



Civil Resolution Tribunal

Date Issued: February 20, 2019

File: SC-2018-002909

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Chen v. Croden et al*, 2019 BCCRT 202

BETWEEN:

Fang Chen

APPLICANT

AND:

Christopher Lee Croden and Pamela Dunn

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about liability for a motor vehicle accident (MVA) that occurred in the afternoon on May 8, 2016 in a parking lot in Port Coquitlam.

2. The respondent Pamela Dunn owns the vehicle that was driven by the respondent Christopher Lee Croden at the time of the MVA. The applicant, Fang Chen, says Mr. Croden was backing his vehicle out of a parking spot and hit her car. She says that Mr. Croden fraudulently claimed that she hit him.
3. The applicant Ms. Chen wants Mr. Croden to pay \$1,263.98 for damage to her car. Ms. Chen also wants an order that the Insurance Corporation of British Columbia (ICBC) reassess the liability apportionment and find her 0% responsible. ICBC is not a party to this dispute.
4. ICBC's internal determination and position in this dispute is that Ms. Chen was 75% responsible for the MVA, for failing to maintain a proper lookout as required by section 144(1) of the *Motor Vehicle Act*. Mr. Croden was found 25% responsible.
5. The applicant is self-represented. The respondents are represented by an employee of their insurer, ICBC. For the reasons that follow, I dismiss the applicant's claims.

JURISDICTION AND PROCEDURE

6. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 118 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.
7. 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 "she 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.

8. 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 the recent decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal's process and that oral hearings are not necessarily required where credibility is in issue. I acknowledge the 1981 and 1985 Supreme Court of Canada decisions cited by the applicant¹, but in terms of requiring an oral hearing I find they are not determinative bearing in mind the statutory mandate set out in the Act.
9. Here, I acknowledge the applicant's request for an oral hearing, which I deny. I find there are no extraordinary circumstances that make an oral hearing necessary in the interests of justice, as set out in section 39(3) of the Act. As noted, the tribunal's mandate includes proportionality, and this roughly \$1,300 dispute does not warrant an oral hearing. The parties each had full opportunity to provide evidence and written submissions, including photos, videos, and diagrams. Further, I find that it is unlikely an oral hearing will flesh out the evidence any better than the contemporaneous written statements before me, bearing in mind the MVA occurred almost 3 years ago in May 2016. I have drawn my conclusions below based on the harmony of the evidence taken together.
10. 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.

¹ *Singh v. Minister of Employment and Immigration*, [1985] 1 S.C.R. 177 and *Innisfil (Township) v. Vespra (Township)*, [1981] 2 S.C.R. 145

11. 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.

ISSUE

12. The issue in this dispute is whether the applicant is liable for the MVA, and if not, what are the appropriate remedies.

EVIDENCE AND ANALYSIS

13. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.

14. At the time of the MVA, the following is undisputed:

- a. Ms. Chen was travelling eastbound in an aisleway in the parking lot,
- b. Mr. Croden's vehicle was parked beside another vehicle, perpendicular to the aisleway,
- c. As she approached, Ms. Chen saw Mr. Croden's vehicle reverse from his parking stall, and
- d. The parties' vehicles collided as Ms. Chen proceeded to drive forward.

15. Ms. Chen says she moved carefully, and had first stopped for 3 to 5 seconds. Ms. Chen says she then slowly proceeded on the basis she had the right of way, although as she moved forward Mr. Croden reversed again. Ms. Chen and Mr. Croden agree she honked at the same time as the MVA happened. In essence, Ms. Chen says that the respondent then backed into her.

16. In contrast, Mr. Croden says he had reversed mostly out of his spot when Ms. Chen hit him. When he started reversing, he checked his mirrors and rear window, and it

was all clear. He did not see Ms. Chen approaching. As further detailed below, 2 witnesses (JB and JM) supported Mr. Croden's statement that he was $\frac{3}{4}$ out of his stall when the MVA occurred.

