



Civil Resolution Tribunal

Date Issued: September 21, 2023

File: AR-2022-008111

Type: Accident Claims

Category: Accident Responsibility

Civil Resolution Tribunal

Indexed as: *Brar v. ICBC*, 2023 BCCRT 806

Default decision – non-compliance

B E T W E E N :

SUKHRAJ SINGH BRAR and SEVEN HORSES TRANSPORT LTD.

APPLICANTS

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin, Vice Chair

INTRODUCTION

1. This final decision of the Civil Resolution Tribunal (CRT) has been made without the participation of the applicants, Sukhraj Singh Brar and Seven Horses Transport Ltd. (Seven Horses), due to their non-compliance with the CRT's mandatory directions, as discussed below.
2. The applicants say the respondent insurer, Insurance Corporation of British Columbia (ICBC), incorrectly held them 100% responsible for a motor vehicle accident on May 20, 2022. The applicants say that Sukhraj Sing Brar entered the intersection on a yellow light, turned left on a red light, and was struck by a speeding vehicle. They also say ICBC did not consider the applicants' witness' evidence. They say ask the CRT to find them not at fault for the accident.
3. In its Dispute Response, ICBC says it acted reasonably and properly in assessing responsibility and contacted all witnesses. ICBC says that, based on the video evidence of the accident, Sukhraj Singh Brar turned left when it was not safe to do so and so is responsible for the accident. ICBC also says it does not insure the third party driver involved in the accident, who should be named as a respondent in this dispute about liability.
4. The applicants are represented by an employee or owner of Seven Horses (HS). ICBC is represented by an employee.

JURISDICTION AND PROCEDURE

5. Section 36 of the *Civil Resolution Tribunal Act* (CRTA) applies if a party to a dispute fails to comply with the CRTA or its regulations. It also applies if a party fails to comply with CRT rules in relation to the case management phase of the dispute, including specified time limits, or an order of the CRT made during the case management phase. After giving notice to the non-compliant party, the case manager may refer the dispute to a CRT member for resolution and the CRT member may:
 - a. Hear the dispute in accordance with any applicable rules,

- b. Make an order dismissing a claim in the dispute made by the non-compliant party, or
 - c. Refuse to resolve a claim made by the non-compliant party or refuse to resolve the dispute.
- 6. CRT staff have referred the applicants' non-compliance with the CRT's rules to me for a decision as to whether I ought to hear the dispute, refuse to resolve it, or dismiss it.
- 7. These are the CRT's formal written reasons. The CRT has jurisdiction over accident claims brought under section 133 of the CRTA. Section 133(1)(d) of the CRTA and Part 2 of the *Accident Claims Regulation* give the CRT jurisdiction over accident responsibility determinations. 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.

ISSUES

- 8. The issues are:
 - a. Are the applicants non-compliant with the CRTA and the CRT's rules, and
 - b. If so, should I decide this dispute without the applicants' further participation, refuse to resolve it, or dismiss it?

EVIDENCE AND ANALYSIS

Non-compliance

- 9. For the following reasons, I find the applicants are non-compliant in this dispute, having failed to participate in the case management phase and pay the tribunal decision fee, as required under sections 25 and 32 of the CRTA, and CRT rules 1.3(1)

and 5.1 to 5.4. This is despite multiple attempts by the CRT to contact the applicants with a request for a reply.

10. Initially, Sukhraj Singh Brar and another individual applied for dispute resolution. However, on June 12, 2023, the applicants amended the Dispute Notice to remove the second individual applicant and add Seven Horses as an applicant because it owned the vehicle involved in the accident. The amended Dispute Notice includes HS' name and contact information to be used for this dispute, as Seven Horses' representative. It also notes that Seven Horses is the primary applicant.
11. CRT staff provided details of the applicants' non-compliance, as follows:
 - a. On June 29, 2023 CRT staff emailed Seven Horses and asked it to pay the \$50 tribunal decision fee by July 6, 2023. The email included a warning that, if the applicants did not pay the fee, the CRT would give the other party the option to pay. However, if no party paid the fee, the CRT could dismiss or refuse to resolve the dispute.
 - b. On July 5, 2023 CRT staff emailed Seven Horses a reminder that the decision fee was due the following day.
 - c. On July 7, 2023 CRT staff emailed Seven Horses that the fee payment was overdue and extended the due date to July 12, 2023. The email contained the same warning as the June 29, 2023 email.
 - d. On July 14, 2023 CRT staff telephoned Seven Horses and left a voicemail message asking either HS or Sukhraj Singh Brar to contact the CRT about the decision fee. On July 26, 2023 CRT staff spoke to HS and explained the decision fee was due. HS said they had not received the CRT's emails but found them in their junk folder while on the phone with the CRT staff. HS said they would pay the required fee.
 - e. On August 11, 2023, CRT staff emailed Seven Horses that the fee payment was overdue and again extended the due date to August 14, 2023. CRT staff

warned the applicants that the dispute could be decided by a tribunal member without any further warning if the applicants did not pay the fee.

