



# Civil Resolution Tribunal

Date Issued: February 27, 2024

File: SC-2023-005168

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Patel v. Egycan Middle Eastern Foods Inc.*, 2024 BCCRT 186

BETWEEN:

PRITESH PATEL

**APPLICANT**

AND:

EGYCAN MIDDLE EASTERN FOODS INC. and SUNSA HOLDINGS LTD.

**RESPONDENTS**

---

## REASONS FOR DECISION

---

Tribunal Member:

Megan Stewart

## INTRODUCTION

1. This dispute is about towing and related charges.
2. Pritesh Patel says Egycan Middle Eastern Foods Inc. (Egycan) improperly had his vehicle towed from a private parking lot. Sunsa Holdings Ltd. (Sunsa) is the parking lot's property manager, and holds a towing contract with the company that towed Mr.

Patel's vehicle. The towing company is not a party to this dispute. Mr. Patel says Egycan and Sunsa are responsible for his vehicle being towed, and claims \$3,000 in damages. Mr. Patel is self-represented.

3. Egycan says Mr. Patel parked in front of its business, and then went to the gym located at the other end of the commercial complex. Egycan says there were signs on the property warning drivers not to park without authorization, which Mr. Patel did not have. I infer Egycan asks me to dismiss Mr. Patel's claims. Egycan is represented by an employee.
4. Sunsa says Mr. Patel parked in a part of the parking lot that is leased for Egycan's exclusive use. Sunsa says Egycan controls its designated parking areas. Sunsa says it did not cause Mr. Patel's vehicle to be towed, so it is not responsible for the claimed damages. Sunsa is represented by someone I infer is an authorized employee.

## **JURISDICTION AND PROCEDURE**

5. These are the Civil Resolution Tribunal's (CRT) formal written reasons. The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). CRTA section 2 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. CRTA section 39 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 I am properly able to assess and weigh the documentary evidence and submissions before me, without an oral hearing.
7. Section 42 of the CRTA says the CRT may accept as evidence information 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 EGYCAN or Sunsa, or both, are responsible for Mr. Patel's towing and related charges.

## **EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, Mr. Patel, as the applicant, 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 information I find necessary to explain my decision.

### ***Background***

11. The following background is undisputed. On April 27, 2023, Mr. Patel parked his vehicle in a private parking lot, in an unmarked parking stall across from EGYCAN. He went to the gym, and on his return about 2 hours later, he discovered his vehicle had been towed. Mr. Patel spoke to an EGYCAN employee who confirmed this.
12. Mr. Patel says that as a gym member, he was entitled to park in any of the stalls not marked "reserved" for EGYCAN, so EGYCAN should not have had his vehicle towed. He says EGYCAN and Sunsa were negligent in not displaying clear signage of the parking restrictions for the stall he parked in.
13. Mr. Patel says he paid \$378.48 for the towing fee. He claims that amount, plus \$2,621.52 for mileage to travel to collect his vehicle, lost income, and loss of enjoyment from stress, for a total of \$3,000.

### ***Sunsa's liability***

14. Sunsa denies responsibility for Mr. Patel's alleged damages, since it undisputedly did not request the tow. Mr. Patel suggests that as the property manager with the towing contract, Sunsa was responsible for any towing events. I fail to see how an agreement between Sunsa and the towing company created any contractual obligations on Sunsa's part in favour of Mr. Patel. Further, Mr. Patel does not explain why Sunsa owed him a duty to ensure Egycan's designated parking area was properly signposted, particularly since Egycan says it was responsible for the towing signs. Mr. Patel also says it was negligent of Sunsa not to inform Egycan about towing conditions, but he has not provided proof of this. Given the above, I find Mr. Patel has not established a legal basis for his claim against Sunsa, and I dismiss it.

### ***Egycan's liability***

15. 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)).

16. I find the law of bailment (a person's obligation to safeguard another's belongings in their possession) does not apply to this dispute because Mr. Patel's claim is not about damage to his vehicle or lack of proper care. Further, I find Egycan and Mr. Patel did not have a contract for the parking stall's use, as Mr. Patel did not pay to park there.

17. I find Egycan's authority to have Mr. Patel's vehicle towed was based on the law of trespass. Unless prohibited by law, a private property owner (or lessee) may have a vehicle towed from its property, if it is not parked properly with permission (see *Webster*). As noted above, Mr. Patel says that as a gym member, he reasonably believed he had permission to park in an unmarked stall, and that Egycan was negligent in not marking the stall he parked in.

18. To prove negligence, Mr. Patel must show 1) Egycan owed him a duty of care, 2) it breached the applicable standard of care, 3) he sustained reasonably foreseeable

damage, and 4) Egycan's breach caused the damage (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27).

