ALEXANDER HOLBURN

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E-NEWSLETTER

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In This Issue:

1. *Yuan v. Burrard Pacific Realty & Management Inc.*, 2023 BCCRT 628

In this Civil Resolution Tribunal decision, the Claimant scraped the roof of his truck driving into an underground parking lot owned/operated by the Respondent.

The Claimant was driving a Jeep Rubicon Gladiator truck. The parking garage sign notified drivers that there was a maximum vehicle height of 1.87 metres. The Claimant alleged that as he drove down the ramp, he passed under some ducting on the ceiling as well as a metal mount that he said was inadequately maintained, which scraped the roof of his truck.

While the Claimant did not submit any evidence indicating the specific height of his vehicle, he did submit a photo showing it stopped under, but without contacting, the height sign. The Claimant therefore argued that the metal mount must have been lower than the posted 1.87 metres and that as an occupier the Respondent should be liable for the damage to his truck.

In response, the Respondent submitted a photograph showing the metal bracket was at a height of 1.92 metres. It also submitted a photo of the Claimant's vehicle directly under the bracket, showing there was some clearance between the top of the Claimant's vehicle and the bottom of the bracket. The Respondent said that the Claimant was speeding down the parkade ramp, which likely caused the Claimant's truck to contact the bracket.

Civil Resolution Tribunal ("CRT") Jurisdiction [1]

This case was brought pursuant to the *Civil Resolution Tribunal Act*. The CRT has jurisdiction over small claims worth $5,000 or less. The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The CRT most often determines cases based solely on documentary evidence and submission, as it did in this case.

Decision

The Tribunal member noted that the standard of care in occupiers' liability is reasonableness, not perfection. The question was whether the Respondent, as an occupier, provided a reasonable warning of potential hazards, including the metal bracket, that was in its parking garage.

The Tribunal member noted that the evidence showed that the metal bracket, even when bent downwards, was still at a height of 1.92 metres. This was higher than the maximum clearance recommended for the parking garage of 1.87 metres. The photographs in evidence showed that the Claimant's truck was remarkably close to the 1.87 metre maximum height.

The Tribunal member concluded that because the bracket sat above the maximum height warning, even when bent downwards, the Respondent had provided reasonable warning of potential over-height hazards in the parking garage through its maximum height signage.

The claim was dismissed.

[1] While CRT decisions are not binding, they provide informative analysis of common occupiers' liability issues.

2. *Maruschak v. Berry*, 2023 BCCRT 731

Background

This was another CRT dispute. In this dispute, the Claimant's cat "Tazz" was attacked by a dog "Gus" owned by a fellow tenant. Unfortunately, Tazz the cat had to be euthanized. The Claimant brought this claim seeking recovery of veterinary bills from the Respondent. The Respondent was not Gus' owner nor did he live in the same building. The Respondent had come over to the building to take Gus out while Gus' owner was away.

A partial video of the incident showed Gus and the Respondent's own dog, Rigsby, unattended and off-leash on a patio and in what appeared to be a shared yard. The video showed some interaction between one of the dogs and a cat, but did not show the attack itself.

In what may be considered an ill-advised move, the Respondent provided text messages between herself and Gus' owner where the owner advised the Respondent that the owner always kept Gus leashed, and never left him unattended off-leash in the yard. The owner indicated they did this "out of respect and as a precaution."

The Respondent argued that given she did not own Gus, she could not be held liable for Gus' actions. The CRT disagreed.

Decision

The CRT Tribunal member discussed how there are three ways for a pet owner to be held legally responsible for the action of their pet: a) occupier's liability; b) the legal maxim known as 'scienter'; and c) negligence (see our Q1-2 update for a lengthier discussion of these three categories). Crucially, in some cases, these may also apply to people looking after someone else's pet.

The Tribunal member dismissed the occupier's liability as a basis for establishing liability, finding that because the Respondent was only visiting the premises she did not control the property and could not be considered an occupier.

Scienter means knowledge of the animal's poor behaviour or propensity to be aggressive. For *scienter* to apply, the Claimant must prove that at the time of the attack:

(a) The Respondent was the dog's owner (or keeper),
(b) The dog had manifested a propensity or tendency to cause the type of harm that happened, and
(c) The Respondent knew of that propensity.

The Tribunal member found, notwithstanding the Respondent did not own Gus, she was Gus' "keeper" within the meaning of *scienter* case-law. However, the Claimant did not provide any evidence that (1) Gus was aggressive or had previously attacked Tazz or any other cats and (2) the Respondent was aware of any such behaviour. Therefore, the claim in *scienter* failed.

However, the Tribunal member held the Respondent liable under negligence. The crucial finding was that Gus' owner had specifically advised the Respondent to keep Gus leashed while outside. The Respondent failed to do so. As the person responsible for controlling Gus at the time, the Respondent owed the Claimant a duty of care. The reasonable standard of care was to have sufficient control of Gus in the circumstances.

The claim was allowed.

Q3 Occupiers' Risk Management Tip

Any successful defence to an Occupiers' Liability claim arising out of a slip and fall or trip and fall incident, begins with the creation of maintenance and inspection policies and procedures. At a minimum, a maintenance and inspection policy should be reduced to a written form, and should set out:

(a) the purpose of the policy;
(b) the effective date (or revision date);
(c) the maintenance and inspection activities to be carried out, where they are to be carried out, and the frequency of same;
(d) the identity of those parties responsible for carrying out both maintenance and inspection activities;
(e) the method of documenting by who, when, and what was carried out (optimally in a standardized form appended to the policy); and
(f) prescribed methods for responding to hazards (i.e. the use of warning signage or notices, cordoning off areas, and a means of documenting when such methods are employed).

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ABOUT THE AUTHOR

PATRICK BRUCE

PARTNER

EMAIL pbruce@ahbl.ca
TEL 604 484 1779
Vancouver
V-Card

Patrick Bruce is a Partner in the firm's Insurance group. His practice is primarily litigation-based with an emphasis on insurance defence, insurance coverage and alternative dispute resolution. Patrick has experience with technically complex, multi-party personal injury, casualty, and liability claims. He has acted for large global insurers and their insureds across a wide range of industries, including complex personal injury claims, subrogated matters, property damage, construction claims, and other matters. In his capacity as counsel, Patrick's approach is to focus on first understanding his client's unique objectives before recommending a course of action to resolve claims efficiently and creatively. He works closely with his clients throughout the process and is committed to providing a high level of service on all matters.

ABOUT ALEXANDER HOLBURN BEAUDIN + LANG LLP

Alexander Holburn is a leading full-service, Canadian law firm with offices in Vancouver, Kelowna and Toronto, Canada. We have operated in British Columbia for 50 years and opened our Ontario office in 2019, followed by our Kelowna office in 2023. With over 100 lawyers, we provide a full spectrum of litigation, insurance, business, and personal law services for clients based in Canada, the United States, and Europe.

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