



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Afhami v. Triovest Realty Advisors (B.C.) Inc.*, 2024 BCCRT 655

B E T W E E N :

SHAHAB AFHAMI

APPLICANT

A N D :

TRIOVEST REALTY ADVISORS (B.C.) INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Jeffrey Drozdiak

INTRODUCTION

1. This is a dispute about vehicle damage.
2. The applicant, Shahab Afhami, was driving his vehicle into an underground parkade in a commercial building managed by the respondent, Triovest Realty Advisors (B.C.)

Inc. (Triocest), when the entrance gate closed and scraped his vehicle. Mr. Afhami seeks compensation of \$2,741.90 for repair costs.

3. Triocest denies it is responsible for the vehicle damage. Triocest says it regularly maintains the entrance gate, and the gate meets all safety standards. Triocest also claims Mr. Afhami signed a parking agreement, which waived liability for any vehicle damage that happens in the parkade.
4. Mr. Afhami represents himself. Triocest is represented by someone I infer is an employee.
5. For the reasons that follow, I dismiss Mr. Afhami'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). CRTA section 2 says that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
7. 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 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. 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 court.
9. 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

10. The issue in this dispute is whether Triovest is responsible for Mr. Afhami's vehicle damage, and if so, is Mr. Afhami entitled to his claimed damages?

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, Mr. Afhami, 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 the evidence and argument that I find relevant to provide context for my decision.

The Vehicle Damage

12. It is undisputed that on June 3, 2022, Mr. Afhami was driving his vehicle into an underground parkade in a commercial building managed by Triovest when the entrance gate closed in front of his vehicle. The entrance gate scraped Mr. Afhami's vehicle, damaging the grill, hood, and bumper.
13. Triovest provided time and date stamped video footage of the incident. From the video, I find:
 - a. At 1:34:48, the entrance gate begins to lift and fully opens at 1:34:56.
 - b. At 1:35:02, Mr. Afhami's vehicle begins driving into the parkade, but the vehicle suddenly stops at 1:35:04 when the entrance gate begins to close. The entrance gate closes in front of the vehicle without stopping.
 - c. At 1:36:06, the entrance gate lifts again and at 1:36:12 Mr. Afhami's vehicle drives in before the entrance gate fully opens. The entrance gate begins to close at 1:36:23.
14. Mr. Afhami provided pictures of the vehicle damage and an estimate from an auto body shop for \$2,741.90 to fix the damage. Triovest does not dispute this amount, but argues it is not responsible for the repairs.

Is Triovest Responsible for the Vehicle Damage?

15. Mr. Afhami claims the entrance gate was unsafe. Mr. Afhami says an overhead automatic gate must include:
 - a. A non-contact photoelectric sensor that causes the gate to reverse direction when it detects an object below the gate.
 - b. A contact pneumatic edge sensor that causes the gate to reverse direction when the gate hits an object.
16. Mr. Afhami argues that the safety sensors were either installed incorrectly, or not working properly, which caused the gate to scrape his vehicle. Mr. Afhami claims that Triovest was negligent by not ensuring the parkade was safe.
17. To prove Triovest was negligent, Mr. Afhami must show Triovest owed him a duty of care, Triovest breached the standard of care, Mr. Afhami suffered a loss, and Triovest's breach caused the loss (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27).
18. I find that Triovest owed Mr. Afhami a duty of care, as I find Triovest was an occupier of a premises under 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.
19. The standard of care under the OLA and for negligence is the same. It is to protect others from an objectively unreasonable risk of harm (see *Agar v. Weber*, 2014 BCCA 297 at para 30). This means Mr. Afhami must prove the entrance gate posed an objectively unreasonable risk of harm. For the following reasons, I find Mr. Afhami has not proven this.
20. First, Triovest says it has routine preventative maintenance done on the entrance gate 4 times per year, and the safety sensors were functioning properly. In support, Triovest provided invoices from Nikl's "One Call" Property Services (Nikl's) for inspections on January 18, 2022, April 20, 2022, June 30, 2022, and October 24,

2022. Each invoice includes a line item for “general service on (3) garage gates, tested safety devices, lubed and adjusted.” I accept this evidence, and I find Triovest routinely maintained the entrance gate and the safety sensors.

