



# Civil Resolution Tribunal

Date Issued: November 9, 2018

File: SC-2018-000405

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Evans v. VF FREIGHT LTD.*, 2018 BCCRT 709

**B E T W E E N :**

Dustin Evans

**APPLICANT**

**A N D :**

VF FREIGHT LTD.

**RESPONDENT**

---

## REASONS FOR DECISION

---

Tribunal Member:

Kate Campbell

### INTRODUCTION

1. On November 23, 2017, the applicant, Dustin Evans, was involved in a motor vehicle accident (MVA). The applicant says the respondent's driver was responsible for the accident because he failed to yield. The applicant seeks \$1,480 for the cost of repairs to his vehicle, plus dispute-related expenses.

2. The respondent, VF FREIGHT LTD., denies liability and says the collision was caused by the applicant's negligence.
3. The applicant is self-represented. The respondent is represented by an Insurance Corporation of British Columbia (ICBC) employee, Kathie Metzner.

## **JURISDICTION AND PROCEDURE**

4. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act (Act)*. The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal 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.
5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Some of the evidence in this dispute amounts to a "he said, he said" scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is in issue.
6. The tribunal 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 tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

7. Under tribunal rule 126, in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

## **ISSUES**

8. The issue in this dispute is whether the respondent's driver was responsible for the MVA, and if so, what is the appropriate remedy.

## **EVIDENCE AND ANALYSIS**

9. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
10. The respondent's representative submitted that the applicant did not have a valid BC driver's license at the time of the MVA, and that his Alberta driver's license was not valid in BC because the applicant was a resident of BC for more than 90 days by the time of the MVA. The applicant disputes both of these assertions. I make no findings about the validity of the applicant's driver's licenses, as it is not determinative of the liability issue before me in this dispute.
11. Based on the evidence before me, I find the applicant has not met the burden of proving that the respondent's driver, SQ, was responsible for the MVA. My reasons follow.
12. This is not a situation where 2 vehicles collided. In his Dispute Notice, the applicant says that SQ, who was driving a tractor-trailer, pulled out in front of him from the north exit of a Canadian Tire parking lot. The applicant says that SQ's vehicle blocked both lanes and forced the applicant into the median, damaging his vehicle.

13. SQ provided a contrary account. In a written statement dated January 29, 2018, SQ described the events as follows:

- SQ was exiting the parking lot in the tractor-trailer, and at the same time the applicant's vehicle exited from the south exit that was about 100 meters further down the road.
- The applicant had plenty of time to see SQ turn and could have simply driven past the truck once SQ had completed the turn. Instead, the applicant accelerated extremely hard toward SQ, honked his horn, passed SQ, cut in front of him, and braked hard, forcing SQ to stop.
- The applicant exited his vehicle and approached SQ. The parties spoke, and the applicant shouted abuse.
- SQ then maneuvered around the applicant's vehicle to continue driving, and the applicant again pulled in front of SQ and braked hard so SQ had to fully apply his brakes.
- This braking cycle repeated 2 more times, until they reached the traffic lights. The applicant was in the left lane at the intersection, and SQ was in the right lane. When the light changed to green, the applicant "made a great show of accelerating extremely hard and was spinning his wheels."
- The applicant gained so much momentum while spinning his wheels and turning to the left that he lost control of his vehicle. The vehicle spun around and the rear tire hit the curb, puncturing it.

14. I find that the weight of evidence in this dispute supports SQ's statement, rather than the applicant's. In making that finding, I note that the applicant did not provide any report or account of the accident at the time the events occurred, or until he submitted his dispute application to the tribunal on January 16, 2018. I also note that in that account, the applicant did not mention the incident in the intersection,

although he later admitted to it in his submissions. In this submission, the applicant said the “second accident” resulted in no damage, and occurred as follows:

When I again tried to get in front of him because he was turning his trailer into me/to stop him from leaving (again) and I had to avoid yet another collision with this individual, that is when the second accident occurred.

