



Civil Resolution Tribunal

Date Issued: November 28, 2023

File: SC-2022-009698

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Monterio v. Jericho Paddling Club*, 2023 BCCRT 1029

B E T W E E N :

ROBERT MONTERIO

APPLICANT

A N D :

JERICO PADDLING CLUB

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Nav Shukla

INTRODUCTION

1. This dispute is about 2 damaged canoes owned by the applicant, Robert Monterio. Mr. Monterio undisputedly stored the canoes at Jericho Sailing Centre (JSC). Mr. Monterio says that in September 2021 and April 2022, the respondent, Jericho Paddling Club (JPC), moved his 2 canoes without his permission and damaged them. He claims \$2,683.97, broken down as \$2,000 for income loss for time spent dealing

with the damaged canoes and the rest for the cost of replacement parts and repairs. Mr. Monterio is a lawyer and represents himself.

2. JPC does not deny that it moved Mr. Monterio's canoes around September 2021 and April 2022 but says it is not responsible for the claimed damage. JPC is represented by its commodore.

JURISDICTION AND PROCEDURE

3. 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.
4. 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 and that an oral hearing is not necessary.
5. 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.
6. 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.
7. In its written argument and without admitting liability, JPC makes a settlement offer to Mr. Monterio. In his reply argument, Mr. Monterio did not accept, or even address, JPC's offer. So, I find the parties have not reached a binding agreement and I consider Mr. Monterio's claims on their merits below.

ISSUES

8. The issues in this dispute are:
 - a. Did JPC damage Mr. Monterio's canoes?
 - b. If so, what amount, if any, must JPC pay Mr. Monterio?

EVIDENCE AND ANALYSIS

9. As the applicant in this civil proceeding, Mr. Monterio must prove his claims on a balance of probabilities (meaning "more likely than not"). I have considered all the parties' submitted evidence and argument but refer only to what I find relevant to provide context for my decision.
10. Mr. Monterio says that on September 13, 2021, he noticed that his 2 canoes which he had stored at JSC, had been damaged. In particular, Mr. Monterio says that a drain, referred to as a venturi, was damaged on each boat. The evidence includes photographs of the damaged venturis. Mr. Monterio says that JPC's president, PC, acknowledged JPC had moved his canoes. He says that he did not provide JPC permission to do so. He says that when he had used 1 of the canoes a few days prior to September 13, 2021, there was no damage. So, he says the venturis must have been damaged by JPC during the move.
11. Mr. Monterio says that on April 22, 2022, his canoes were moved again by JPC, without his permission. He says that 1 of the canoes was placed on a metal bar and sustained further damage due to being moved to an unsuitable storage location. Mr. Monterio alleges JPC was negligent during both moves, causing damage to his canoes.
12. As noted, JPC admits moving the canoes on both occasions. It says that the venturi hoods on this type of canoe are small pieces of plastic that are glued to the exterior of the hull and are known to fall off. JPC says there is no proof that the canoes were damaged by JPC's moves.

Is JPC responsible for the alleged damage?

13. As noted above, Mr. Monterio's claim against JPC is in negligence. To succeed in a claim for negligence, Mr. Monterio must prove JPC owed him a duty of care, JPC failed to meet that duty, and the failure resulted in the claimed damages (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27).
14. As JPC does not deny it moved Mr. Monterio's canoes, I find it owed Mr. Monterio a duty of care to move the canoes with reasonable care so as not to cause damage.
15. In a November 17, 2021 email to JPC, Mr. Monterio wrote that the September 2021 damage may have been caused by sliding the canoes onto the storage racks. In the email, Mr. Monterio said that his "California make Huki's" have a drainage system that makes them "peculiar to most similar boats". He further said that care needs to be taken to gently lift the venturis over the stops the hull rests on. Based on photographs of the canoes and the storage racks at JSC in evidence and given the placement of the venturis and the way the storage racks appear to require the boats to be slid onto the racks, I find it likely that the canoes' venturis could be damaged or fall off if the canoes were slid onto the racks without adequate care.
16. Notably, while JPC denies damaging the venturis on Mr. Monterio's canoes, it did not provide evidence from any of its personnel that were involved in the September 2021 move stating that the venturis were not in place or already damaged prior to the move. As noted, Mr. Monterio says he did not notice any damage a few days prior when he used 1 of the canoes. So, I find it likely that the damage occurred sometime between the time Mr. Monterio returned the canoe back to storage after using it, and JPC moving the canoes a few days later. Given JPC's statement that venturis are known to fall off, I find that if adequate care had been taken during the September 2021 move to protect the venturis, JPC would have provided witness statements from those who did the move saying so. Given the lack of any such evidence, I find it appropriate to draw an adverse inference against JPC here. Based on this adverse inference, JPC's statement that venturis are known to fall off, and the photographs mentioned

above, I find it more likely than not that the venturis on Mr. Monterio's 2 canoes were damaged during the September 2021 move.

