to proceed without checking their mirrors to ensure their boat and trailer were clear of the gate.
29. Finally, Mr. Archondous says there is insufficient room to drive a vehicle and trailer clear of the gate and safely check for traffic before turning onto the road. Given the impact sensor's operation, I find it is unnecessary for a vehicle to clear the gate while waiting for traffic. I find that in the normal course of operation, the gate would automatically re-open on contact with another object. So, I find if the gate began to close, a reasonable driver would wait for it to re-open before driving forward.
30. So, I find the strata has not breached its duty of care to Mr. Archondous. They have not proved the strata was negligent. I dismiss their claim.

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. I see no reason in this case not to follow that general rule. I dismiss Mr. Archondous's claim for CRT fees. The strata did not pay any CRT fees.
32. The strata claims \$264.44 in dispute-related expenses for an expert report (\$60) and a gate repair test (\$204.44). I find the gate repair test formed the basis of Ron Pankonin's report. Due to the complete lack of information regarding Ron Pankonin's qualifications, I did not accept that report as expert evidence. I find it was unreasonable to incur an expense for an expert report where the report does not include any information about the expert's job, title, or experience. So, I dismiss the respondent's claim for expenses.

ORDER

33. I dismiss Mr. Archondous's claims and this dispute.

Christopher C. Rivers, Tribunal Member