15. I find this evidence unpersuasive, as it is difficult to understand how a driver in a passenger vehicle could simultaneously take action to stop a tractor-trailer from leaving and avoid a collision with that same tractor-trailer. It is also inconsistent with the applicant’s first account of events, because as previously noted the Dispute Notice does not mention any second accident.
16. I prefer the account of the police officer who attended the scene over that of the applicant. While the police officer did not witness the events, he created a written report immediately after they occurred, based on interviews with the applicant and 3 witnesses. The police officer wrote that the applicant was trying to avoid a transport he felt was cutting him off of the road. The policer officer said the applicant sped up to get in front of the transport, but the wet roads caused his vehicle to slip and spin and hit the curb.
17. This account from the police officer, upon which I place significant weight for the reasons set out above, does not support the applicant’s assertion that SQ forced the applicant into the median, damaging his vehicle. There is no mention of the median in the police report, or of being forced off the road.
18. The police officer also reported that 3 witnesses, TT, JB, and JP all said the applicant gunned his vehicle off the red light and his speed caused him to lose control. Two ICBC employees, including Ms. Metzner, provided statements indicating that they saw the incident in the intersection from their office windows. They both said the applicant’s vehicle lost control while turning left in the intersection, hit the curb, and remained there until the police and a tow truck arrived. The ICBC employee identified as “Kelly” said the applicant was going “super-fast

completely out of control”, then spun around and ended up facing the wrong way on the street.

19. While the applicant says these witnesses did not see the incident involving the median, the applicant has not provided any witness statements or other evidence to corroborate his version of events. On balance, I prefer the accounts of the police officer and SQ. I also find that the statements of the 5 witnesses to the incident in the intersection support the conclusion that any damage to the applicant’s vehicle was caused by his own actions, rather than negligence by SQ.
20. The applicant obtained a surveillance video of the parking lot, which shows SQ’s truck pulling onto the street. This video does not show that SQ forced the applicant off the road and into the median. The video does not show the entire road, but the portion that is visible does not show any approaching car decelerating quickly, taking evasive maneuvers, or heading toward the median.
21. The applicant also provided no photographs or specific description of the damage of his vehicle in order to corroborate his account of events. While he said that a tire was damaged, he did not indicate which tire.
22. The applicant provided photos of calculations on a whiteboard, and a page showing a scientific formula. He says he got the formula and calculations from a physics teacher, and he says they disprove SQ’s account of events. I place no weight on this evidence, as I have no information about the identity, credentials, or expertise of the person who provided it to the applicant, and there is no explanation of the data used for the calculations. Tribunal rules 113 and 114 provide that expert opinion evidence will only be accepted from a person the tribunal decides is qualified by education, training, or experience to give that opinion, and that an expert must state his qualifications in any written expert opinion evidence. As these conditions were not met, I do not accept the formula or calculations as persuasive evidence.

23. For all of these reasons, I find that the applicant has not proven that SQ caused the MVA, or any damage to the applicant's vehicle. I therefore dismiss the applicant's claims, and this dispute.
24. Even if the applicant had proven liability, I would not have ordered any remedy, including the claimed \$1,480 for vehicle repairs or \$140 for dispute-related expenses. I say this because the applicant provided no proof of vehicle damage, no particulars of such damage, nor any receipts or invoices to support the claimed costs. There are no photos, estimates, or other reports showing that the applicant's vehicle was actually damaged, or setting out repair costs. The applicant also provided no particulars or proof of the \$140 in dispute-related expenses. For these reasons, he has not met the burden of proving his monetary claims.
25. The tribunal's rules provide that the successful party is generally entitled to recovery of their fees and expenses. The applicant was unsuccessful and so I dismiss his claim for reimbursement of tribunal fees and dispute-related expenses.

## **ORDER**

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

---

Kate Campbell, Tribunal Member