



Civil Resolution Tribunal

Date Issued: January 19, 2024

File: SC-2023-000631

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Bratt v. RC Alliance Ltd.*, 2024 BCCRT 60

BETWEEN:

MICHAEL BRATT

APPLICANT

AND:

RC ALLIANCE LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Megan Stewart

INTRODUCTION

1. This is a personal injury dispute.
2. Michael Bratt says he walked into a piece of wood that was extending from RC Alliance Ltd.'s (RC) parked truck, and sustained a concussion. Dr. Bratt says due to

RC's negligence, he had to take 4 days off work. He claims \$2,500 for lost income and for pain and suffering.

3. RC denies Dr. Bratt's claim. It says there is no evidence Dr. Bratt walked into the wood, and no evidence of Dr. Bratt's claimed damages in any event. RC also says if Dr. Bratt did walk into the wood, it was not negligent, and the wood was there to be seen.
4. Dr. Bratt is self-represented. An employee represents RC.

JURISDICTION AND PROCEDURE

5. 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.
6. 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, without the need for an oral hearing.
7. 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.
8. 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.

ISSUE

9. The issue in this dispute is whether RC was negligent, and if so, to what extent Dr. Bratt is entitled to his claimed personal injury damages.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant Dr. Bratt must prove his claims on a balance of probabilities, meaning more likely than not. I have read all the parties' submissions and evidence but refer only to that which I find necessary to explain my decision.
11. Around 3:30pm on December 14, 2022, RC's truck was reverse parked in a parking stall perpendicular to a sidewalk. The truck's cargo bed contained various construction materials, including an unflagged piece of piece of medium-density fibreboard skirting (the wood) that extended into the sidewalk's airspace approximately 5 feet to 6 feet from the ground. None of this is disputed.
12. Dr. Bratt says he was walking along the sidewalk when he collided with the wood and sustained a concussion. He says the attending doctor in the emergency room he visited advised him to take several days off work until he was no longer experiencing a headache, dizziness, nausea, confusion, or drowsiness. Dr. Bratt says the wood was not easy to see, and RC was negligent in not attaching a red flag to it, as Dr. Bratt says is customary.
13. For its part, RC says there is no evidence Dr. Bratt walked into the wood as alleged since there were no witnesses to the incident, and the wood was unbroken and showed no signs of impact. RC also says it was not negligent as the wood was sticking out less than the distance legally required for a flag, and was clearly visible. Finally, RC says Dr. Bratt has not proven his damages because there is no evidence he had to take time off work to recover from his injury.
14. To succeed in negligence, Dr. Bratt must prove RC owed him a duty of care, RC breached the applicable standard of care, and Dr. Bratt sustained reasonably

foreseeable harm caused by the breach (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27).

15. I find RC owed pedestrians a duty of care to park its vehicle in a way that did not risk their safety and wellbeing. Further, I find that by reverse parking its truck with the wood sticking out of the cargo bed into the sidewalk's airspace without some warning, RC fell below the applicable standard of care.
16. RC says it was not negligent since it had no obligation to attach a red flag to the wood, which extended less than 1.2 metres from the truck's cargo bed. RC relies on section 4.20 (2) of the *Motor Vehicle Act Regulations*, which requires vehicles with loads projecting more than 1.2 metres from the rear of the vehicle's body to have a red light or a red flag attached to the tip of the projection.
17. I disagree. First, there is no conclusive evidence, such as a photo of the wood being measured, indicating the distance the wood stuck out from the truck's cargo bed. I find the parties' photos of the wood from different angles do not assist in determining how far it stuck out from the truck. Second, even if the wood extended less than 1.2 metres, I find this is insufficient to conclude RC did not breach the applicable standard of care. The parties' photos clearly show the wood sticking into the sidewalk's airspace, where pedestrians would not reasonably expect it to be. In addition, I find the white wood was not highly visible in the wintry conditions. In these circumstances, I find the applicable standard required RC to attach a flag or other warning to the end of the wood to caution sidewalk users.
18. When determining whether harm is reasonably foreseeable, the person alleging the harm must show that the risk of the type of damage that occurred was reasonably foreseeable to the class of people who suffered the damage (see *Rankin (Rankin's Garage & Sales) v. J.J.*, 2018 SCC 19). In the absence of a warning, I find that injuries from collisions with the wood were a reasonably foreseeable consequence for sidewalk users.

19. As noted above, RC says there is no witness evidence to corroborate Dr. Bratt's allegation he sustained his injuries from walking into the wood, and no evidence the wood was broken or impacted at all by a collision. Even without witness evidence or evidence of broken or impacted wood, I find Dr. Bratt's photo of 2 small lacerations across the bridge of his nose and between his eyes persuasive. In addition, both parties provided photos of the truck's driver standing next to it (presumably after the incident, when he had returned to the truck) with the wood at face-height. In these circumstances, I find it is more likely than not Dr. Bratt sustained the injuries recorded in the medical record from a collision with the unflagged wood.
20. RC also suggests Dr. Bratt was looking down at his phone and not paying attention when he walked into the wood. I find this is speculative, as there is no evidence Dr. Bratt was looking at his phone or was otherwise distracted. So, I find Dr. Bratt was not contributorily negligent for his injuries.
21. I turn to the claimed damages. Dr. Bratt did not distinguish between the damages he claims for lost income and those he claims for pain and suffering. Also, Dr. Bratt did not provide evidence that he had to take time off work, such as a statement from the manager he says covered for him for 4 days, or evidence of lost income. So, I find Dr. Bratt's claim for lost income unproven.
22. Dr. Bratt says he had a concussion. However, the doctor's notes in the medical record are very difficult to read, and there is no clear indication of a diagnosed concussion. From the notes, I can only conclude the doctor diagnosed lacerations to Dr. Bratt's nose. The notes do not say the lacerations needed sutures, and Dr. Bratt did not say when they healed. The photo in evidence suggests they were superficial, and that Dr. Bratt sustained a minor facial injury. Dr. Bratt did not indicate any ongoing adverse effects from the lacerations. On a judgment basis, I award Dr. Bratt \$300 in non-pecuniary damages (damages for pain and suffering).
23. The *Court Order Interest Act* (COIA) applies to the CRT. Under section 2 of the COIA, there is no pre-judgment interest payable on an award of non-pecuniary damages resulting from personal injury. I make no order for 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 Dr. Bratt was partly successful, I find he is entitled to reimbursement of \$62.50, which is half his paid CRT fees. Neither party claims dispute-related expenses, so I award none.

ORDERS

25. Within 30 days of the date of this order, I order RC to pay Dr. Bratt a total of \$362.50, broken down as follows:

- a. \$300 in damages, and
- b. \$62.50 in CRT fees.

26. Dr. Bratt is entitled to post-judgment interest, as applicable.

27. I dismiss the balance of Dr. Bratt's claims.

28. 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.

Megan Stewart, Tribunal Member