Civil Resolution Tribunal

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Civil Resolution Tribunal

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B E T W E E N :

JACK MORRIS and NICHOLAS BIDEN

APPLICANTS

A N D :

The Owners, Strata Plan EPS1923

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Christopher C. Rivers

INTRODUCTION

1. This dispute is about damage to a rented U-Haul truck.

2. On November 18, 2020, Nicholas Biden rented a U-Haul truck and went to visit Jack Morris, a tenant in a strata lot in the respondent strata corporation, The Owners,

Strata Plan EPS1923 (strata). Mr. Morris invited Mr. Biden to park in Mr. Morris' parking stall in the garage under the strata building. A sign at the entrance to the garage said clearance was 7 feet, 7 inches and the applicants say they knew the truck was 7 feet, 2 inches tall.

3. When Mr. Biden attempted to drive the truck through the garage to the parking stall, they hit a pipe protruding from the ceiling. The pipe damaged the U-Haul's roof, requiring the applicants had to pay for the damage. The applicants say the strata acted negligently by putting up a misleading sign and by not clearly marking the pipe as a hazard. They claim $2,944.60 for the damage to the rental truck.

4. The strata argues it was not negligent. It says the sign only described clearance for the gate and not the entire garage, and that the pipe joint was well-marked, as it was painted in red. It asks me to dismiss the applicants' claim.

5. The applicants are each self-represented. The strata is represented by a member of the strata council.

6. For the reasons that follow, I mostly allow the applicants' claim.

JURISDICTION AND PROCEDURE

7. These are the Civil Resolution Tribunal's (CRT) formal written reasons. The CRT has jurisdiction over small claims brought under *Civil Resolution Tribunal Act* (CRTA) section 118. 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.

8. CRTA section 39 says the CRT has discretion to decide the hearing's format, 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.

9. Under CRTA section 61, the CRT may make any order or give any direction in relation to a CRT proceeding it thinks necessary to achieve the objects of the CRT in accordance with its mandate. In particular, the CRT may make such an order on its own initiative, on request by a party, or on recommendation by a CRT case manager.

10. In this case, the applicants initially applied as co-applicants under the CRT's small claims jurisdiction. After speaking with CRT staff, the applicants withdrew that application and Mr. Morris re-filed it under the CRT's strata property jurisdiction. Mr. Biden was not listed as a co-applicant on the re-filed claim. While reviewing the dispute, I determined the matter should be addressed under the CRT's small claims jurisdiction, which I explain below.

11. Under CRTA section 1(2), if the CRT may validly categorize a claim as either small claims or strata property, the claim must be adjudicated under the CRT's strata property jurisdiction.

12. While not binding on me, a CRT Vice Chair considered the interplay between strata and small claims jurisdiction in *Alameer v. Zhang*, 2021 BCCRT 435. I find that analysis persuasive and I summarize and adopt it below.

13. CRTA section 121 provides jurisdiction for matters "in respect of" the *Strata Property Act* (SPA). Furthermore, SPA section 189.1 limits the parties who may make CRT dispute resolution requests concerning strata property. Only strata corporations, owners, and tenants may make such requests under the SPA. Mr. Biden is a person apparently entitled to damages but is not an owner or tenant under the SPA. So, I find this means their dispute is properly addressed under the CRT's small claims jurisdiction.

14. CRT rule 6(3) allows parties to pursue a previously withdrawn claim with the CRT's permission. CRT rule 6(5) sets out the factors the CRT must consider when granting permission. At my request, CRT staff asked the parties to provide submissions about whether this matter should be addressed under the original, withdrawn small claims

dispute, thereby bringing Mr. Biden back in as co-applicant. No one objected to that approach.

15. I also invited Mr. Biden to provide submissions and the strata to respond. Each did so.

16. So, I directed CRT staff to re-open the original small claims dispute and issue a new small claims dispute number. I find there is no prejudice to the parties in allowing this matter to be determined under the CRT's small claims jurisdiction. Each party had the opportunity to review and respond to the others' evidence and submissions. The dispute was undisputedly brought within the necessary limitation period. While the strata says the applicants did not give it notice of the incident until this claim, it admits it received the applicants' evidence. Given the above, I find it is in the interests of justice and fairness to allow the matter to be determined under the CRT's small claims jurisdiction.

17. CRTA section 42 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 the parties and witnesses questions and inform itself in any other way it considers appropriate.

18. Where permitted by CRTA section 118, 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

19. The issue in this dispute is whether the strata was negligent by installing and displaying a sign showing an underground garage's clearance as 7 feet, 7 inches.

EVIDENCE AND ANALYSIS

20. In a civil proceeding like this one, the applicants 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.

21. As noted above, on November 18, 2020, Mr. Biden damaged a rented U-Haul truck when they drove it into a pipe protruding from the strata's underground parking garage ceiling.

