



Civil Resolution Tribunal

Date Issued: March 29, 2019

File: SC-2018-006909

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *State Farm Mutual Automobile Insurance Company v. Chornomorets et al*,
2019 BCCRT 397

B E T W E E N :

State Farm Mutual Automobile Insurance Company

APPLICANT

A N D :

Nataliya Chornomorets and Insurance Corporation of British Columbia

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This is a dispute about responsibility for damage to a vehicle. The applicant, State Farm Mutual Automobile Insurance Company (State Farm), says that a vehicle belonging to one of its insureds was damaged by the respondent, Nataliya

Chornomorets, whose vehicle was insured by the respondent, Insurance Corporation of British Columbia (ICBC).

2. The applicant is represented by an employee. Both respondents are represented by an ICBC employee.

JURISDICTION AND PROCEDURE

3. 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.
4. 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, she said" scenario. The 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. Here, I find that I am properly able to assess and weigh the 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.
5. 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.

6. Under tribunal rule 126, in resolving this dispute the tribunal may make one or more of the following orders:
 - a. order a party to do or stop doing something;
 - b. order a party to pay money;
 - c. order any other terms or conditions the tribunal considers appropriate.

ISSUES

7. The issues in this dispute are:
 - a. whether State Farm is the appropriate party to bring this dispute;
 - b. whether ICBC is properly named as a respondent in this dispute;
 - c. whether Ms. Chornomorets is responsible for the collision; and
 - d. whether Ms. Chornomorets is responsible for the damages claimed by the applicant.

EVIDENCE AND ANALYSIS

8. In a civil dispute such as this, an applicant bears the burden of proof on a balance of probabilities. The parties have provided submissions and evidence in support of their respective positions. While I have considered all of this information, I will refer to only that which is necessary to provide context to my decision.
9. The applicant issued an automobile insurance policy for the 2014 Audi owned by ED and RD for the period between July 26, 2017 and February 16, 2018. The insurance policy provided various types of coverage, including collision coverage.

10. On September 4, 2017, ED was driving the Audi at a border crossing in Surrey, British Columbia. A Toyota RAV4 operated by the respondent, Ms. Chornomorets, and insured by ICBC was in front of the Audi in what is described as slow-moving traffic in the border line.
11. The applicant says that Ms. Chornomorets reversed her vehicle into the stationary Audi, causing damage to it. According to the applicant, it has paid \$1,707.42 (USD) or \$2,201.19 (CAD) to repair the Audi. The applicant seeks an order for payment of this amount from the respondents.
12. The respondents say that the collision did not occur as the applicant describes. Ms. Chornomorets denies that she reversed into the Audi. Instead, the respondents say that the Audi rear-ended Ms. Chornomorets' vehicle. The respondents also say that the applicant has not provided evidence to establish negligence on the part of Ms. Chornomorets or the damage to its insured's vehicle.

The Applicant as a Party

13. The respondents question whether State Farm is the appropriate party to bring this claim, and whether it has a cause of action against them. The respondents suggest that, unless the third party insured obtained a judgment or the contract with the third party insured contained an assignment clause, then that party would be the appropriate applicant.
14. The applicant submits that it is entitled to subrogation recovery under the policy issued to ED and RD. It provided a State Farm Car Policy Booklet which, at section 12 of the general terms, specifically provides that the right of recovery passes to State Farm if it makes a payment for physical damage coverage. The applicant also provided evidence that it has paid \$1,457.42 (USD) to repair damage on the front end of the Audi. I note that this amount differs from the amount of damages claimed, which appears to reflect the amount of a deductible.

15. I am satisfied that, given the presence of physical damage and pursuant to the terms of policy issued to ED and RD, State Farm is the appropriate party to be the applicant in this dispute.

ICBC as a Respondent

16. ICBC also made submissions that it is not an appropriate respondent in this dispute. ICBC says it insures Ms. Chornomorets with respect to third party motor vehicle claims and the proper respondent to the applicant's claim is solely Ms. Chornomorets.

17. I am satisfied that Ms. Chornomorets is the appropriate respondent in this dispute, and not ICBC. However, given my conclusion below, nothing turns on this.

Liability for the Collision & Responsibility for Damages

18. Both parties rely on sections from the British Columbia *Motor Vehicle Act* (MVA). The applicant says that Ms. Chornomorets had an obligation under section 193 not to move her vehicle backwards unless the movement could be made safely. Ms. Chornomorets says that hers was the dominant vehicle, and that ED had an obligation not to follow too closely under section 162 and to not drive in a careless manner under section 144 of the MVA.

19. As noted, the parties are not in agreement as to how the collision occurred or which driver bears liability for it. The applicant provided a transcript of an October 19, 2017 interview in which ED described the RAV4 reversing into his stopped Audi. According to ED, when the parties discussed the collision, Ms. Chornomorets asked why he ran into her. He stated that Ms. Chornomorets reported that she could see the movement of his car through a rearview camera, which he said would not be on unless the vehicle was in reverse. However, Ms. Chornomorets continued to insist that her vehicle was the one that had been struck.

20. Ms. Chornomorets' version of events is documented in a Loss Details form created by ICBC. This form contains Ms. Chornomorets' statement that the "queue was moving very slowly" and she was rear-ended.
21. ED and Ms. Chornomorets provided conflicting statements as to how the collision occurred. They do not agree about who struck whom, and whether their respective vehicles were moving or stopped at the time of the collision. This does not appear to be a situation where the actions of both drivers contributed to a collision. I must consider the remaining evidence before me to determine whether it supports one version of events over the other.
22. I have before me statements only from the vehicle drivers as to the events surrounding the collision. There are no statements from any witnesses, including the other adult in the Audi, as to the circumstances of the collision or any subsequent comments made by Ms. Chornomorets about a camera. Further, there is no evidence to establish whether there is a camera in Ms. Chornomorets' vehicle or, if so, whether such a camera would be activated only when the vehicle is in reverse as stated by ED.
23. Photographs of the Audi show scrapes on the front bumper and damage to the licence plate holder. Images of the RAV4 show some damage to the rear bumper. There is no evidence before me from a mechanic or an engineer to comment on whether the damage is consistent with one accident mechanism or the other.
24. I do not find that the available evidence supports one driver's description of the collision over the other's, or a determination that one version of events was more likely to have occurred. As discussed above, the applicant bears the burden of establishing, on a balance of probabilities, that the collision occurred as described by its insured. In the absence of evidence to corroborate ED's statement, I cannot say that it is more likely than not that the collision occurred as asserted by the applicant. Accordingly, I dismiss the applicant's claim.

25. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. As the applicant was unsuccessful, I dismiss its claim for reimbursement of tribunal fees paid.

ORDER

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

Lynn Scrivener, Tribunal Member