21. I place significant weight on Triovest last servicing the gate on April 20, 2022, 6 weeks before the incident. I also note that Nikl’s did not complete any sensor repairs on the 2 inspections after the incident. Since Nikl’s work included testing safety devices, I find that if a sensor did not work, Nikl’s likely would have fixed the sensor, or at least noted an issue.
22. Second, Mr. Afhami argues the edge sensor did not work properly during the incident. I find it is unclear from the video footage whether the edge sensor failed. The security footage is shot from inside the parkade, so the point of contact is not clearly visible. The video only shows that the parkade gate closed without resistance.
23. Mr. Afhami argues Triovest fixed the edge sensor by March 21, 2024, after he started his CRT claim, proving the edge sensor did not work. In support, Mr. Afhami provided photographs of the edge sensor on June 17, 2022, and March 21, 2024. Based on this evidence, I am unable to determine if the edge sensor was not working during the incident.
24. Third, Mr. Afhami argues that the photoelectric sensor was misaligned and did not sense his vehicle. Triovest says it installed the sensors directly inside the parkade to industry standards. It argues this is necessary to minimize the likelihood of individuals tampering with the equipment and gaining unauthorized access inside the gated area.
25. I find a safety sensor’s installation location, or alleged failure, is subject matter outside ordinary knowledge. So, I find Mr. Afhami needed to provide expert opinion evidence to prove the safety sensors either failed, or Triovest did not install them properly (see *Laidar Holdings Ltd. v. Lindt & Sprungli (Canada) Inc.*, 2015 BCSC 845 at para 22).
26. Mr. Afhami did not provide any expert opinion evidence. On August 8, 2022, Mr. Afhami wrote to Triovest saying he had spoken to experts about the parking gate accident. Mr. Afhami wrote that the experts’ opinion was that the parkade gate

needed 2 functioning safety sensors, and the sensors did not work. Mr. Afhami did not provide any opinion evidence from these experts. Instead, Mr. Afhami provided:

- a. The US Consumer Product Safety Commission's safety standards for automatic residential garage door operators, and
- b. An Alberta overhead door manufacturer's reference guide for commercial overhead door safety compliance.

27. I accept that these safety materials reference the need for a photoelectric sensor and a pneumatic edge sensor. However, I find this evidence is not relevant. The safety standards are from other jurisdictions, and reference laws that do not apply to BC. Triovest also does not dispute that the parkade gate requires both sensors. It provided its own safety policy, UL-325 Safety Standards, confirming the need for both sensors. Instead, Triovest argues that it correctly installed the sensors, and the sensors worked properly. I find I cannot conclude from Mr. Afhami's safety materials that the sensors malfunctioned, or that Triovest did not install the sensors correctly.

28. Finally, Mr. Afhami argues that a Triovest employee, ES, admitted to him that the photoelectric sensor was misaligned and there had been similar accidents in the past. There is no evidence before me that ES is an expert on installing parkade gate sensors. So, I give this alleged admission no weight. Triovest also provided internal records showing from January 1, 2020 to April 11, 2024 there were no complaints or work orders related to the entrance gate. Without documentary evidence to the contrary, I accept there were none. So, I find Mr. Afhami's conversation with ES does not prove Triovest breached the standard of care.

29. Mr. Afhami also argues that Triovest was negligent because the entrance card reader was mounted to the left of the parkade's entrance, and vehicle traffic drives on the left in the parkade. Mr. Afhami claims Triovest should have a sign or pavement markings outside the entrance to notify drivers that traffic flow is reversed in the parkade. I find the vehicle traffic flow did not directly cause the incident, and Mr.

Afhami did not suffer a loss due to the alleged unsafe condition. So, I find this claim does not prove Triovest was negligent.

30. Since Mr. Afhami has not proven that Triovest breached the standard of care, I find Mr. Afhami has not proven that Triovest was negligent. Therefore, I find I do not need to address whether Triovest can rely on a liability waiver as a defence.

Conclusion

31. In conclusion, I find Mr. Afhami has not proven that Triovest was negligent. So, I dismiss Mr. Afhami's damages claim.
32. 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 Mr. Afhami was unsuccessful, I dismiss his claim for reimbursement of CRT fees. Triovest is the successful party. It paid no CRT fees and claims no dispute-related expenses, so I award no reimbursement.

ORDER

33. I dismiss Mr. Afhami's claims and this dispute.

Jeffrey Drozdiak, Tribunal Member