

BETWEEN

GQ
APPLICANT

AND

SJ
RESPONDENT

Date of Order:

8 March 2017

Referee:

Referee: Murphy

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that the claim is dismissed.

Facts

[1] Mr GQ and Miss SJ were neighbours. Mr GQ claims his vehicle was parked inside his property during the period 22 October 2016 to 24 October 2016 and Miss SJ's son has caused damage to the bonnet of his vehicle by throwing stones on to his vehicle. He claims \$609.50.

Issues

[2] The issues I must decide are:

- a. Has Miss SJ been negligent in the care of her child?
- b. Did Miss SJ's son cause damage to Mr GQ's vehicle?
- c. Is the amount claimed reasonable?

Has Miss SJ been negligent in the care of her child?

[3] Mr GQ has brought a claim against Miss SJ for the alleged actions of her son. The law states that a parent is not responsible for torts committed by their child, in the absence of negligence on the parent's part for the negligence of their child. In other words a parent who has negligently failed to properly supervise their child may be personally liable for the torts committed by that child. So for Mr GQ to prove his claim he must prove that Miss SJ has negligently failed to supervise her son.

[4] Mr GQ states that Miss SJ was probably busy and her son has gone outside alone and was not being supervised and has thrown stones over the fence.

[5] Miss SJ states that if her seven year old son is downstairs she is either with him or on her deck where he is observed by her. She states she is very mindful of him when he is outside because there is a dangerous driveway. She also states that on week days they do not get home until 5.00pm to 5.30pm and therefore he is not usually outside anyway. Further she told the Tribunal that on most weekends she and her son are (or her son on his own) at her parents' property which is out of Hamilton. She provided evidence of photos and texts to support her evidence that she was at her parents for the period 22 to 24 October 2016.

[6] In the Tribunal it is for Mr GQ to prove his claim on the balance of probabilities. That means Mr GQ must prove that it was more likely than not that Miss SJ negligently failed to properly supervise her son. Negligence is a high standard and would require, for example,

that Mr GQ had previously observed Miss SJ's son throwing stones and had told her of such action and that Miss SJ ignored that information and allowed such action by her son to continue. Mr GQ's evidence that Miss SJ was probably busy and not supervising her son falls significantly short of negligently failing to properly supervise her son. Therefore I find that Mr GQ has not proved Miss SJ negligently failed to properly supervise her son.

[7] I am not required to address the remaining issues. That said, if I was required to I would have found that Miss SJ was not liable because of the strength of her evidence that she was not at home in the time frame Mr GQ alleged the stone throwing occurred.

[8] The claim must be dismissed.