



# Civil Resolution Tribunal

Date Issued: October 13, 2023

File: AR-2022-009725

Type: Accident Claims

Category: Accident Responsibility

Civil Resolution Tribunal

Indexed as: *Mu v. ICBC*, 2023 BCCRT 876

BETWEEN:

HONG HONG MU and ZHI LI WANG

**APPLICANTS**

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Andrea Ritchie, Vice Chair

## INTRODUCTION

1. This dispute is about accident responsibility.
2. The applicants, Hong Hong Mu and Zhi Li Wang, say they were incorrectly held responsible for a motor vehicle accident that took place on March 26, 2022. The

applicants deny an accident occurred at all. Mr. Wang was using the vehicle at the time, which Mrs. Mu owns.

3. The applicants say the respondent insurer, Insurance Corporation of British Columbia (ICBC), incorrectly held Mr. Wang 100% responsible. They say they should be held 0% responsible instead.
4. ICBC says it acted reasonably in its liability assessment and determining Mr. Wang was at fault.
5. Mrs. Mu represents the applicants. ICBC is represented by an authorized employee.

## **JURISDICTION AND PROCEDURE**

6. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over accident claims brought under section 133 of the *Civil Resolution Tribunal Act* (CRTA). Section 133(1)(d) of the CRTA and Part 2 of the *Accident Claims Regulation* (ACR) give the CRT jurisdiction over accident responsibility determinations.
7. 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.
8. 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.

9. 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.

## ISSUES

10. The issues in this dispute are:
  - a. Whether ICBC acted improperly or unreasonably in assigning responsibility for the accident, and
  - b. If so, what extent, if any, the applicants are responsible for the accident.

## BACKGROUND, EVIDENCE AND ANALYSIS

11. In a civil claim such as this, the applicants must prove their claim on a balance of probabilities, meaning “more likely than not”. Under the ACR, to succeed in their claim against ICBC, the applicants must first prove that ICBC acted improperly or unreasonably in assigning responsibility for the accident to Mr. Wang. Second, the applicants must prove Mr. Wang is less responsible for the accident than ICBC assessed.
12. Further to section 10 of the ACR, **both** parts of the test described above must be proven. This means that even if the applicants can prove Mr. Wang is less responsible for the accident than ICBC assessed, the applicants will not be successful if they cannot prove ICBC acted improperly or unreasonably. While I have read all of the parties’ evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision. I note the applicants chose not to provide any final reply submissions, despite being given the opportunity to do so.
13. On March 26, 2022, Mr. Wang pulled Mrs. Mu’s vehicle into a parking stall, front first, immediately next to a Hyundai Palisade that had reversed into the neighbouring parking stall. BR was inside the parked Palisade. Mrs. Mu says Mr. Wang exited the

vehicle and kept his hand on the edge of the driver's door to protect the Palisade while Mr. Wang opened his door. Mrs. Mu says Mr. Wang then put on his backpack, which may have made contact with the Palisade. Notably, it does not appear Mr. Wang ever gave a direct statement to ICBC, nor did he provide one in this dispute. It is undisputed Mrs. Mu was not present when the alleged accident occurred.

14. In any event, the applicants say BR exited his vehicle and demanded money from Mr. Wang for hitting his vehicle, which Mr. Wang denied doing. On March 28, 2022, BR reported to ICBC that Mr. Wang opened his driver's door and it struck BR's left rear door, leaving a dent. After investigating the incident, ICBC held Mr. Wang solely responsible for BR's vehicle damage.
15. The applicants disagree with ICBC's conclusion and argue ICBC acted improperly or unreasonably by refusing an in-person inspection of the vehicles, ignoring relevant evidence, and applying incorrect law.

***Did ICBC act improperly or unreasonably in assigning responsibility for the accident?***

16. Section 10(a) of the ACR essentially codifies the existing case law about whether ICBC acted "properly or reasonably" in administratively assigning responsibility for accidents (see: *Singh v. McHatten*, 2012 BCCA 286, referring to *Innes v. Bui*, 2010 BCCA 322). As noted above, to succeed in their claim, the applicants must prove that ICBC acted improperly or unreasonably in assigning Mr. Wang sole responsibility for the March 26, 2022 incident.
17. ICBC says after BR reported the incident, it contacted the applicants who provided the statement described above on April 7, 2022. ICBC requested the applicants submit "self-administered" photos of their vehicle's driver's door with a tape measure, which Mrs. Mu provided copies of on April 12, and additional photos on April 15, 2022. BR took their Palisade to a repair facility on May 25, 2022, which took photos of that vehicle's damage.

