



Civil Resolution Tribunal

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File: SC-2018-009134

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *McDermid et al v. ICBC et al*, 2019 BCCRT 1030

B E T W E E N :

Leslie McDermid and Shirley McDermid

APPLICANTS

A N D :

Insurance Corporation of British Columbia and Jaiden Trabant

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Kathleen Mell

INTRODUCTION

1. This small claims dispute is about a June 21, 2017 motor vehicle accident. At the time of the collision, the applicant Leslie McDermid was driving a car owned and insured by his mother, the applicant Shirley McDermid.

2. The respondent Insurance Corporation of British Columbia (ICBC) internally concluded Mr. McDermid was solely responsible. Mr. McDermid says that the other driver, the respondent Jaiden Trabant, was responsible for the accident.
3. The applicants want a declaration that Ms. Trabant is liable for the accident. They also want the \$500.00 insurance premium assessed against Ms. McDermid reversed. The applicants also ask for \$300.00 to repair Ms. McDermid's car. Mr. McDermid represents the applicants.
4. As noted, ICBC and Ms. Trabant say that Mr. McDermid was 100% responsible for the accident and because Ms. McDermid owned the car it was appropriate to increase her premiums. ICBC and Ms. Trabant are represented by an ICBC adjuster, C.C.

JURISDICTION AND PROCEDURE

5. 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* (CRTA). 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.
6. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, this dispute amounts to a "they said, they said" scenario with both sides calling into question the credibility of the other. In the circumstances of this dispute, 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 decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the

court recognized that oral hearings are not necessarily required where credibility is in issue. I therefore decided to hear this dispute through written submissions.

7. 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.
8. Under tribunal rule 9.3(2), in resolving this dispute the tribunal may make one or more of the following orders, where permitted under section 118 of the CRTA: 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.

ISSUE

9. The issue in this dispute is whether the other driver, the respondent Ms. Trabant, is responsible for the accident and if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

10. In a civil dispute such as this, the applicants must prove their claim. They bear the burden of proof on a balance of probabilities.
11. I will not refer to all of the evidence or deal with each point raised in the parties' submissions. I will refer only to the evidence and submissions that are relevant to my determination, or to the extent necessary to give context to these reasons.
12. The parties have different versions of how the accident happened. Mr. McDermid's descriptions have varied over time and are inconsistent. The root of this dispute is about whether Ms. Trabant was merging into Mr. McDermid's lane, or, whether he was merging into hers.
13. Mr. McDermid admits that he swerved towards Ms. Trabant, but he says it was no more than 6 to 12 inches and he stayed in his lane the whole time. Mr. McDermid

says that Ms. Trabant was passing him too closely. Mr. McDermid does not explain why he would swerve toward Ms. Trabant if he saw that she was coming into his lane. Common sense would indicate that he would swerve away from her.

14. According to the first report to ICBC, Mr. McDermid originally described the accident as he merged into the other lane and hit Ms. Trabant's vehicle going the same direction. Mr. McDermid later denied that he told ICBC that he was merging. ICBC described the accident as a sideswipe of vehicles going in the same direction. Ms. Trabant's vehicle had damage down the passenger side. Mr. McDermid reported damage to his driver's side mirror although there are no pictures of Mr. McDermid's car in evidence. On June 22, 2017, ICBC decided that Mr. McDermid was completely responsible for the accident.
15. On November 29, 2017, five months after the accident, Mr. McDermid told ICBC that where the road merged he was in front of all the traffic and out of nowhere Ms. Trabant sped past him and he sideswiped her vehicle. He said that he apologized to Ms. Trabant for hitting her because he could not figure out what happened and thought that he was responsible. He said that on November 27, 2017 he was in the same area and noticed that there was no passing lane where the accident happened. He says that Ms. Trabant passed him where there was no second lane. This is further up the road from where it was originally determined that the accident happened. He says that he suspected that she passed him so closely to avoid vehicles coming from the other direction.
16. Mr. McDermid also spoke to ICBC on March 5, 2018 and said that Ms. Trabant went by him speeding and he swerved a little bit, about six inches, clipping her when she went by him.
17. On April 9, 2018, ICBC told Mr. McDermid that a day after the accident happened both he and Ms. Trabant stated that the accident happened where the two lanes merge into one. ICBC also noted that the damage to Ms. Trabant's vehicle did not support a finding that Mr. McDermid was ahead of Ms. Trabant. They refused to change their assessment of liability.

