Civil Resolution Tribunal

Date Issued: December 10, 2024

File: SC-2023-007123

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kraljii v. Starbucks Coffee Canada, Inc.*, 2024 BCCRT 1254

B E T W E E N :

JULIE KRALJII

APPLICANT

A N D :

STARBUCKS COFFEE CANADA, INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Jeffrey Drozdiak

INTRODUCTION

1. This dispute is about an injured finger.

2. The applicant, Julie Kraljii, injured the knuckle of their left index finger while opening the patio door at a café run by the respondent, Starbucks Coffee Canada, Inc. (Starbucks). Ms. Kraljii claims $2,800 for pain and suffering caused by the injury.

3. Starbucks argues it took reasonable care in the circumstances to ensure its café was safe, and the door was not inherently hazardous. Starbucks claims Ms. Kraljii caused the injury by awkwardly opening the door and not paying attention. Starbucks denies it is liable for the injury.

4. Ms. Kraljii represents themselves. Starbucks is represented by an in-house paralegal.

5. For the following reasons, I dismiss Ms. Kraljii'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 hearing's format, including by writing, telephone, videoconferencing, email, or a combination of these. I considered the potential benefits of an oral hearing. Here, there are no significant credibility issues, and I am properly able to assess and weigh the documentary evidence and submissions before me. So, the CRT's mandate to provide proportional and speedy dispute resolution outweighs any potential benefit of an oral hearing. Overall, I find that an oral hearing is not necessary in the interests of justice, and I decided to hear this dispute through written submissions.

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.

Respondent's Name

10. In the Dispute Notice, Ms. Kraljii named the respondent as "Starbucks Coffee Canada Inc.". However, Starbucks' corporate search in evidence shows that its correct name is "Starbucks Coffee Canada, Inc." The parties moved forward on the basis that Starbucks had been correctly named in all documents and submissions. So, I have exercised my discretion under CRTA section 61 and amended Starbucks' name in the style of cause to reflect the corporate search.

Late Evidence

11. Ms. Kraljii provided evidence after the CRT's deadline. The evidence included pictures of Ms. Kraljii's injury and the patio door, which I find are relevant to the issue in this dispute. Starbucks does not oppose admitting this late evidence.

12. Since Starbucks had the opportunity to comment on the late evidence, I find there is no prejudice in admitting it. Given the CRT's mandate that includes providing flexible and informal dispute resolution services, I have admitted the late evidence and considered it when making my decision.

ISSUE

13. The issue in this dispute is whether Starbucks must compensate Ms. Kraljii $2,800 for their injured finger.

EVIDENCE AND ANALYSIS

14. In a civil proceeding like this one, Ms. Kraljii, as the applicant, must prove their 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 Injury

15. On June 9, 2023, Ms. Kraljii says they met a friend for coffee at a Starbucks café. After picking up their order, Ms. Kraljii says they opened the door to go out to the patio. Ms. Kraljii says they used their left hand to pull down on the lever. As they opened the door, Ms. Kraljii says they cut the middle knuckle of their left index finger on the metal door frame.

16. Ms. Kraljii says they went to the barista and asked for a bandage. After that, Ms. Kraljii says they went to the bathroom and applied pressure to stop the bleeding, as the cut was “really bleeding”. When they got home, Ms. Kraljii says they unwrapped their finger and put on the bandage. That night, Ms. Kraljii says their finger throbbed and they had a terrible sleep.

17. For the injury, Ms. Kraljii saw a doctor three times, which is supported by clinical notes in evidence. On June 16, 2023, Ms. Kraljii visited a walk-in clinic, where the doctor noted that Ms. Kraljii had suffered a small cut with no sign of an infection. On July 5, 2023, Ms. Kraljii visited Dr. Karen Stancer, their family doctor. Dr. Stancer noted that the wound had healed, but the finger feels tight to bend and the knuckle still hurts if bumped. In a follow-up appointment on October 18, 2023, Dr. Stancer noted that the wound had healed, but Ms. Kraljii still experienced pain if the knuckle touched something.

18. In the months after the incident, Ms. Kraljii documented their pain from the injury. Ms. Kraljii provided a pain log from June 9, 2023 to January 6, 2024. In the journal, Ms. Kraljii writes how the injury remained painful even after the wound had healed. Actions such as pushing an elevator button, running, or bumping the knuckle were painful.

19. Ms. Kraljii says they are a hairdresser and fitness instructor, and these jobs were very painful after the incident. They say their scissors rested on the sore knuckle, and they could not bend their finger to grip weights. From pictures of the injury

provided by Ms. Kraljii, I accept that the injury looks painful and would be problematic for these activities.

20. On June 21, 2024, Dr. Stancer wrote an opinion letter about Ms. Kraljii's injury. In the letter, Dr. Stancer outlined how the injury severely affected Ms. Kraljii, and they diagnosed Ms. Kraljii with post-traumatic stress disorder. Given my conclusion below, I find it unnecessary to summarize this letter in detail or decide if it is admissible as expert opinion evidence.

21. Starbucks does not dispute that Ms. Kraljii injured themselves at the café. So, I accept that Ms. Kraljii cut their knuckle while opening the café's patio door. Based on Ms. Kraljii's evidence, I also accept that the injury significantly affected Ms. Kraljii's daily life. However, the main question I must decide in this dispute is whether Starbucks is liable for the injury.

Must Starbucks Compensate Ms. Kraljii for the Injury?

22. Ms. Kraljii argues Starbucks is responsible for the injury, but they do not say why. Starbucks acknowledges that it is an "occupier" of a "premises", under the *Occupiers Liability Act* (OLA). So, I find Ms. Kraljii's claim falls under the OLA.

