



Civil Resolution Tribunal

Date Issued: March 7, 2024

File: SC-2023-000621

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lewis v. City of Surrey*, 2024 BCCRT 234

B E T W E E N :

JACQUELINE LEWIS

APPLICANT

A N D :

SURREY, CITY OF

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Alison Wake

INTRODUCTION

1. This is a small claims dispute for personal injury damages. Jacqueline Lewis says she tripped and fell in a crosswalk maintained by the City of Surrey (City). She claims \$5,000 in pain and suffering damages and \$80 in physiotherapy expenses. Mrs. Lewis is self-represented.

2. The City says that Mrs. Lewis has failed to prove that it is liable for her injuries, and it asks me to dismiss this dispute. The City is represented by Wassan Aujla, in-house legal counsel.
3. For the following reasons, I dismiss Mrs. Lewis's claims.

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). CRTA section 2 says that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
5. 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. Neither party requested an oral hearing, and 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. 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.
7. I note Mrs. Lewis submitted some evidence after the deadline to do so. This evidence primarily consists of her own handwritten notes on documents the City provided in evidence. I decided to admit this late evidence, as I find it is relevant to the dispute. However, given my conclusions below dismissing Mrs. Lewis's claims, I decided it was not necessary to give the City an opportunity to comment on the late evidence.

ISSUE

8. The issue in this dispute is whether the City is responsible for Mrs. Lewis's injuries, and if so, whether it must pay Mrs. Lewis \$5,000 for her claimed damages.

EVIDENCE AND ANALYSIS

9. As the applicant in this civil proceeding, Mrs. Lewis must prove her claims on a balance of probabilities, meaning more likely than not. While I have considered all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
10. On March 5, 2022, Mrs. Lewis was crossing 152nd Street at 16th Avenue in Surrey, BC. She was walking from west to east, in the crosswalk on the north side of the intersection. Mrs. Lewis says that she tripped over a "hole" in the crosswalk pavement. She says this caused her to stumble to the other side of the road, where she ultimately fell and suffered injuries. As noted, Mrs. Lewis claims \$5,000 for pain and suffering damages and \$80 for physiotherapy expenses. However, her claim is limited to \$5,000 total, as this is the CRT's small claims monetary limit.
11. The City does not dispute that Mrs. Lewis fell at the intersection she described, and that it is responsible for maintaining that intersection. However, the City says that it is not responsible for Mrs. Lewis's claimed damages, for several reasons.
12. First, the City argues that Mrs. Lewis's Dispute Notice does not specify a "cause of action", or legal basis, for her claim. I agree, but find this does not mean Mrs. Lewis's claim cannot proceed. I find it would be inconsistent with the CRT's accessible, informal, and flexible mandate to dismiss a claim brought by a self-represented applicant because it does not explicitly identify the legal basis the applicant relies on. The CRT routinely infers the alleged legal cause of action based on the parties' submissions. Here, although she does not use these exact words, I find Mrs. Lewis is alleging that the City acted negligently in failing to maintain the crosswalk.
13. To show the City was negligent, Mrs. Lewis must prove that (a) the City owed her a duty of care, (b) the City breached the standard of care, (c) Mrs. Lewis sustained a loss, and (d) the City's breach caused that loss.¹

¹ *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 at paragraph 3.

14. I begin with the duty of care. Public authorities, like the City, do not owe a duty of care to public property users if their actions were based on a policy decision. There is an exception to this principle if the policy decision is made in bad faith or is so irrational or unreasonable that it is not a proper exercise of discretion.² If a claim arises from an operational decision rather than a policy decision, the standard negligence analysis applies.
15. The City says that it relies on service requests and reports from members of the public or City staff regarding any potential issues observed on City roads, because it is not able to carry out recurring scheduled inspections of its roads due to budget restraints. I infer the City argues that its complaints-based policy for road maintenance is rational and made in good faith. The City did not provide documentary evidence of this policy, but provided an affidavit from its Streets Manager, MB, describing it. I accept that MB is qualified to provide evidence about the City's road maintenance policies.
16. In *Oser v. Nelson (City of)*,³ the court found that a similar complaints-based policy was not irrational, as there was no evidence that clearly dangerous situations were being ignored. I find the same applies here, and Mrs. Lewis has not provided any evidence that the City's policy decision was irrational, unreasonable, or otherwise made in bad faith.
17. In their affidavit, MB says that they reviewed the City's service request records for the two-year period prior to Mrs. Lewis's fall. They say that while there were two service requests for nearby areas in February 2022, neither was for the particular intersection where Mrs. Lewis fell. I accept this, as it is supported by the service requests in evidence. So, I find there is no evidence that the City did not follow its policy here.
18. While I accept that Mrs. Lewis tripped at an intersection maintained by the City, and suffered injuries as a result, this does not necessarily mean that the City is responsible for her injuries. The City is not an insurer against injuries resulting from

² *Lowe v. Sidney (Town of)*, 2020 BCSC 335 at paragraphs 23 to 28.

³ 1997 CanLII 1388 (BCSC).

the use of its streets.⁴ Here, because the City's actions were consistent with its policy, which I have found is rational and made in good faith, I find the City did not owe Mrs. Lewis a duty of care with respect to the alleged hazard at the intersection. I dismiss her claim on that basis.

19. Even if the City had received a service request about the intersection where Mrs. Lewis fell, it argues that it would not have required repair in any event. In their affidavit, MB says that while there are some "marks and depressions" in the roadway at the intersection, they do not warrant repair, as they are "reasonable and standard deviations".
20. Mrs. Lewis provided a photograph which she says she took at the crosswalk in question. It shows a small hole in the pavement. I find this photograph alone is insufficient to conclude that the City obviously breached a reasonable standard of care for road maintenance. As Mrs. Lewis provided no other evidence about the applicable standard of care or the City's alleged breach of it, I would have dismissed her claim in any event.
21. I note that Mrs. Lewis disputes several of the City's adjuster's findings in a report that it made to the City, such as that she was outside of the marked crosswalk when she tripped, or that she was rushing across the road. This decision does not turn on those disputed facts, so I find it unnecessary to address them in detail here.

CRT FEES AND EXPENSES

22. Under CRTA section 49 and the 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. The City is the successful party, but it paid no CRT fees. As Mrs. Lewis was

⁴ *Craigie v. Lehigh Hanson Materials Limited*, 2020 BCSC 12 at paragraph 64, citing *Fafard v. City of Quebec (1917)*, 1917 CanLII 69 (SCC).

unsuccessful, I dismiss her claim for CRT fees. Neither party claimed dispute-related expenses.

ORDERS

23. I dismiss Mrs. Lewis's claims and this dispute.

Alison Wake, Tribunal Member