22. A photograph in evidence shows a sign at the entrance to the parking garage that reads "7'7" CLEARANCE 2.3M". A sticker on the rented truck says "2.2M (7FT-2IN) CLEARANCE REQUIRED".

23. Before Mr. Biden drove into the garage, the applicants say they compared the vehicle's height on the sticker to the clearance height on the sign. They determined the truck was below the necessary height, so they drove in. It is undisputed that while driving to Mr. Morris' parking stall, Mr. Biden hit a pipe and joint running along the garage ceiling.

24. Photographs show the pipe and joint dented and scratched the truck's roof. Other photographs show the black pipe, marred with white paint, and red pipe-joints. The applicants say the pipe and joint's height was 6 feet, 10 inches, and a photograph of a measuring tape shows it to be under 7 feet, 1 inch. In either case, it is well below the 7 feet, 7 inches clearance indicated by the sign, and the strata does not argue otherwise.

25. To prove negligence, the applicants must show the strata owed them a duty of care, failed to meet the applicable standard of care, that the failure caused the applicants' loss, and that the loss was reasonably foreseeable.[1]

26. I find it clear the strata owed the applicants a duty of care to ensure the posted sign accurately reflected the garage's safe driving height. Given the pipes and their fittings were well below 7 feet 7 inches, I find the strata breached the duty of care. I find the

[1] See: *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27.

damage to the U-Haul's roof was a reasonably foreseeable and direct result of the applicants' reliance on the strata's sign.

27. The strata argues the sign only marked the entry gate's height and not the height at any time thereafter. It says there were easily visible pipes, pillars, and lighting below 7 feet 7 inches and some ventilation ducts as low as 4 feet. It says if signage was made for the lowest obstacle, almost all vehicles would be unable to enter. I infer the strata is arguing that once the applicants' truck cleared the gate, the applicants could no longer depend on the clearance sign's information.

28. I do not find the strata's argument persuasive. I find a reasonable person would understand a clearance sign to mean the height of the garage's drivable areas. The pipes are undisputedly over the driving lanes in the middle of the garage. Once a driver confirmed their vehicle was under the clearance height, I find it unreasonable to expect them to get out and double-check each pipe they drive under.

29. The strata also argues the joints were painted red, which should have provided enough contrast to draw the driver's attention. However, in the absence of any other indication of the joints' heights, I find their red colour does not make it clear they are a height-related hazard.

30. Finally, it is undisputed that the strata installed a new sign after it received notice of the applicants' claim. The new sign says the maximum clearance is 6 feet, 8 inches. The strata says the change should not be taken as an admission of any breach of care. While I acknowledge the strata does not admit any breach, I find it meaningful that they have changed the clearance to reflect a lower height that accommodates the pipes and joints, and that they say they did so after receiving notice of this the claim. While the strata's decision to amend the sign does not determine whether it initially failed to meet its duty of care, such a remedial action is a factor to consider.[2]

[2] See: *Cahoon v. Wendy's Restaurant*, 2000 BCSC 629, at para 21.

31. So, I find the applicants have proven the strata was negligent in installing an inaccurate sign.

Damages

32. The applicants submitted U-Haul's invoice to Mr. Biden, paid in full, that includes a charge for vehicle damage of $2,800 plus GST. While the invoice also has a charge for PST, I find it does not align with the amount U-Haul charged for vehicle damage.

33. The invoice also includes rental charges, environmental fees, mileage, and insurance. The applicants do not explain how they calculated their claimed damages of $2,944.60.

34. The invoice is addressed to Mr. Biden, so he is the one apparently entitled to damages. So, I find Mr. Biden is entitled to $2,800 plus $140 in GST, for a total of $2,940.

35. The *Court Order Interest Act* applies to the CRT. The applicants are entitled to pre-judgment interest on the damages from November 19, 2020, the paid invoice's date, to the date of this decision. This equals $212.85.

36. Under CRTA section 49 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.

37. Given the change in jurisdiction, I direct CRT staff to refund the applicants $100 in fees to reflect the difference between the cost of a small claim and strata property claim. I find the strata must pay the applicants the remaining $125 in paid CRT fees.

ORDERS

38. Within 14 days of the date of this order, I order the strata to pay Mr. Biden a total of $3,277.85, broken down as follows:

    a. $2,940 in damages for negligence,

b. $212.85 in pre-judgment interest under the *Court Order Interest Act*, and

c. $125 in CRT fees.

39. Mr. Biden is entitled to post-judgment interest, as applicable.

40. I dismiss the applicants' remaining claims.

41. Under section CRTA section 58.1, 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.

Christopher C. Rivers, Tribunal Member