



Civil Resolution Tribunal

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File: SC-2024-003160

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Falkenberg v. Vancouver Airport Authority*, 2025 BCCRT 1314

B E T W E E N :

BENTLEY FALKENBERG

APPLICANT

A N D :

VANCOUVER AIRPORT AUTHORITY and CONCORD PARKING LTD.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Peter Mennie

INTRODUCTION

1. The applicant, Bentley Falkenberg, left his vehicle in a parking lot operated by the respondent, Concord Parking Ltd. The other respondent, the Vancouver Airport Authority, manages the airport where the parking lot is located. Mr. Falkenberg says his vehicle's paddle shifter was broken when he picked it up. He claimed \$1,596.57

in his Dispute Notice to repair the paddle shifter, but increased his claim to \$1,746.65 in his submissions.

2. The respondents both say the vehicle was not damaged when Mr. Falkenberg picked it up. They also say they are not responsible for this damage under the terms and conditions listed on the Airport Authority's website.
3. Mr. Falkenberg is self-represented and is a former lawyer. Both respondents are represented by Concord's in-house lawyer, Chelsea Hazewinkel.
4. For the reasons below, I allow Mr. Falkenberg's claims against Concord and order it to pay \$1,596.57.

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 *Civil Resolution Tribunal Act* (CRTA) section 118. CRTA section 2 states that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
6. CRTA section 39 says the CRT has discretion to decide the hearing's format. Neither party requested an oral hearing. Some issues, such as when Mr. Falkenberg saw the broken paddle shifter, do depend on his credibility and an oral hearing could be of assistance. However, given that this is a relatively small claim, and bearing in mind the CRT's mandate for speedy and economical dispute resolution, I find that an oral hearing is not required. Both parties were given the opportunity to provide evidence to support their respective claims. Neither requested an oral hearing. So, I have decided this dispute based on the parties' documentary evidence and written submissions.
7. 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.

8. Under CRTA section 48(1), the CRT may make an order on terms and conditions it considers appropriate.
9. The respondents both provided website links to the Airport Authority's website which has terms and conditions about parking. Parties are instructed not to provide website links as evidence because website content can change over time. There is no way for a CRT member to know whether they are viewing the same content the parties viewed. I did not review or rely on these website links. The respondents' evidence included a Word document with these terms and conditions. I relied on this Word document in coming to my decision.

ISSUES

10. The issues in this dispute are:
 - a. Are either of the respondents responsible for the damage to Mr. Falkenberg's vehicle?
 - b. If so, what are Mr. Falkenberg's damages?

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, Mr. Falkenberg, as 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.
12. The parties agree that Mr. Falkenberg dropped his vehicle off at Vancouver airport's parking lot on April 4, 2023 and picked it up on April 12, 2023. His booking confirmation shows he paid the Airport Authority \$169.95 for valet parking.
13. Mr. Falkenberg says he picked his vehicle up at 10 pm when it was dark and he could not inspect his vehicle. He says he noticed a small plastic item on his

vehicle's floor mat the following day. His mechanic later identified this item as a paddle shifter which had fallen off the back of his steering wheel.

14. Mr. Falkenberg contacted the Airport Authority which referred him to Concord, the parking lot's operator. Concord's manager provided photos of the vehicle at check-in and check-out. The photos at check-in do not show the back of the steering wheel, so I cannot determine whether the paddle shifter had fallen off at this point. However, nothing appears on the floor mat where Mr. Falkenberg says he found the paddle shifter. The photos of the vehicle at check-out are too dark to see anything.
15. Mr. Falkenberg makes this claim under the law of bailment. A bailment occurs when personal property is temporarily transferred to another person for safekeeping. The person holding the property, called the bailee, may be liable for loss or damage to the property in their safekeeping.
16. It is undisputed that Concord took possession of Mr. Falkenberg's vehicle. Concord is a commercial enterprise, so I find it likely that Concord accepted Mr. Falkenberg's vehicle with an expectation of profit even if Mr. Falkenberg did not pay Concord directly. This means Concord was a bailee for reward. The standard of care for a bailee for reward is the care a reasonable person would take of the property.
17. Mr. Falkenberg named the Airport Authority as a respondent in this dispute. The Airport Authority did not take possession of Mr. Falkenberg's vehicle. While Mr. Falkenberg did pay the Airport Authority for parking and may have a claim for breach of contract, he did not pursue this claim in his submissions. As Mr. Falkenberg claims under the law of bailment, and the Airport Authority was not a bailee, I dismiss Mr. Falkenberg's claim against the Airport Authority.
18. I turn to consider whether damage occurred to Mr. Falkenberg's vehicle while in Concord's possession. Normally, in civil cases, an applicant bears the burden to prove a respondent's liability. However, where property is damaged while in a bailee's possession, there is a presumption the bailee was negligent. The bailee must then rebut the presumption to avoid liability. This is because the bailee is in

the best position to explain what actually happened to the goods. See *Cahoon v. Isfeld Ford*, 2009 BCPC 334 at paragraph 12.