19. I find Egycan had a duty of care to Mr. Patel as a parking lot user, to advise him of restrictions to parts of the parking lot leased to Egycan for its exclusive use.
20. I find the applicable standard of care is whether Egycan reasonably warned Mr. Patel of the parking restrictions for the stall he parked in, based on the signage in place at the time. For the following reasons, I find it did not.
21. It is undisputed that Mr. Patel parked in an unmarked stall, and that other nearby stalls were marked "Egycan Foods Parking Only 7 days 9am – 9pm".
22. Mr. Patel submitted a photo of the stall that he says he took several days after his vehicle was towed with that same signage, which Egycan does not challenge. Mr. Patel says the new signage proves that previously, the stall was inadequately marked. I disagree. I find the fact that Egycan decided to clarify the parking restrictions applicable to any particular stall is not, on its own, evidence of prior negligence.
23. Based on the marked restrictions on other nearby stalls alone, however, I find a parking lot user attending one of the commercial complex's other businesses could reasonably assume they had permission to use the unmarked stall.
24. Here, though, there was other signage in place. Pictures in evidence show that at the parking lot entrance closest to the stall Mr. Patel parked in, there was a sign that said, "Authorized Parking Only Violators Towed Away". This towage sign was also posted on the wall above the individually marked stalls. Egycan relies on the towage signs in support of its position that Mr. Patel did not have authority to park in the unmarked stall.
25. Mr. Patel submitted an excerpt of the city's bylaw concerning towing from private parking lots. The excerpt reads:

No person shall cause a vehicle to be towed from a private parking lot unless, at the time such vehicle is towed, the required tow away signs are being clearly displayed on the said parking lot. Tow away signs shall meet the following requirements:

(...)

(c) signs shall clearly state the conditions under which the parking of a vehicle will be considered unauthorized

26. Egycan does not dispute this excerpt, and I accept it accurately reflects the city bylaw in effect at the time.
27. I find the bylaw establishes the applicable standard for tow away signage for private parking lots in the city. I also find the towage signs did not meet this standard, because they did not set out the conditions for “authorized parking”, and by extension “unauthorized parking”.

### ***Damages***

28. I find Egycan’s breach of the standard of care caused Mr. Patel to sustain reasonably foreseeable damage of \$378.48 in towing fees. So, I find he is entitled to reimbursement of this amount.
29. I turn to balance of the claimed \$3,000. Mr. Patel does not specify how much he claims for mileage or explain how this was calculated. Also, there is no documentary evidence of the mileage Mr. Patel says he and his girlfriend had to travel to collect his vehicle, such as a statement from his girlfriend or a map of the route to the towing company. So, I dismiss the part of his claim for mileage. Mr. Patel also claims for lost income on April 28, 2023, the day after the tow, as he did not have his vehicle. However, he did not provide a paystub as he says he did, or other documentary evidence from his employer showing he missed work on that day, and what his earnings would have been. I dismiss the part of Mr. Patel’s claim for lost income.

30. Finally, Mr. Patel claims damages for loss of enjoyment because he says he stopped attending the gym due to stress. Mr. Patel did not submit any medical or other evidence to support a claim for emotional distress or pain and suffering. Even if he had, I would not have found these damages reasonably foreseeable. So, I also dismiss this part of his claim.

## **INTEREST, CRT FEES, AND EXPENSES**

31. The *Court Order Interest Act* applies to the CRT. Mr. Patel is entitled to pre-judgment interest on the \$378.48 damages award from April 28, 2023, the date of the towing invoice, to the date of this decision. This equals \$15.52.

32. 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. Here, Mr. Patel was partly successful, but I decline to award reimbursement of his CRT fees. This is because before Mr. Patel filed the application for dispute resolution, Sunsa offered to reimburse his \$378.48 towing fees, which is the amount I award here. I find Mr. Patel and Sunsa waived any settlement privilege that applied to this offer, as both of them referred to it in their submissions. Had Mr. Patel accepted Sunsa's offer, he would not have had to file a claim against Sunsa or Egycan. He could still have brought a claim for the remaining amount, but he would have been unsuccessful, and so not entitled to reimbursement of his CRT fees. Mr. Patel did not request dispute-related expenses, so I award none.

## **ORDERS**

33. Within 30 days of the date of this order, I order Egycan to pay Mr. Patel a total of \$394, broken down as follows:

- a. \$378.48 in damages as reimbursement for towing fees, and
- b. \$15.52 in pre-judgment interest under the *Court Order Interest Act*.

34. Mr. Patel is entitled to post-judgment interest, as applicable.

35. I dismiss the balance of Mr. Patel's claims, including his claims against Sunsa.
36. 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