23. OLA section 3(1) says an occupier of a premises owes a duty of care to ensure a person will be reasonably safe while on the premises. This means Starbucks had a duty to take all reasonable care in the circumstances and protect Ms. Kraljii from an objectively unreasonable risk of harm (see *Agar v. Weber*, 2014 BCCA 297 at paragraph 30).

24. To be successful in their claim, Ms. Kraljii must prove the patio door created an objectively unreasonable risk of harm. Notably, Ms. Kraljii did not provide any evidence to show how the door created such a risk. The fact that Ms. Kraljii was injured is not enough (see *Herron v. Value Industries Ltd.*, 2019 BCSC 878 at paragraph 15).

25. To assess whether the door created an objectively unreasonable risk of harm, I must consider factors including the likelihood of known or foreseeable harm, the gravity of the harm, the burden or costs to prevent the harm, and whether Starbucks followed industry standards (see *Agar* at paragraphs 31 to 33).

26. The greater the risk of harm, the greater the care needed to guard against it. In contrast, there are risks so small that a reasonable person would say that no steps are needed to protect others from harm. Not all conduct giving rise to risk will result in liability (see *Lawrence v. Prince Rupert (City) and B.C. Hydro & Power Authority*, 2005 BCCA 567 at paragraphs 21 to 22).

Known or Foreseeable Harm

27. Starbucks argues the patio door was not inherently hazardous and did not pose a known or foreseeable risk of harm.

28. In support, Starbucks provided four statements from staff, including IG, the barista who gave Ms. Kraljii a bandage, VT, the store's shift supervisor, CM, the store's manager, and GB, Starbucks' facilities manager. All four statements were signed in September 2024.

29. IG, VT, and CM say that customers and employees use the patio door many times per day without difficulty. They all say that no one else that they know of has ever injured themselves on the door. While not determinative, prior safe use has been found to be a relevant factor in deciding whether premises are reasonably safe (see *Cahoon v. Wendy*'s *Restaurant of Canada Inc.,* 2000 BCSC 629 at paragraph 16).

30. GB says they reviewed Starbucks' records and maintenance history for the café from mid-2021 to the present. In these documents, GB says there were no other recorded issues, including safety or injury issues, with the patio door.

31. After speaking with Ms. Kraljii, CM says they inspected the patio door and door frame. CM notes:

a. The patio door opened and closed properly, the handle rotated normally, and nothing was broken, out of place, or missing.

b. They used the handle to open the door without pinching or scraping their hand or fingers.

c. The frame and door jamb appeared to be finished and were not jagged, sharp, or uneven.

d. They decided there was nothing wrong or unsafe with the door, and there was no risk that needed to be addressed. So, they did not ask for the door to be fixed or changed.

32. VT also inspected the patio door after the incident and provided similar observations.

33. After reviewing pictures of the door and Starbucks' evidence, I find the likelihood that someone would injure themselves on the patio door is low. There is nothing that appears obviously dangerous about the door, and the door does not have any noticeable defects. Ms. Kraljii provided a picture showing how they opened the door. In the picture, Ms. Kraljii can be seen taking an underhand grip with their left hand and pulling the door lever down. I find it was not reasonably foreseeable for Starbucks to expect someone to open a door in this manner and injure themselves on the door frame.

Gravity of the Harm

34. The walk-in clinic notes in evidence say that Ms. Kraljii suffered "a small cut" on their left index finger. I acknowledge that Ms. Kraljii's injury significantly impacted their daily life and remained painful for months after the incident. However, overall, I find the gravity of the harm created by the door was low.

Burden or Costs to Prevent the Harm

35. Neither party provided any evidence about the burden or cost to prevent a risk of harm. Presumably, it would involve replacing the patio door and door frame.

36. The duty imposed by the OLA is to take reasonable care in the circumstances to make the premises safe. The duty does not require occupiers to ensure that everyone using the premises will be absolutely safe. It does not extend so far as to require the occupier to remove every possibility of danger. The test is one of reasonableness, not perfection (see *Fulber v. Browns Social House Ltd.,* 2013 BCSC 1760 at paragraph 28).

Industry Standards

37. In their statement, Starbucks' facilities manager, GB, says they believe the door complies with the building code and meets industry standards. I find this is subject matter outside ordinary knowledge and can only be proven by expert opinion evidence (see *Miller v. Emil Anderson Maintenance Co. Ltd.*, 2013 BCSC 2304 at paragraph 58).

38. Since GB is employed by Starbucks, I find they are not neutral, and their statement does not satisfy the CRT's requirements for expert evidence under CRT rule 8.3(7). So, I place no weight on this comment. In any event, Ms. Kraljii has not provided any evidence to prove the door does not comply with the building code or fails to meet industry standards. As noted, Mr. Kraljii bears the burden of proving this.

Conclusion

39. Balancing the factors in *Agar*, I find the door did not pose an objectively unreasonable risk of harm. So, I find Starbucks met its duty of care under the OLA.

40. Since Ms. Kraljii has not proven Starbucks is liable for their injury, I dismiss their claim for $2,800.

CRT FEES AND DISPUTE RELATED EXPENSES

41. 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. Ms. Kraljii was unsuccessful, so I dismiss their claim for CRT fees and dispute-related expenses. Starbucks did not pay any CRT Fees, or claim any dispute-related expenses, so I order none.

ORDER

42. I dismiss Ms. Kraljii's claims and this dispute.

Jeffrey Drozdiak, Tribunal Member