18. On June 21, 2022, Don Wallace, an ICBC Material Damage Estimator, compared the 2 vehicles' photos and measurements and concluded the Palisade's damage was consistent with the applicants' driver's door protrusion, and noted a minor paint chip at that location on Mrs. Mu's vehicle. At one point in their report, Don Wallace incorrectly refers to BR's vehicle damage as being on the left rear door instead of the right rear door, but this was corrected in a second report Don Wallace prepared on July 19, 2022, discussed below.
19. Mrs. Mu disagreed with ICBC's conclusion, but admitted to noticing a paint chip in that area of her vehicle. However, she argued the paint chip was unrelated. ICBC advised the applicants could take their vehicle into a body shop for professional images and it would reconsider its decision.
20. On July 15, 2022, a body shop examined Mrs. Mu's vehicle and provided additional photos to ICBC. After reviewing the photos, Don Wallace provided another opinion dated July 19, 2022, which stated the professional photos provided no new information and continued to show the points of contact were consistent between the 2 vehicles.
21. As the applicants did not agree, ICBC obtained another opinion from Chris Wigard, an ICBC Material Damage Manager, dated August 23, 2022. In their statement, Chris Wigard said the Palisade's damage was consistent with the height and profile of Mrs. Mu's driver's door edge. ICBC advised Mrs. Mu of its final decision on September 9, 2022 by email, and through a CL722 (a detailed responsibility letter) on September 26, 2022.
22. ICBC's employees' qualifications are not before me. I find neither Don Wallace nor Chris Wigard's opinions qualify as expert evidence under the CRT's rules. However, I accept the opinions were provided to and relied on by ICBC in the course of its investigation of the incident and in its decision that Mrs. Mu's vehicle was involved in a collision.

23. Although the applicants argue ICBC refused an in-person vehicle inspection, I find they have not provided any evidence that such an inspection would have made any difference in ICBC's responsibility assessment, given ICBC undisputedly had photos and measurements from accredited body shops who examined the vehicles.
24. In fact, after the applicants started this CRT dispute, ICBC obtained an expert report from David Little, Professional Engineer with CEP Forensic dated May 7, 2023. In that report, Mr. Little explained that he reviewed the vehicles' measurements and photographs. He noted that although the measurements in the "self-administered" photographs provided by the applicants are not an exact match to the height of the Palisade's damage, this can be accounted for due a "parallax error" because the camera was not held at the same height as the damage.
25. Mr. Little explained the Palisade's damage was the same approximate height as the portion of Mrs. Mu's door that protruded the furthest from her vehicle, and that the Palisade's dent's shape was consistent with Mrs. Mu's protruding door shape. It was Mr. Little's opinion that the trailing edge of Mrs. Mu's driver's door likely contacted the Palisade's rear door, resulting in the dent.
26. Under CRT rule 8.3, the CRT may accept expert opinion evidence from a person the CRT determines is qualified by education, training, or experience to give that opinion. Based on his stated qualifications, and with no evidence showing the contrary, I accept Mr. Little as an expert with respect to assessing motor vehicle damage, and I accept his evidence under the CRT's rules. There is no contrary expert evidence.
27. Given all the above, I find ICBC did not act unreasonably or improperly for refusing to inspect the applicants' vehicle in person.
28. I also find the applicants have not proven ICBC ignored any evidence or photographs.
29. The applicants also argue ICBC applied the wrong section of the *Motor Vehicle Act* (MVA) in holding them at fault. In the CL722, ICBC referenced section 203 of the MVA which says a person must not open a vehicle's door on the side available to moving traffic unless and until it is reasonable to do so. Here, the applicants argue

there was no moving traffic, so section 203 does not apply. They further argue ICBC had no legal basis to hold them responsible. I disagree.

30. While ICBC admits it may have incorrectly applied section 203 of the MVA because BR's vehicle was stationary, it argues Mr. Wang was still responsible for the care, custody and control while operating the vehicle and while exiting the vehicle.
31. Here, although ICBC's reliance on section 203 of the MVA may have been incorrect, I find the applicants have not shown that if ICBC applied the correct law, it would have changed the outcome of ICBC's responsibility assessment in any event. I find opening one's car door into a parked car falls below the standard of care of a prudent vehicle user.
32. As noted above, the applicants did not provide any final reply submissions, so did not respond to ICBC's submission that Mr. Wang was still responsible for ensuring the vehicle did not come into contact with a stationary vehicle.
33. On balance, I find the applicants have not proven ICBC acted improperly or unreasonably in its investigation of the March 26, 2022 accident or its assignment of fault against Mr. Wang. So, I find the applicants have not satisfied section 10(a) of the 2-part test. I dismiss the applicants' claim.
34. Given this, I do not need to consider part 2 of the test, set out in section 10(b) of the ACR.

## **FEES, EXPENSES AND INTEREST**

35. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. The applicants were unsuccessful, so I dismiss their claim for reimbursement of tribunal fees. As ICBC was successful, I find the applicants must reimburse it for the \$25 it paid in CRT fees.

36. ICBC seeks reimbursement of \$1,797.86 for Mr. Little's report as a dispute-related expense. I order reimbursement of this amount as I find the report was relevant and the cost was reasonable.

## **ORDERS**

37. Within 30 days of the date of this decision, I order the applicants to pay ICBC a total of \$1,822.86, including \$25 for reimbursement of tribunal fees and \$1,797.86 in dispute-related expenses.

38. ICBC is also entitled to post-judgment interest under the *Court Order Interest Act*.

39. The applicants' claims are dismissed.

40. 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.

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Andrea Ritchie, Vice Chair