Civil Resolution Tribunal

Date Issued: February 8, 2021

File: VI-2020-006221

Type: Motor Vehicle Injury

Civil Resolution Tribunal

Indexed as: *Spiridonov v. Anthony*, 2021 BCCRT 150

B E T W E E N :

NIKOLAI SPIRIDONOV

APPLICANT

A N D :

LORI ANTHONY

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Kristin Gardner

INTRODUCTION

1. This dispute is about a motor vehicle accident that took place on September 11, 2019 in Kelowna, British Columbia.

2. The applicant, Nikolai Spiridonov, was travelling straight through an intersection on a green light when the respondent, Lori Anthony, turned left in front of him and the two

vehicles collided. Mr. Spiridonov says his vehicle was damaged as a result of the accident, and he claims $7,000 in damages for his vehicle's accelerated depreciation.

3. Ms. Anthony says Mr. Spiridonov's vehicle was fully repaired and denies that its value depreciated because of the accident.

4. Mr. Spiridonov is self-represented. Ms. Anthony is represented by an employee of her insurer, Insurance Corporation of British Columbia (ICBC). ICBC is not a party to this dispute.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over motor vehicle injury disputes, or "accident claims", brought under section 133 of the *Civil Resolution Tribunal Act* (CRTA). Section 133(1)(c) of the CRTA and section 7 of the *Accident Claims Regulation* (ACR) give the CRT jurisdiction over the determination of liability and damages claims, up to $50,000.

6. Section 2 of the CRTA states that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.

7. Section 39 of the CRTA says that the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.

8. Section 42 of the CRTA says that the CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information

would be admissible in a court of law. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

Fault

9. In the Dispute Notice, Mr. Spiridonov asks the CRT to make a finding on fault. In her Dispute Response, Ms. Anthony admits that she was assessed 100% at fault for the accident. The parties agree that Ms. Anthony was solely responsible for the accident. Therefore, I find the issue of who was at fault for the accident is not before me.

Personal injuries

10. In the Dispute Notice, Mr. Spiridonov also says he was injured as a result of the accident. However, the only remedy he seeks is for the claimed accelerated depreciation. The parties agree that Mr. Spiridonov's personal injury claim was resolved outside the CRT process. So, I find there is no personal injury claim before me.

Allegations against ICBC

11. Mr. Spiridonov submits that he had a phone conversation with an ICBC adjuster in December 2019, where the adjuster agreed to compensate him for his accelerated depreciation claim. As noted above, ICBC is not a party to this dispute. Therefore, I make no findings about this alleged agreement. In any event, I note a CRT Vice Chair in *Liang v. ICBC*, 2020 BCCRT 192 found tort claims for accelerated depreciation are properly brought against the party who allegedly caused the damage. Although *Liang* is not binding on me, I agree with the Vice Chair's reasoning, and I find Ms. Anthony is the proper respondent in this dispute.

ISSUE

12. The remaining issue in this dispute is whether Mr. Spiridonov is entitled to damages for alleged accelerated depreciation, and if so, what is the value of those damages?

BACKGROUND, EVIDENCE AND ANALYSIS

13. As the applicant in a civil claim such as this, Mr. Spiridonov bears the burden of proof on a balance of probabilities. While I have read all of the parties' evidence and submissions, I have only addressed them to the extent necessary to explain my decision.

14. It is undisputed that the accident occurred on September 11, 2019 when Mr. Spiridonov was travelling northbound on Highway 97 in Kelowna, British Columbia. Mr. Spiridonov was proceeding straight through the intersection at Leckie Road on a green light. Ms. Anthony was travelling southbound on Highway 97 and turned left in front of Mr. Spiridonov, causing the collision. As noted above, the parties agree Ms. Anthony was 100% at fault for the accident.

15. At the time of the accident, Mr. Spiridonov was driving a 2018 Chevy Express Cargo Van (van). It is undisputed that he purchased the van on April 17, 2019 for $27,094. As of the purchase date, the van had over 22,000 kilometres on the odometer.

16. Photos of the van after the accident show it sustained significant damage to its front end. According to a November 27, 2019 invoice submitted in evidence, the van's repairs cost $16,276.96, which included repairs to the van's frame assembly. It appears the van required further repairs, and a December 18, 2019 estimate in evidence shows the final repair bill was nearly $20,000.

17. Mr. Spiridonov says he contacted several car dealerships and used car lots to determine the van's value after the accident. He finalized a trade-in deal on December 7, 2019 that valued the van's trade-in allowance at $14,000. Mr. Spiridonov claims the van sustained at least $7,000 in accelerated depreciation as a result of the accident.

18. Accelerated depreciation is the loss of market value of a motor vehicle because it was damaged, regardless of whether the damage was repaired: see *Squire v. ICBC*, 1990 CanLII 711 (BCCA). The proper measure of damages is the difference in the van's

value immediately before and immediately after the accident: see *Miles v. Mendoza*, 1994 CanLII 419 (BCSC).