17. In particular, JB said Mr. Croden was $\frac{3}{4}$ out of his parking spot, and that Ms. Chen "might have stopped and then the collision happen" (reproduced as written). JB said Ms. Chen did not honk. She said Ms. Chen's front right side "hit the rear bumper" of Mr. Croden's car. JB concluded her statement that from her perspective, "it was clear [Ms. Chen] could see him backing out and drove anyways." JB said she witnessed the MVA, and at the time she was walking into the adjacent bank.
18. I accept that neither JB nor JM know the parties to this dispute, as there is simply no evidence to the contrary, despite the applicant's speculation that there must be collusion between Mr. Croden and JM. I find the evidence before me does not support such collusion.
19. Ms. Chen alleges that JM's second witness statement given in November 2018 (provided by ICBC for this decision, obtained in response to Ms. Chen's request for an oral hearing) is materially inconsistent with his first. I do not agree. While Ms. Chen believes JM may have been the person she spoke to at the MVA scene and who told her he did not see the accident, the reality is Ms. Chen does not have a witness statement. Ms. Chen appears to concede that the person in one of her MVA scene photos, in the driver seat in a car parked to the right of Mr. Croden's, is not JM, given JM's later statement that he is bald and the person in the photo has hair. I also note in the photo showing the cars touching and Mr. Croden getting out of his car, the car parked to Mr. Croden's right appears to be red. In the photo with the man that Ms. Chen initially believed was JM, that man's car is appears to be black.
20. Ms. Chen further challenges JM's evidence, saying that if he was not the person in the photo, then he must have been untruthful about where his car was parked. I find this is not proved. In his 2016 statement to ICBC, JM stated he was parked "next to" Mr. Croden's vehicle, with both vehicles "facing the bank". Contrary to Ms. Chen's

submission, JM did not state he was parked *to the right* of Mr. Croden, although perhaps he was before the man in the black car pulled in.

21. I find I do not need to sort out exactly where JM was parked. I accept that he saw Mr. Croden's position accurately. I accept JM's evidence that Mr. Croden was stopped at the time of the MVA and that Ms. Chen "may not have been paying attention as she drove right into the back of" Mr. Croden's vehicle. Significantly, like JB indicated, JM said Mr. Croden was "obviously established in the lane".
22. Ms. Chen also says JM's more recent statement is inconsistent because he said he was "sitting in my vehicle parked facing the oncoming driver (Fang Chen) ...", whereas in his 2016 statement to ICBC he said he was facing the bank. I find this inconsistency is relatively minor and not evidence of fraud, given the almost 3 years that have passed since the MVA. In any event, it is possible in his later statement JM simply meant his car was parked perpendicular to the bank (rather than in a spot alongside it), which was true. On balance, I prefer JM's 2016 statement about the MVA details, as it was closer in time to the event. I note that in that earlier statement, JM never said he saw Ms. Chen's car approaching. JM's emphasis was that Mr. Croden was nearly out of the stall and stopped at the time of impact, which is consistent with JB's unequivocal evidence. This was something JM could have seen regardless of whether he was seated facing the bank or seated facing the aisleway.
23. The internal Claims Assessment Review or "CARS" arbitration system at ICBC upheld ICBC's 75% liability assessment against the applicant. ICBC concluded that while there is a heavy onus on the reversing driver, Mr. Croden had done everything required to safely reverse into the aisle and once established, Ms. Chen should have stopped to allow him to complete his maneuver and move on. I agree.
24. In particular, based on the evidence summarized above, I find Mr. Croden was nearly out of his parking stall before the MVA occurred and was well established in the lane. I find that the weight of the evidence is that Ms. Chen tried to pass around Mr. Croden's visibly reversing car, and that is when the MVA happened. Contrary to

Ms. Chen's submission, her photos do not prove her position that Mr. Croden hit her.

25. Section 144(1) of the *Motor Vehicle Act* states that a person must not drive a motor vehicle a) without due care and attention, b) without reasonable consideration for other persons using the highway, or c) at a speed that is excessive relative to the road, traffic, visibility or weather conditions. I find that Ms. Chen breached section 144(1)(a) and (b) by failing to allow Mr. Croden to complete his reversal, given he was well established in the lane. I see no reason to disturb the 75% liability finding against Ms. Chen.
26. Given my conclusions above, I do not need to address the applicant's requested remedies. In accordance with the Act and the tribunal's rules, as the applicant was unsuccessful I find she is not entitled to reimbursement of tribunal fees.

ORDER

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

Shelley Lopez, Vice Chair