- f. On August 18, 2023 CRT staff emailed the respondent and asked it to pay the decision fee by August 25, 2023, if it wished to proceed to adjudication. The email included a warning that, if no party paid the decision fee, the CRT could choose to dismiss or refuse to resolve the dispute.
 - g. On September 11, 2023 CRT staff emailed Sukhraj Singh Brar and asked them to pay the decision fee by September 14, 2023, if they wished to proceed to adjudication. The email included a warning that the CRT would make a decision without their participation, if Sukhraj Singh Brar failed to pay the fee.
 - h. No party has paid the \$50 decision fee.
12. CRT staff referred the matter of the applicants' non-compliance with the CRTA and the CRT's rules to me for a decision as to whether I should hear the dispute without the applicants' further participation.
13. Based on the above, I find the applicants are non-compliant with the CRTA and the CRT's rules for failing to pay the tribunal decision fee and failing to respond to CRT staff's requests for contact. As noted above, applicants were warned, in writing, about the risks of their failure to pay the tribunal decision fee or respond to the CRT staff's communications. Under CRT rule 5.4(3), where no party pays the tribunal decision fee, the CRT can refuse to resolve the dispute, proceed to hear it, or dismiss it.

Should the CRT hear the dispute without the applicant's further participation?

14. As noted above, the applicants initiated this CRT dispute. The applicants have provided no explanation about why they failed to pay the tribunal decision fee, or otherwise communicate with the CRT as required. Parties are told at the beginning of the facilitation process that they must actively participate in the dispute resolution process and respond to the case manager's communications, including emails. I find CRT staff made a reasonable number of contact attempts, through both the email

address and phone number that the applicants provided for Seven Horses as the primary applicant. I find the applicants knew about the outstanding tribunal decision fee and failed to pay it.

15. Rule 1.4(2) states that if a party is non-compliant, the CRT may:

- a. Decide the dispute relying only on the information and evidence that was provided in compliance with the CRTA, a rule or an order,
- b. Conclude that the non-compliant party has not provided information or evidence because the information or evidence would have been unfavourable to that party's position, and make a finding of fact based on that conclusion,
- c. Dismiss the claims brought by a party that did not comply with the CRTA, a rule or an order, and
- d. Require the non-compliant party to pay to another party any fees and other reasonable expenses that arose because of a party's non-compliance with the CRTA, a rule or an order.

16. Rule 1.4(3) says that to determine how to proceed when a party is non-compliant, the CRT will consider:

- a. Whether an issue raised by the claim or dispute is of importance to persons other than the parties to the dispute,
- b. The stage in the facilitation process at which the non-compliance occurs,
- c. The nature and extent of the non-compliance,
- d. The relative prejudice to the parties of the CRT's order addressing the non-compliance, and
- e. The effect of the non-compliance on the CRT's resources and mandate.

17. Based on the evidence described above, I find that the applicants had proper notice of the outstanding tribunal decision fee and CRT staff's attempts to contact them. I

further find the applicants knew the consequences if they failed to pay the fee or respond, which was the potential dismissal of their dispute. I am also satisfied the dispute only affects the named parties, and I see no prejudice to the respondent in making an order dismissing the applicants' dispute.

18. On the other hand, if I were to refuse to resolve the claim, there would be no finality to this dispute. This is because it would be open to the applicants to make a further request for CRT resolution, subject to any limitation period. I find that in refusing to resolve, there would be no finality and no consequence to the applicants for failing to participate, which would be unfair to the respondent.
19. The applicants' non-compliance here occurred early in the tribunal decision process, and the parties have not provided any evidence or submissions.
20. The CRT's resources are valuable and its mandate to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly is severely impaired if one party does not want to participate. I find that it would be wasteful for the CRT to continue applying its resources on a dispute where, through a failure to respond as required, the applicants show they do not want the CRT's assistance in resolving their claim.
21. Although not binding on me, I agree with and apply the CRT Chair's reasoning in *Grand-Clement v. The Owners, Strata Plan KAS 2467*, 2017 BCCRT 45, that it is problematic to force unwilling applicants to pursue a dispute with the CRT. I agree that to do so would go against the CRT's mandate and impair the fairness of the process by creating an imbalance of the CRT's fact finding and decision-making functions.
22. In weighing all the factors, I find the applicants' claims, and this dispute, should be dismissed.
23. Under its rules, the CRT can make orders about payment of fees or reasonable dispute-related expenses in the case of a withdrawal or dismissal. Given the applicants' non-compliance, I find they are not entitled to a refund of any CRT fees

they may have paid. The successful respondent did not ask for reimbursement of any CRT fees or claim expenses it may have paid.

ORDERS

24. I dismiss the applicants' claims and this dispute.

Sherelle Goodwin, Vice Chair