18. Mr. McDermid now submits that he was driving in his own lane when Ms. Trabant passed him way too close and along a double solid yellow line. He says that there was traffic coming from the other direction and this is why she was passing him so closely. I note that previously Mr. McDermid said he suspected a vehicle was coming at Ms. Trabant in the oncoming lane but now he states it as a fact.
19. Mr. McDermid submitted pictures which he says show the accident happened where there was only one lane. However, the pictures do not show this. To the left there is a shared designated lane for drivers to turn left and just in front of that the same lane is set aside for drivers to turn right. There is no solid double line. Even if I were to accept that this is where the accident occurred, which I do not, it still does not follow that Ms. Trabant would have had to merge into Mr. McDermid's lane at this point. She also would have not been facing oncoming traffic as these cars would also be turning or waiting to turn. Also, Ms. Trabant could have stopped at that point and turned rather than hitting Mr. McDermid's car.
20. Although there is no expert evidence before me, having viewed the pictures of Ms. Trabant's car, I agree with ICBC that the damage to Ms. Trabant's car indicates that she was sideswiped and not that she ran into Mr. McDermid's mirror.
21. Mr. McDermid provided a witness statement from T, who is his friend and was a passenger in the vehicle, dated April 9, 2019. T says that he was in the front seat and that Mr. McDermid had merged into the main lane and gone 70 feet. T says that Ms. Trabant was behind them being impatient because they were not going fast enough. T does not explain what he means by this. He does not say that Ms. Trabant was honking or tailgating. It is also unclear why Mr. McDermid did not notice this impatient behavior or if he did why he never reported it in any of his statements. T says that Ms. Trabant then tried to race around them and that she was in the oncoming lane trying to pass when Mr. McDermid reacted and attempted to avoid her. This is not consistent with Mr. McDermid's evidence that he swerved into Ms. Trabant.

22. It also does not make sense that, if the accident happened the way T described it, Mr. McDermid would get out of the car and apologize to Ms. Trabant for hitting her car. It also does not ring true that T would only provide this information so long after the accident. I find it likely he would have discussed the accident they were both involved in with Mr. McDermid immediately afterward, especially when Mr. McDermid said that right after the accident he was trying to figure out what happened. Therefore, it does not make sense that Mr. McDermid only understood what happened in November 2017 when he went to the scene again if T had this specific information at the time.
23. T also said that he hit his head on the window very hard and he was injured for months following the accident. He said that the two cars made a “pretty good connection” when they collided. However, Mr. McDermid submits that the only damage done to his car was that the mirror was torn off and there was no jolting action, so he did not see how Ms. Trabant could have been hurt. I find T’s version and Mr. McDermid’s cannot both be true. Based on the delay in providing the statement and the inconsistencies between T’s statement and the other evidence, I find it is not credible.
24. Turning to Ms. Trabant’s evidence, after the accident happened on June 21, 2017, Ms. Trabant told ICBC that both cars were stopped at an intersection and when they went through the lights, Mr. McDermid went a bit faster so was ahead of her in the right lane. She then sped up and passed him in the left lane. Mr. McDermid then came up completely beside her again and hit her with his side mirror along her front passenger side door.
25. Ms. Trabant explained that Mr. McDermid was in the right lane and that lane was ending. Mr. McDermid had two options. He could either turn right or merge into her lane. Ms. Trabant says that there were signs showing that the right lane was ending. She said that they were travelling side by side so she did not see whether Mr. McDermid put on any turn signals.

26. Ms. Trabant provided two pictures of where the accident happened. It shows that after the intersection the road narrows into one lane just after the turnoff on the right to another small road going to a cemetery. Mr. McDermid did not originally dispute that this is where the accident happened.
27. Mr. McDermid suggests that Ms. Trabant keeps changing her story. I find that Ms. Trabant has been consistent in that she passed the lighted intersection, continued in the left lane, passed Mr. McDermid who then merged into her lane sideswiping her vehicle. I find that it is Mr. McDermid who has changed his version of events including whether or not he was merging, where the accident happened, and whether Ms. Trabant faced oncoming traffic. I also note again that the physical damage to Ms. Trabant's vehicle supports that she was sideswiped.
28. Section 151(a) of the *Motor Vehicle Act* says that when driving on a laned roadway a driver must not drive from one lane to another unless the driver has made sure that moving into the other lane can be done safely and will not affect the travel of another vehicle.
29. I find on a balance of probabilities that Ms. Trabant's version of how the accident occurred is more credible and reliable. I find Mr. McDermid breached section 151(a) of the *Motor Vehicle Act* when he swerved into Ms. Trabant's lane. Therefore, I find that Mr. McDermid is 100% responsible for the accident.
30. Even if I had decided that the applicants were not responsible for the accident, I would not have awarded the \$300.00 to repair the vehicle as no estimates or invoices were provided that verify this was the cost to repair Ms. McDermid's vehicle. It is also unclear whether the \$500.00 insurance premium has been paid. Given my conclusion that Mr. McDermid is responsible for the accident compensation for this premium is not awarded. If the premium has not been paid, I also note that I do not have the jurisdiction to grant declaratory relief and could not have made a declaration that the Ms. McDermid does not owe it, even if I had found Mr. McDermid was not responsible for the accident.

31. In summary, Mr. McDermid has failed to prove that he was not 100% responsible for the accident and I dismiss the applicants' claims.

32. 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 applicants were unsuccessful in their claim they are not entitled to have their tribunal fees or expenses reimbursed.

ORDER

33. I dismiss the applicants' claims and this dispute.

Kathleen Mell, Tribunal Member