Claim No: SCCH - 476424

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Citation: *Spares v. Risley*, 2018 NSSM 56

BETWEEN:

RALPH GORDON SPARES

Claimant

- and -

JOHN RISLEY

Defendant

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Halifax, Nova Scotia on August 23, 2018

Decision rendered on August 27, 2018

APPEARANCES

For the Claimant self-represented

For the Defendant self-represented

BY THE COURT:

[1] The Defendant in this case is a well-known Halifax businessman who owns a property on Thornvale Avenue in Halifax. During the month of June 2017, he was having some renovations done to the home, and hired a company named G & S Renovations to do some of the work.

[2] The Claimant is an employee of that company.

[3] The Defendant himself was not personally involved with the project on a day to day basis, but does not dispute that there were responsible individuals acting on his behalf.

[4] Many of the workers on the project travelled to the work site by car, and needed a place to park their vehicles. The large property allowed quite a few vehicles to be parked on site at any given time. One of the areas that workers parked was under a wooden pergola structure. There is no dispute that the pergola looked to be structurally sound, and that the Claimant had permission to park there.

[5] On the day in question, June 5, 2017, the Claimant parked his 1994 Toyota Celica under the pergola. When he came to get his vehicle at the end of the day, he found that a 2 X 6 section of wood had apparently come loose and fallen from the top of the pergola, doing some damage to his car.

[6] The Claimant takes pride in this vehicle. He has not yet had it repaired because he cannot afford the $2,965.62 cost that has been estimated. He

continues to drive the car but wants to have it fixed and seeks to hold the Defendant responsible.

[7] The Defendant does not accept that he should be 100% responsible. He also questions whether it makes sense to pay almost $3,000.00 to fix a car that is worth no more than about $5,000.00, according to the “Blue Book.”

[8] Dealing with the last point first, it is common in insurance cases for repair claims to be denied where the cost exceeds the value of the vehicle. Such a repair estimate leads to the car being “written off,” to use common parlance. More accurately, the claimant in such a case is not entitled to any more than the actual cash value of the property destroyed.

[9] In a situation such as here, the relevant question is whether the car is worth fixing. While drivable, it has dents and scratches that make it much less than the desirable vehicle it once was. The repair cost may be high relative to the value of the vehicle, but it is still worth having it fixed. It is not a write off.

[10] The real question is the degree of responsibility that each party should face.

[11] The Defendant says, and I accept, that he had no idea that his pergola was in disrepair and that a piece of it was apparently loose.

[12] The Claimant admits that he did not carefully inspect the structure but simply assumed that it was safe.

[13] Neither party came to court with any legal authority, or even a legal theory to back up the claim or defence. I have done a bit of research and cannot find a closely similar case. There are abundant authorities of vehicles parked in commercial parking lots, that are damaged or stolen. Most of those cases centre around the typical efforts of the lot owners to limit their liability, either through signs or fine print on a ticket. Those cases apply the law of bailment, where the property owner assumes a type of custody of the item in question.

[14] I do not think this was a bailment. The Claimant was not entrusting his vehicle to the care of the Defendant in that sense. He was an invitee upon the property, and the *Occupiers Liability Act* would apply, and in particular s.4:

> **Duties of occupier**
>
> 4 (1) An occupier of premises owes a duty to take such care as in all the circumstances of the case is reasonable to see that each person entering on the premises and the property brought on the premises by that person are reasonably safe while on the premises.
>
> (2) The duty created by subsection (1) applies in respect of
>
> (a) the condition of the premises;
>
> (b) activities on the premises; and
>
> (c) the conduct of third parties on the premises.
>
> (3) Without restricting the generality of subsection (1), in determining whether the duty of care created by subsection (1) has been discharged, consideration shall be given to
>
> (a) the knowledge that the occupier has or ought to have of the likelihood of persons or property being on the premises;
>
> (b) the circumstances of the entry into the premises;
>
> (c) the age of the person entering the premises;

> (d) the ability of the person entering the premises to appreciate the danger;
>
> (e) the effort made by the occupier to give warning of the danger concerned or to discourage persons from incurring the risk; and
>
> (f) whether the risk is one against which, in all the circumstances of the case, the occupier may reasonably be expected to offer some protection.
>
> (4) Nothing in this Section relieves an occupier of premises of any duty to exercise, in a particular case, a higher standard of care that, in such case, is required of the occupier by virtue of any law imposing special standards of care on particular classes of premises.

[15] In occupier liability cases, courts do not impose liability simply because an accident happens. It is not "strict liability." There must be an element of fault based on a breach of the duty of care.

[16] It is also common for claimants to be assessed some degree of fault for contributory negligence, reflecting their failure to take care.

[17] In the case here, I cannot place total liability on the Defendant. I believe that he is partially at fault, in that he did nothing to assure the structural stability of the structure where people were parking, with the permission of his agents.

[18] However, the Defendant also had a duty to ensure that he was parking in a safe place. I would assess him with 20% liability, with Mr. Risley incurring 80%.

[19] There will be an order for the Defendant to pay to the Claimant the sum of $2,372.50.

[20] The Claimant is entitled to his filing cost of $99.70.

[21] The Claimant also seeks compensation for the multiple trips that he made in an attempt to locate the Defendant at his home in Chester to serve the Claim. These trips were in vain as the Defendant was not there at the time. In the end an order for substituted service was made.

[22] The Defendant pointed out that he was often available in his Halifax office, and that no one contacted him to arrange for him to be served.

[23] I believe that the Claimant acted unreasonably in making multiple long drives in the hope of finding the Defendant at home. I will allow $100.00 as the reasonable cost of service.

[24] The total payment order will be for $2,572.20.

Eric K. Slone, Adjudicator