19. The courts have relied mainly on expert opinion in deciding claims of accelerated depreciation. However, in cases where the vehicle is sold soon after the accident date, evidence about the sale is also considered. Courts have generally been reluctant to assume accelerated depreciation simply due to a "stigma" associated with a vehicle having been involved in an accident requiring repairs: see *Miles*. Nevertheless, more recent cases seem to accept that stigma could contribute to a vehicle's accelerated depreciation: see *Pan v. Shihundu*, 2014 BCSC 504 at paragraphs 168-169, referring to *Cummings v. 565204 B.C. LTD.*, 2009 BCSC 1009.

20. Mr. Spiridonov submitted 2 opinions about the van's post-accident value. The first was a December 3, 2019 letter from the dealer principal at Kelowna Chevrolet, Ian Speckman. In his letter, Mr. Speckman stated he has 35 years of experience, which I infer relates to car sales. He stated that the $16,000 accident declaration impacted the van's value by approximately 30%. He also stated that without this declaration, the van would be worth approximately $24,000. So, I find Mr. Speckman's opinion is that the van sustained approximately $7,200 in accelerated depreciation.

21. Mr. Spiridonov also submitted a December 6, 2019 letter from Steve Enns, sales manager at Kelowna Toyota, where Mr. Spiridonov ultimately traded in the van. Mr. Enns stated he has 25 years' experience in the car industry. He stated the accident declaration negatively affected the van's value by approximately $7,000. He also stated the van would be worth approximately $24,000 without the accident declaration.

22. Ms. Anthony disputes the admissibility of both Mr. Speckman's and Mr. Enns' letters as expert evidence because she says the authors do not state their credentials and they are not qualified to provide an opinion on the issue of accelerated depreciation. Under CRT rule 8.3(3), the CRT may accept expert opinion evidence from a person the CRT decides is qualified by education, training, or experience to give that opinion.

23. While Mr. Speckman's letter says he has "35 years' experience", he does not set out the nature of that experience, such as whether it includes any experience or training in performing vehicle valuations, assessing vehicle damage, or determining accelerated depreciation. Still, as a dealer principle, I find it is more likely than not that he has substantial experience with selling and trading-in vehicles. Therefore, I accept that Mr. Speckman has the necessary qualifications to comment on how the van's accident declaration may have affected its sale price. Similarly, Mr. Enns did not specify what his 25 years of "car industry" experience entailed. However, I find as a sales manager, Mr. Enns also has sufficient qualification to comment on the narrow issue of the van's likely market value with the accident declaration. Therefore, I accept the letters as expert evidence, subject to weight, which is further discussed below.

24. Ms. Anthony disputes the reliability of both expert opinions. While she does not dispute that the van was likely worth about $24,000 just before the accident, she argues that neither Mr. Speckman nor Mr. Enns provided any evidence to support their opinions about the van's accelerated depreciation. However, Ms. Anthony also admits in her submissions that there is no generally accepted formula to calculate accelerated depreciation. I find that both Mr. Speckman and Mr. Enns provided their opinion about the van's value with an accident declaration based on their experience with selling vehicles.

25. Ms. Anthony specifically argues that little weight should be given to Mr. Enns' opinion because the evidence about the van's actual market value after the accident contradicts his opinion. Ms. Anthony filed evidence showing Kelowna Toyota bought the van from Mr. Spiridonov as a trade-in for $14,000, but then sold it shortly after to a used car dealership, EAC, for $18,200. Ms. Anthony says this shows Mr. Spiridonov accepted a lower trade-in value than what the van was actually worth.

26. I accept that there is a difference between what a dealership may offer as a vehicle's trade-in value and what the dealership might ultimately try to sell the vehicle for. Therefore, while Mr. Spiridonov received only $14,000 when he traded in the van, I find that does not represent the van's market value. In any event, I note that Mr.

Spiridonov is not claiming, nor are Mr. Speckman and Mr. Enns suggesting, that the $14,000 trade-in price represented the van's market value after the accident. Rather, the claim is that the van's market value was reduced from $24,000 to about $17,000 (representing the claimed $7,000 in accelerated depreciation).

27. Further, I find that just because Kelowna Toyota was able to sell the van to another dealership for slightly more than Mr. Enns' stated opinion of the van's value, does not invalidate his opinion. It is, however, a factor in assessing how much weight to give his (and Mr. Speckman's) opinion.

28. I turn now to assess Ms. Anthony's evidence in support of her submissions that the van sustained very little or no accelerated depreciation.

29. Ms. Anthony relies on ICBC claim file notes containing statements made by an ICBC employee, Dale Stubel. I infer that Mr. Stubel was assigned to internally assess Mr. Spiridonov's accelerated depreciation claim for ICBC. Ms. Anthony also filed a copy of Mr. Stubel's resume in evidence. While I accept that Mr. Stubel has the required training and experience to provide expert opinion on accelerated depreciation, I decline to admit the claim file notes as expert opinion evidence. The notes were created to document Mr. Stubel's telephone conversation with Mr. Spiridonov, not to set out his opinion for the purpose of these proceedings. Therefore, I am not satisfied that the telephone notes accurately represent Mr. Stubel's opinion as an expert. Given that ICBC represents Ms. Anthony in this dispute, I find she could have filed an expert report from Mr. Stubel if she wanted to rely on his opinion.