17. As for the April 2022 move, Mr. Monterio did not explain exactly what damage he alleges was caused by JPC allegedly placing 1 of the canoes in an improper storage location. Mr. Monterio's evidence includes a photograph of a crack on 1 of the canoes, which I infer may be the alleged damage. However, JPC says this damage was pre-existing, and has provided photographs in support that were taken during the April 2022 move. Based on these photographs, I find it more likely than not that this crack was pre-existing. As it is unclear what additional damage Mr. Monterio alleges occurred as a result of the April 2022 move, I find it unproven that JPC acted negligently during this move.
18. In its Dispute Response, JPC says that all individuals who store watercrafts at JSC sign a waiver. However, JPC did not provide a copy of this waiver in evidence, nor is there any other evidence showing that Mr. Monterio signed a waiver releasing JPC from any liability relating to damaged watercrafts stored at JSC. So, I find JPC is liable for the damage to the 2 venturis on Mr. Monterio's canoes.
19. I turn now to the appropriate remedy. A repair invoice in evidence shows TJ More Renovations (TMR) charged Mr. Monterio \$581.65 for 8 hours of repair work and additional materials to repair the venturis, repair the canoes' gel coats, and to install anti scuff tape on 1 of the canoes. As JPC does not specifically dispute it, I find Mr. Monterio likely paid this invoice in full.
20. The repair invoice provides no breakdown for the number of hours spent on each task. However, based on the description of the work in the invoice, I find it likely that the bulk of the 8 hours spent by TMR on the repair work for Mr. Monterio's canoes was not for fixing the venturis but rather for the multiple repairs to the canoes' gel coat. Mr. Monterio has not provided any explanation about how or whether the gel coat is related to the damaged venturis. As I have found the only proven damage resulting from JPC's negligence during the September 2021 move to be the damaged venturis, on a judgment basis, I find Mr. Monterio is entitled to reimbursement of 1

hour of TMR's time that I find it likely spent repairing the venturis. Based on the \$520 TMR charged for the 8 hours of total labour, this equals \$68.25 (tax inclusive). Mr. Monterio's evidence shows he also paid \$76.97 USD on July 3, 2022 for a replacement venturi for 1 of his canoes. So, I find JPC must also reimburse Mr. Monterio \$76.97 USD for the replacement venturi. Using the Bank of Canada's July 3, 2022 conversion rate, this equals \$99.18 CDN.

21. Lastly, Mr. Monterio claims \$2,000 for lost income for time spent moving the canoes to his backyard for repairs and ordering parts to facilitate the repairs. Mr. Monterio says that while he is confident his income loss exceeds \$2,000, this is the amount he believes it would have cost to have a qualified person attend to the canoes at JSC or move them to and from a repair facility. Mr. Monterio provided no documentary evidence in support of his claim for alleged lost income (such as proof of salary or income, or a log of time spent dealing with the canoe damage) or a quote or other document to show that he would have otherwise incurred \$2,000 to have someone else move the canoes. He has also not provided any evidence showing that it was necessary to move the canoes from JSC in order to repair the venturis. As noted above, the burden is on Mr. Monterio to prove his claims. Here, I find he has failed to prove on a balance of probabilities that he lost any income as a result of JPC's negligence. So, I dismiss Mr. Monterio's claim for lost income.
22. In conclusion, I find JPC must pay Mr. Monterio \$68.25 for repair costs and \$99.18 for the cost of the replacement venturi, totaling \$167.43 in damages.
23. The *Court Order Interest Act* (COIA) applies to the CRT. Mr. Monterio is entitled to pre-judgment interest on the \$68.25 from October 11, 2022, the date of the TMR's invoice, to the date of this decision. Mr. Monterio is also entitled to pre-judgment interest on the \$99.18 for the replacement venturi from July 3, 2022, the date he paid for it, to the date of this decision. Together, this equals \$8.22 in pre-judgment interest.
24. 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. Monterio was partly successful, I find he is entitled

to only half his paid CRT fees. This equals \$75. Mr. Monterio also claims \$11.60 as a dispute-related expense for sending JPC the Dispute Notice by registered mail. I find this expense, which is supported by receipts in evidence, to be reasonable. Given Mr. Monterio's partial success in the dispute, I order JPC to reimburse him for half the registered mail expense, which equals \$5.80.

ORDERS

25. Within 14 days of the date of this decision, I order JPC to pay Mr. Monterio a total of \$256.45, broken down as follows:

- a. \$167.43 in damages,
- b. \$8.22 in pre-judgment interest under the COIA, and
- c. \$80.80, for \$75 in CRT fees and \$5.80 in dispute-related expenses.

26. Mr. Monterio is entitled to post-judgment interest, as applicable.

27. 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. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Nav Shukla, Tribunal Member