



Civil Resolution Tribunal

Date Issued: December 21, 2023

File: AR-2023-001939

Type: Accident Claims

Category: Accident Responsibility

Civil Resolution Tribunal

Indexed as: *DeLaurentis v. ICBC*, 2023 BCCRT 1133

Default decision – non-compliance

B E T W E E N :

DEANNA DELAURENTIS

APPLICANT

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 applicant, Deanna Delaurentis, due to their non-compliance with the CRT's mandatory directions, as discussed below.
2. The applicant says the respondent insurer, Insurance Corporation of British Columbia, incorrectly held them 100% responsible for a motor vehicle accident on February 25, 2023. The applicant says another vehicle entered the applicant's right hand side lane and struck their vehicle. They say ask the CRT to find them not at fault for the accident.
3. In its Dispute Response, the respondent says the other driver reported that the applicant entered the other driver's left hand side lane and struck their vehicle. The respondent says it acted reasonably and properly in assessing responsibility against the applicant.
4. The applicant is self represented. The respondent is represented by an employee.

JURISDICTION AND PROCEDURE

5. 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.
6. Section 36 of the *Civil Resolution Tribunal Act* (CRTA) applies if a party to a dispute fails to comply with the CRTA, its regulations, or the CRT rules in relation to the case management phase of the dispute. 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.
7. CRT staff referred the applicants' non-compliance to me for a decision as to whether I ought to hear the dispute, refuse to resolve it, or dismiss it.

ISSUES

8. The issues here are:
- a. Is the applicant 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 applicant is non-compliant because they 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.
10. CRT staff provided details of the applicants' non-compliance, as follows:
- a. On October 3, 2023 CRT staff emailed the applicant and asked them to pay the \$50 tribunal decision fee by October 10, 2023. The email included a warning that, if the applicant 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. CRT staff emailed the applicant a reminder that the decision fee was due the by October 10, 2023.
 - c. On October 11, 2023 CRT staff emailed the applicant that the fee payment was overdue. The email contained the same warning as the October 3, 2023 email.
 - d. On October 18, 2023 CRT staff telephoned the applicant and left a voicemail message that the fee payment was overdue and extended the due date for 2 more days.
 - e. On October 23, 2023, CRT staff emailed the applicant that the fee payment was overdue and again extended the due date to October 25, 2023. CRT staff warned the applicant that the dispute could be decided by a tribunal member without any further warning if the applicant did not pay the fee.
 - f. CRT staff emailed the respondent and asked it to pay the decision fee by November 2, 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. Neither party has paid the \$50 decision fee.
11. CRT staff referred the matter of the applicant's 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.
12. 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 applicant provided. I find the applicant knew about the outstanding tribunal decision fee and failed to pay it.

13. Based on the above, I find the applicant is 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.

Should the CRT dismiss this dispute?

14. 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.

15. 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.

16. Based on the evidence described above, I find that the applicant had proper notice of the outstanding tribunal decision fee and CRT staff's attempts to contact them. I further find the applicant 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 applicant's dispute.
17. 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 applicant 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 applicant for failing to participate, which would be unfair to the respondent.
18. The applicant's non-compliance here occurred early in the tribunal decision process, and the parties have not provided any evidence or submissions.
19. 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 applicant shows they do not want the CRT's assistance in resolving their claim.
20. Although not binding on me, I agree with and apply the former 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.
21. In weighing all the factors, I find the applicant's claims, and this dispute, should be dismissed.

22. 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 applicant's 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

23. I dismiss the applicant's claims and this dispute.

Sherelle Goodwin, Vice Chair