30. Ms. Anthony also filed evidence showing EAC initially advertised the van for sale at $28,888, before dropping the advertised price to $24,888. The ICBC claim file notes show that Mr. Stubel spoke with the EAC manager, who suggested he expected to sell the van for at least $23,500. Ms. Anthony argues that this shows the van sustained little or no accelerated depreciation. However, I find the EAC advertised price of $24,888 does not necessarily reflect the van's true market value, as there is no evidence EAC found a buyer at that price or at EAC's alleged expected sale price.

31. Further, I find what Mr. Stubel recorded in ICBC's internal file notes about his conversation with the EAC manager is hearsay evidence. While the CRT has discretion to admit evidence that would not be admissible in court proceedings, including hearsay evidence, I decline to do so here. The EAC manager's view on what the van would sell for is an opinion, which I find must be provided by an expert. I have no evidence before me about the EAC manager's experience or qualifications. Ms. Anthony also did not explain why she failed to obtain a statement directly from the EAC manager. Therefore, I find I cannot assess the reliability or credibility of the notes documenting the EAC manager's conversation with Mr. Stubel and I place no weight on them.

32. Ms. Anthony submits that EAC eventually sold the van for $22,900 plus fees. However, again, Ms. Anthony did not provide any evidence from EAC about the circumstances and timing of the alleged sale or confirming the alleged sale price. I find Ms. Anthony has not proven what the van ultimately sold for, or that the alleged sale price represents the van's overall market value.

33. Ms. Anthony also submits that work vehicles with low mileage with an accident declaration (such as the van) carry less stigma than other vehicles with an accident declaration, so the van's accelerated depreciation is lower. However, she provided no expert evidence to support this submission, and I find it is unproven. Ms. Anthony did not provide any evidence of what other similar vans with accident declarations are advertised or sold for, or any admissible expert opinion about the van's accelerated depreciation.

34. I find I am left with Mr. Speckman's and Mr. Enns' uncontradicted expert evidence about the van's accelerated depreciation. However, the fact that Kelowna Toyota sold the van to EAC for $18,200, casts some doubt on their opinions that $17,000 accurately represents the van's market value after the accident. Further, I find that EAC likely purchased the van from Kelowna Toyota with the expectation of a profit when it sold the van, though how much profit is unproven. Overall, given neither Mr. Speckman nor Mr. Enns set out a detailed basis for how they came to their opinions

about the van's accelerated depreciation, I do not place a lot of weight on their opinions.

35. So, on balance, I find that the van sustained less than $7,000 in accelerated depreciation. Yet, I also do not accept Ms. Anthony's submission that the van sustained no accelerated depreciation. I find it is unlikely a person would pay the same price for the van with its accident declaration and extensive repair history, as it would for a similar vehicle without the van's accident history. I place considerable weight on the van's relatively new age and the substantial repair costs for the damage it sustained in the accident, including damage to its frame assembly, in concluding that the van sustained some level of accelerated depreciation. Considering all the evidence, on a judgment basis, I find $3,500 is a reasonable assessment of the van's accelerated depreciation. Therefore, I order Ms. Anthony to pay Mr. Spiridonov $3,500 in damages for the van's accelerated depreciation.

36. In his submissions, Mr. Spiridonov also argues that he suffered $503.99 in property damage as a result of the accident, for a bulkhead divider he installed in the van on May 4, 2019. Mr. Spiridonov says the divider was removed and demolished after the accident. However, Mr. Spiridonov did not identify this issue in the Dispute Notice and did not ask for an order that Ms. Anthony pay this amount. So, I find the claim, if there is one, is not properly before me. I make no findings about Mr. Spiridonov's alleged bulkhead divider damage.

FEES, EXPENSES AND INTEREST

37. The *Court Order Interest Act* applies to the CRT. Mr. Spiridonov is entitled to pre-judgment interest on the $3,500 from December 7, 2019, the date he traded in the van, to the date of this decision. This equals $48.30.

38. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule.

I find Mr. Spiridonov was generally successful, so is entitled to reimbursement of $175 in CRT fees. Neither party claimed any dispute-related expenses.

ORDERS

39. Within 30 days of the date of this decision, I order the respondent, Ms. Anthony, to pay the applicant, Mr. Spiridonov, a total of $3,723.30, broken down as follows:

    a. $3,500 in damages for accelerated depreciation,

    b. $48.30 in pre-judgment interest under the *Court Order Interest Act*, and

    c. $175 in CRT fees.

40. Mr. Spiridonov is entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.

41. Under section 57 and 58 of the CRTA, a validated copy of the CRT's order can be enforced through the Supreme Court of British Columbia or the Provincial Court of British Columbia if it is under $35,000. Once filed, a CRT order has the same force and effect as an order of the court that it is filed in.

Kristin Gardner, Tribunal Member