



Civil Resolution Tribunal

Date Issued: June 20, 2024

File: SC-2023-000214

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Cossette v. Home Depot of Canada Inc.*, 2024 BCCRT 575

BETWEEN:

DAYLEN COSSETTE

APPLICANT

AND:

HOME DEPOT OF CANADA INC. and THE CARR GROUP

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Mark Henderson

INTRODUCTION

1. This is a personal injury dispute arising from the delivery and installation of a washer/dryer.
2. The applicant, Daylen Cossette, says the respondents, Home Depot of Canada Inc. and The Carr Group did not properly deliver and install his LG Washtower

washer/dryer. The applicant says he had to hire a contractor to finish the installation. The applicant injured his finger helping the contractor move the washer/dryer. The applicant claims \$1,000 each for i) the injury to his finger, ii) punitive damages, and iii) stress injury and having to hire a contractor for the installation, for a total claim of \$3,000.

3. The applicant is self-represented. The Carr Group agreed to indemnify Home Depot Canada Inc. The Carr Group and Home Depot Canada Inc. are represented by an employee of The Carr Group. The Carr Group did not file a Dispute Response so is technically in default, which I address below.
4. For the reasons below, I dismiss the applicant's claim and this dispute.

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. 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.
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 the respondents were negligent, and if so, what remedy is appropriate.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant must prove his claims on a balance of probabilities. 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.
11. The applicant purchased the washer/dryer from Home Depot on September 4, 2022. The applicant did not provide a receipt for the washer/dryer or evidence of a contract for delivery and installation of the washer/dryer. The applicant says he told the salesperson that he would need delivery and installation of the washer/dryer.
12. I infer from the respondents' submissions that Home Depot contracted with The Carr Group or its affiliate B&N Delivery Service (B&N) to deliver the washer/dryer. Although The Carr Group is technically in default, I find it is participating in this dispute as Home Depot's representative, so nothing turns on its technical default status.
13. B&N is not a named party to this dispute. It is not clear if B&N is incorporated but it appears to be a business arm, affiliate or subsidiary of The Carr Group. The Carr Group has submitted evidence on B&N's letterhead and has not raised concerns about improper names of the parties. Where I use the term "respondents" I refer to Home Depot, The Carr Group and its affiliate B&N.
14. B&N delivered the washer/dryer on September 14, 2022. B&N could not install the duct for the dryer. The applicant says B&N left the washer/dryer in his hallway and

did not complete the installation. He says B&N said they might be able to return the next day, but B&N did not return to finish the installation.

15. The applicant hired a contractor on September 15, 2022, to complete the installation. The applicant says he injured his finger helping the contractor move the washer/dryer. The applicant provided a photograph showing a small cut to one finger on his left hand. I accept the applicant's evidence that he injured his finger while moving the washer/dryer.
16. The respondents say that the applicant signed off on the delivery of the washer/dryer. The respondents provided a copy of a Customer Acceptance Form, which appears to show the applicant's name and signature. The respondents also say that the applicant did not contact Home Depot or B&N on September 15 to schedule completion of the installation.
17. I find that the Customer Acceptance Form does not contain any information about whether the washer/dryer was fully installed. The Customer Acceptance Form only acknowledges that delivery occurred.
18. The applicant and the respondents both provided a similar photograph showing the washer/dryer still wrapped in plastic and near a doorway. I find that B&N did not complete the installation of the washer/dryer.
19. The respondents also say the applicant was not required to help the contractor move the washer/dryer. The respondents say that because the applicant chose to help the contractor, the applicant is responsible for his injured finger.
20. The applicant said that he contacted Home Depot on September 15, 2022, seeking compensation for hiring a contractor and for the injury to his finger. The applicant does not say whether he asked to reschedule the installation appointment. The applicant said Home Depot reimbursed him \$300 for the contractor's cost but did not compensate him for his injured finger.

21. The applicant's submissions do not clearly state if he claims for breach of contract or negligence. I find that since Home Depot reimbursed the applicant for the contractor's cost, any damages for breach of the contract have been satisfied. So, I find the applicant's claim is in negligence.
22. To succeed in negligence, the applicant must show that the respondents owed him a duty of care, that the respondents breached the standard of care, and that the respondents' alleged negligence caused the injury (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27).
23. I first consider causation because I find causation is determinative. Causation involves two elements – factual and legal causation. The test for factual causation is known as the "but for" test (see *Nelson (City) v. Marchi*, 2021 SCC 41). The question is: but for the alleged negligent installation, would the applicant have avoided the loss? In other words, if B&N had finished installing the washer/dryer on September 14, would the applicant have avoided his injured finger? I find that if B&N had finished installing the washer dryer on September 14, 2022, then the applicant would not have needed to move the washer/dryer. The applicant would not have injured his finger in this way.
24. The second element of causation is legal causation. The test for legal causation is whether the harm is too remote from the wrongful conduct to hold the defendant liable (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27). The applicant must show that it was reasonably foreseeable that he would suffer an injury because of the improperly installed washer/dryer. Here I find that the applicant's finger injury was too remote from the alleged negligence. The applicant's finger injury occurred after the applicant decided to help the contractor move the washer/dryer. It was not reasonably foreseeable that the applicant would choose to help the contractor move the washer/dryer and get injured while moving the washer/dryer. For this reason, I find that the applicant has not proved B&N's negligence, and so B&N is not liable to compensate the applicant for his finger injury.

25. The applicant also seeks punitive damages against the respondents. Punitive damages are meant to punish a “morally culpable” respondent and are usually only granted for malicious and outrageous acts (see: *Honda Canada Inc. v. Keays*, 2008 SCC 39 at paragraphs 62 and 68). The purpose of punitive damages is to punish extreme conduct worthy of condemnation, and can only be awarded to punish harsh, vindictive, reprehensible and malicious behaviour (see: *Vorvis v. ICBC*, [1989] 1 SCR 1085). Punitive damages should be resorted to only in exceptional cases and with restraint (see: *Whiten v. Pilot Insurance Co.*, 2002 SCC 18 at paragraph 69).
26. Here I find the evidence does not support punitive damages. B&N’s installers arrived at the applicant’s residence at 7:00pm on September 14, 2022. The applicant says the installers told him they had been delivering appliances since 6:00am that day. The applicant said it was clear the installers did not want to stay very long at the applicant’s residence. The installers were not able to install the dryer vent duct. The installers told the applicant they might try to call him the next day to complete the installation. The applicant says the installers never called him. I find no evidence that the Home Depot, The Carr Group or B&N’s conduct was vindictive, reprehensible, or malicious.
27. The applicant also seeks damages for emotional and stress injury. Damages for emotional and stress injury are considered a form of aggravated damages. Aggravated damages are compensatory damages that may be awarded when a respondent’s conduct causes intangible injuries, such as mental distress and anxiety. Aggravated damages only arise when a respondent’s behaviour has been “particularly poor” and are rarely awarded. See *Gibson v. F.K. Developments Ltd.*, 2017 BCSC 2153. I find that the respondents’ actions here do not warrant damages for emotional and stress injury.
28. For the above reasons, I dismiss the applicant’s claim and this dispute.
29. 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. The respondents were successful but did not pay CRT

fees. I dismiss the applicant's claim for CRT fees. Neither party claimed dispute-related expenses.

ORDER

30. I dismiss the applicant's claim and this dispute.

Mark Henderson, Tribunal Member