19. Concord does not dispute that the paddle shifter was undamaged when Mr. Falkenberg dropped off his vehicle. However, it says he would have noticed the broken paddle shifter when driving home after his flight. It argues that Mr. Falkenberg likely broke the paddle shifter after leaving the airport. I do not accept this argument. The paddle shifter is on the back of the steering wheel and would not have been in Mr. Falkenberg's line of sight when driving. The paddle shifter is also small, and it is understandable that Mr. Falkenberg did not see this when driving home from the airport late in the evening.
20. I would have expected Concord to provide evidence about its protocols to prevent vehicle damage or a statement from its employee who parked Mr. Falkenberg's vehicle. However, Concord did not provide evidence from either its manager or its employee that parked the vehicle. So, I find that Concord has not rebutted the presumption that it damaged the vehicle while in its possession. I find that Concord, as a bailee for reward, is liable for this damage.
21. Concord argues that the parties' contract prevents Mr. Falkenberg from claiming damages. It relies on the terms and conditions on what I infer is the Airport Authority's website. Clause 16 of its terms and conditions for parking said that the Airport Authority is not responsible for any damage to the vehicle. Clause 9 in a different set of terms and conditions related to "jetSet" parking said a person cannot make a claim if they fail to report damage before leaving the parking lot. Clause 12 said the Airport Authority is not responsible for any damages.
22. I agree that a contract can prevent a party from pursuing common law damages. However, terms and conditions on a website do not necessarily form part of a contract. The court in *Kobelt Manufacturing Co. Ltd. v. Pacific Rim Engineered Products (1987) Ltd.*, 2011 BCSC 224 at paragraph 124, held that a party relying on terms and conditions on its website must have taken reasonable steps to bring the

existence of those terms and conditions to the attention of the other party before they enter the contract.

23. Here, there is no evidence that Concord took reasonable steps to bring these terms and conditions to Mr. Falkenberg's attention before he entered the contract. Concord only says that these terms and conditions are available on its website. Without something more, I find that Mr. Falkenberg never agreed to these terms and conditions.
24. If I am wrong on this point, I note that the terms and conditions release the Airport Authority from liability and do not refer to Concord. I find that the terms and conditions on the Airport Authority's website do not prevent Mr. Falkenberg from claiming damages against Concord.
25. I turn to damages. Mr. Falkenberg had optional insurance coverage with the British Columbia Automobile Association (BCAA). He made a claim and paid a \$300 deductible to repair his paddle shifter. The total cost of the repair was \$1,746.65.
26. Though he only paid \$300, Mr. Falkenberg claims the full amount of the repair bill. He says he will keep \$300 and repay the rest to BCAA. Alternatively, he asks for an order that he receive \$300 and Concord pay BCAA the remaining amount.
27. *Insurance Act* section 36 says that an insurer is subrogated to an insured's right of recovery after making a payment under an insurance contract. This means BCAA is entitled to share in any recovery Mr. Falkenberg receives.
28. BCAA did not participate in this dispute, though Mr. Falkenberg says that BCAA advised him to continue with the claim. The court in *Imperial Metals Corporation v. Factory Mutual Insurance Company*, 2022 BCSC 73 at paragraph 110, held that an insurer is entitled to share in an insured's recovery and participating in litigation is not a prerequisite to subrogation rights. So, I find that Mr. Falkenberg can claim the full amount of the repair cost, not just the deductible.

29. Mr. Falkenberg only claimed \$1,596.57 in his Dispute Notice. As a matter of procedural fairness, the CRT will generally not consider claims for more money than stated in the Dispute Notice. This is because the Dispute Notice defines the issues and provides notice to the respondents of the claims against them. So, I find that Mr. Falkenberg's claim is limited to \$1,596.57, and I order Concord to pay him this amount.
30. The *Court Order Interest Act* applies to the CRT. Mr. Falkenberg is entitled to pre-judgment interest on the \$1,596.57 from February 7, 2025, the date he and BCAA paid this amount, to the date of this decision. This equals \$32.18.
31. I make no determination about how much of the \$1,596.57 or interest Mr. Falkenberg must repay BCAA. That is an issue between Mr. Falkenberg and BCAA which is not before me.
32. Under CRTA section 49 and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Mr. Falkenberg was successful in proving that Concord was responsible for the damage to his vehicle. So, I find it appropriate to order Concord to pay him \$125 for his CRT fees.
33. The respondents ask for an order that Mr. Falkenberg pay \$5,000 which they will donate to a legal non-profit. They provided no legal basis for this. I have no jurisdiction to order a fine or penalty and, in any event, no fine or penalty is warranted given that Mr. Falkenberg was successful in this dispute.
34. Mr. Falkenberg claims an unspecified amount of special costs. He says the respondents alleged he committed fraud and was misusing judicial resources. He also notes that the respondents used the wrong pronouns for him in their submissions.
35. I agree that the respondents' submissions could have been more civil. With that said, suggesting that Mr. Falkenberg broke the paddle shifter was not an allegation of fraud. The respondents were permitted to question Mr. Falkenberg's assertions

and suggest alternate conclusions. While I agree that misusing pronouns is blameworthy, I find this was an inadvertent error because there is no evidence to suggest that the respondents did this with an intent to harm.

36. CRT Rule 9.5 says that the CRT will only order reimbursement of legal fees or compensation for time spent on a dispute in extraordinary circumstances. I find that no extraordinary circumstances exist here. So, I do not award special costs.

ORDERS

37. Within 30 days of the date of this decision, I order Concord to pay Mr. Falkenberg a total of \$1,753.75, broken down as follows:

- a. \$1,596.57 as damages,
- b. \$32.18 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$125 in CRT fees.

38. Mr. Falkenberg is entitled to post-judgment interest, as applicable.

39. I dismiss the parties' remaining claims.

40. This is a validated decision and order. Under CRTA section 58.1, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Peter Mennie, Tribunal Member