



Civil Resolution Tribunal

Date Issued: June 26, 2024

File: SC-2023-007347

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Buchmann v. Diamond Parking Ltd.*, 2024 BCCRT 605

B E T W E E N :

CARMEN BUCHMANN

APPLICANT

A N D :

DIAMOND PARKING LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Jeffrey Drozdiak

INTRODUCTION

1. This is a dispute about vehicle damage.
2. The applicant, Carmen Buchmann, tried to park her rental van in a parkade operated by the respondent, Diamond Parking Ltd. (Diamond). Ms. Buchmann says Diamond was negligent by not ensuring the parkade was safe to drive through. Ms. Buchmann

seeks compensation of \$4,004.85 for expenses she incurred when the van's roof hit a bulkhead in the parkade.

3. Diamond denies it was negligent. Diamond says it operated a safe premises for vehicles to park, and the vehicle damage was Ms. Buchmann's fault.
4. Ms. Buchmann represents herself. Diamond is represented by someone I infer is a principal.
5. For the reasons that follow, I dismiss Ms. Buchmann's claims and this dispute.

JURISDICTION AND PROCEDURE

6. 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.
7. 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.
8. 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 court.
9. 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

10. The issue in this dispute is whether Diamond must reimburse Ms. Buchmann for the vehicle damage.

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, Ms. Buchmann, as the applicant, must prove her claims on a balance of probabilities (meaning “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.
12. The following facts are undisputed:
 - a. On December 2, 2022, Ms. Buchmann drove a cargo van into a parkade operated by Diamond.
 - b. At the parkade’s entrance, there is a height clearance sign that reads, “Clearance Max. 6’,0” (1.83 m).”
 - c. Ms. Buchmann travelled to the upper deck of the parkade. As she was turning left up an incline ramp, the van’s roof hit a bulkhead.
 - d. The collision damaged the van’s roof towards the mid to rear driver’s side.
13. Ms. Buchmann says before entering the parkade, she ensured the van easily passed underneath the height clearance sign. Once inside the parkade, Ms. Buchmann says she was very cautious. She says she took various steps to confirm the van had enough clearance to go ahead. Ms. Buchmann says she was surprised when her vehicle hit the bulkhead, which she says was completely hidden by a large rental car sign.
14. In her Dispute Notice, Ms. Buchmann claimed \$3,754.85 for vehicle damages and \$250 for time, effort, and legal consult. Ms. Buchmann did not provide any evidence

for the \$250 expense. Ms. Buchmann's evidence and submissions only addressed vehicle damage. So, I find Ms. Buchmann's claim is only for \$3,754.85.

Must Diamond Reimburse Ms. Buchmann for the Vehicle Damage?

15. Ms. Buchmann alleges that Diamond was negligent by not maintaining a safe premises, contrary to section 3(1) of the *Occupiers Liability Act* (OLA). OLA section 3(1) generally says an occupier of a premises owes a duty of care to ensure a person's personal property, such as a vehicle, will be reasonably safe while on the premises. OLA section 3(2) says the duty of care applies to the premises' conditions.
16. I find Diamond was an occupier of a premises under the OLA. So, I find the OLA applies, and Diamond had a duty to ensure the parkade's conditions were safe.
17. Ms. Buchmann says the parkade was unsafe and presents 4 arguments to support her claim.

Diamond Hung the Height Clearance Sign at the Wrong Height

18. First, Ms. Buchmann argues that the height clearance sign listed a 6-foot clearance, but Diamond did not hang the sign at 6 feet. Instead, she says Diamond hung the height clearance sign at 7 feet, which she claims was misleading.
19. In support, Ms. Buchmann provided a photograph of the height clearance sign at the parkade's entrance. Ms. Buchmann also provided a photograph of a different height clearance sign installed by the new parkade operator. She says the new height clearance sign is hung at 6 feet. The photographs were not taken at the same angle, and height reference markings are not visible. So, I find I cannot conclude from these photographs whether either height clearance sign is hung at a particular height.
20. Diamond says it hung the height clearance sign at 6 feet and all clearances in the parkade were greater than 6 feet. In support, Diamond provided various photographs showing measurements it made around the parkade, and 2 photographs of 2020 GMC S25C cargo vans. Diamond says this van was the make and model driven by Ms. Buchmann, and it lists the van's dimensions, including a vehicle height of 79.7

inches. I find nothing turns on these various measurements given my conclusion below.

