



Civil Resolution Tribunal

Date Issued: September 19, 2019

File: SC-2019-004357

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Sze v. ICBC et al*, 2019 BCCRT 1104

B E T W E E N :

HOK LING SZE

APPLICANT

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA, Jin Song Liu,
and Xiao Xue Sun

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. This is a dispute about whether the applicant, Hok Ling Sze, opened his car door and damaged a car that I infer was owned by the respondents, Jin Song Liu and Xiao Xue Sun (owners). The applicant's insurer, the respondent Insurance Corporation of British Columbia (ICBC), internally determined that the applicant was

at fault. The applicant says that he did not cause any damage. The applicant claims \$2,000, which he says was the cost of the paint job to repair the owners' car.

2. The applicant is self-represented. The owners are represented by an ICBC employee, Colleen Souveryn.

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* (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.
4. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
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 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.

ISSUES

7. The issues in this dispute are:
 - a. Did the applicant damage the owners' car?
 - b. Did ICBC breach its statutory obligations in investigating the accident?

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, the applicant must prove his case on a balance of probabilities. I have read all of the parties' evidence and submissions but I will only refer to what is necessary to explain and give context to my decision.
9. The applicant was parked in a shopping mall parking lot on April 1, 2019. The owners' vehicle was parked in the stall beside the applicant's driver's side.
10. As mentioned above, this dispute is about whether the applicant damaged the owners' car, specifically a scratch and dent on the side of the owners' car (dent). The owners say that the applicant caused the dent when he opened his driver's side car door and hit their car.
11. The applicant does not explicitly admit that he hit the owners' car. He also does not deny it. Rather, the applicant's submissions focus on whether he caused the dent. I find that the applicant's submissions, discussed in more detail below, implicitly acknowledge that he hit the owners' car when he opened his door.
12. The question is whether the applicant caused the dent. The applicant provided numerous photographs to support his arguments.
13. The applicant's first argument is about the paint residue in the dent. The applicant says that the paint residue is a different shade of grey than his car's paint. He also says that the owners' car has a second dent with the same paint residue. He therefore says that another car must have caused the dent at issue in this dispute.

14. I find that the photographs in evidence are inconclusive on this point. While the dent appears to be a lighter colour than the applicant's car, I find that it is not possible to conclude that this is paint residue from another car. I find that it is equally plausible that it is simply the colour of the metal underneath the car's paint that was exposed by the scratch.
15. The respondent's second argument is about a paint chip on his door. ICBC relied, in part, on this paint chip as proof that his door damaged the owners' car. The applicant says that the paint chip is on the outside of the door, not the edge of the door. The applicant also says that based on his measurements, the paint chip on his door is 4 to 5 centimeters higher than the dent. He says that it is impossible that he chipped the paint on his door when he hit the owners' car.
16. Again, I find that the photographs are inconclusive. While the applicant provided photographs of how high off the ground the paint chip on his door is, there is no objective evidence about how high off the ground the dent was on the owners' car. The applicant simply asserts that the dent was 4 to 5 centimeters lower.
17. I find that the key piece of evidence is a photograph that the applicant took at the scene showing his open car door contacting the owners' car. The point of contact appears to be directly on the dent. The applicant says that his car door did not, in fact, contact the owners' car directly on the dent, even though it looks that way in the photograph. He says that the points of contact "appear to line up" because of the "parallax effect".
18. I infer from the applicant's submission that the parallax effect is an optical illusion that operates to make it look like the doors touched where the owners' car was damaged, when in fact they did not. In effect, the applicant asks me to ignore the photographic evidence on the grounds that it is not reliable. However, the applicant did not provide any explanation about what the parallax effect is or how it affects the photograph.

19. In the absence of a convincing explanation about the parallax effect, I prefer the simpler explanation that the photograph accurately shows the point of contact between the cars, which was directly on the dent.
20. Given the evidence before me, the applicant has not shown that he did not damage the owners' car when he struck it with his car door. Based on the weight of the evidence, I find that the applicant caused the dent.
21. Even if I had found that the applicant had not damaged the owners' car, I would not have ordered the owners to reimburse him the \$2,000 he claimed because he provided no evidence to support the amount of the claim, such as an invoice.
22. I dismiss the applicant's claim against the owners.

Did ICBC breach its statutory obligations in investigating the accident and assessing fault?

23. As noted above, the applicant wants an order that overturns ICBC's internal liability assessment. To succeed against ICBC, the applicant must prove that ICBC breached its statutory obligations or its insurance contract with the applicant, or both. The issue against ICBC is whether ICBC acted "properly or reasonably" in assigning 100% fault to the applicant (see *Singh v. McHatten*, 2012 BCCA 286).
24. As part of its obligation to act properly and reasonably in assigning fault, ICBC must reasonably investigate the claim. In doing so, ICBC is not expected to investigate with the "skill and forensic proficiency of a detective". Rather, ICBC must bring "reasonable diligence, fairness, an appropriate level of skill, thoroughness and objectivity". See *McDonald v. Insurance Corporation of British Columbia*, 2012 BCSC 283. I find that the extent of ICBC's obligation to reasonably investigate an accident varies with the severity of the accident. In this accident, there were no injuries and relatively little vehicle damage.
25. ICBC provided copies of the emails between its adjuster and the applicant. In his emails to ICBC, the applicant set out essentially the same arguments as in this

dispute. The ICBC adjuster's response suggests that they considered each of the applicants' arguments but was not persuaded. I find that the ICBC employee's consideration of the applicant's emails and photographs was reasonable.

26. Furthermore, ICBC provided an email from the mall's security contractor. Apparently, there was security video of the incident. The mall's security contractor had a policy that it only provides access to security video to the police, not to ICBC. The employee said that because of the camera's angle, it was not possible to see contact between the applicant's door and the owners' car. While ICBC did not ultimately get any helpful security footage, I find that its attempt is an indication that it made reasonable attempts to investigate the incident.
27. I find that the applicant has not proven that ICBC failed to reasonably investigate the incident. I dismiss the applicant's claim against ICBC.
28. Under section 49 of the CRTA, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. The applicant has not been successful so I dismiss his claim for reimbursement of tribunal fees and dispute-related expenses. The respondents did not claim any dispute-related expenses.

ORDER

29. I dismiss the applicant's claims, and this dispute.

Eric Regehr, Tribunal Member