21. As noted, Ms. Buchmann must prove her claim. This means Ms. Buchmann must provide objective evidence to show that Diamond hung the height clearance sign at 7 feet. Ms. Buchmann says she measured the sign's height in December 2022 with a co-worker, NA. However, Ms. Buchmann did not provide a statement from NA, or photographs showing the sign's height next to a measuring tape.
22. In reply submissions, Ms. Buchmann argues that if her vehicle did hit the height clearance sign, presumably a parkade attendant sitting at the entrance would have seen it. If a parkade attendant saw Ms. Buchmann's vehicle hit the sign, they may have been obligated to tell her. However, Diamond did not get an opportunity to respond to this argument or provide more evidence. So, in the interests of procedural fairness I decline to address this submission.
23. Based on the evidence provided, I find Ms. Buchmann has not proven that the height clearance sign was hung at the wrong height. So, I find the height clearance sign did not create an unsafe premises. My findings would not change even if Ms. Buchmann had proven that Diamond hung the height clearance sign at a different height. I say this for the following reasons.
24. I find the height clearance sign did not have any markings showing that a vehicle must be below the sign's height. In comparison, the new height clearance sign Ms. Buchmann says hangs at 6 feet has:
 - a. Down arrows on either side, and
 - b. A black and orange striped warning bar across the sign's bottom showing no vehicle should be over the sign's height.
25. Ms. Buchmann also did not provide any authority that says a parkade operator must hang a height clearance sign at the stated height. In *Titan Window Frames Ltd. v. Ivanhoe Cambridge Inc.*, 2021 BCCRT 251, the CRT considered this issue for a

parkade in another city. The tribunal member found drivers have an obligation to know their vehicle's height, particularly when entering parkades with height clearance warnings. Although not binding on me, I agree with the reasoning in *Titan*.

26. I accept that Ms. Buchmann drove cautiously within the parkade to avoid any hazards. However, the height clearance sign listed a 6-foot clearance, which I find is a low clearance height. Ms. Buchmann was driving an oversized and unfamiliar rental vehicle. In these circumstances, a driver should confirm the vehicle's height before entering an enclosed space. Ms. Buchmann argues it would be very difficult for a driver to visually confirm 1.83 m. That may be true, but Ms. Buchmann could have contacted the rental car company to confirm the vehicle's dimensions before entering the parkade.

Diamond Placed a Large Sign in Front of the Bulkhead

27. Second, Ms. Buchmann says Diamond placed a large rental car sign in front of the bulkhead. Ms. Buchmann argues that this sign made it impossible for her to see the hazard. In support, Ms. Buchmann provided a photograph of the rental car sign.
28. Based on the photograph provided, I find the rental car sign did not make the hazard impossible to see. I accept the rental car sign hides the change in height. However, the photograph shows the sign, and both the roof and the bulkhead are visible behind it. I can see the roof at one height to the right side of the sign, and the roof at a lower height to the left side of the sign.
29. Even if the rental car sign completely hid the change in roof height, to be unsafe the bulkhead must have been below the 6-foot clearance posted at the entrance. Ms. Buchmann did not provide evidence showing the bulkhead's height. However, she admits the lowest point of the bulkhead is about 6 feet from the ground. Since the bulkhead was not below 6 feet, I find the bulkhead was not a hazard given the height warning at the parkade's entrance. So, I find Ms. Buchmann has not proven the rental car sign created an unsafe premises.

Multiple People Have Hit the Bulkhead

30. Third, Ms. Buchmann argues that multiple people have hit the bulkhead, proving it was a safety hazard. She says Diamond must have known about this safety issue but did not fix it. In support, Ms. Buchmann provided a close-up photograph of the bulkhead showing damage to the concrete.
31. I find this argument is speculative. There is no evidence before me about what caused the concrete damage in the photo. Diamond says the parkade has been running since 1969. Ms. Buchmann does not dispute this. There are many ways that the concrete could have been damaged over the decades. So, I reject Ms. Buchmann's argument that the damaged bulkhead proves Diamond was negligent.

A New Parkade Operator Made Safety Upgrades

32. Finally, Ms. Buchmann says in 2023, a new company began running the parkade and made various changes to improve the parkade's safety. She argues this proves that Diamond was negligent in running the parkade. In support, Ms. Buchmann provided photographs showing:
- a. A new height clearance sign, which she says is hung at 6 feet.
 - b. Black and yellow danger tape on a bulkhead, which she says makes the drops in height more visible.
 - c. New paint on the parkade's railings and curbs, which she says makes these objects more visible.
33. Ms. Buchmann admits the new parkade operator did not remove the rental car sign. From the photographs provided, the bulkhead at issue also does not appear to have black and yellow danger tape. Since the new operator did not fix these alleged issues, I find this evidence does not support Ms. Buchmann's negligence argument.
34. I find Ms. Buchmann's final argument is speculative. The new parkade operator could have made these changes for safety reasons, or for other business reasons. There

is no evidence before me from the new operator explaining why they made these changes. So, I reject Ms. Buchmann's argument that recent changes to the parkade prove Diamond was negligent.

Conclusion

35. In conclusion, I find Ms. Buchmann has not proven that Diamond was negligent when operating the parkade. So, I dismiss Ms. Buchmann's reimbursement claim.

36. 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. As Ms. Buchmann was unsuccessful, I dismiss her claim for reimbursement of CRT fees. Diamond is the successful party. It paid no CRT fees and claims no dispute-related expenses, so I award no reimbursement.

ORDER

37. I dismiss Ms. Buchmann's claims and this dispute.

Jeffrey Drozdiak, Tribunal Member