



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Horn et al v. Longia et al*, 2019 BCCRT 1193

B E T W E E N :

HEATHER HORN and DAVE HORN

APPLICANTS

A N D :

BALJIT LONGIA and BIKRAMDEEP SINGH LONGIA

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This small claims dispute is about liability for a minor motor vehicle accident that occurred on May 28, 2017, at the intersection of Regina Avenue and Harriet Road, in the District of Saanich. Only vehicle damage is at issue. The applicants claim

\$2,278.24 for their truck's repair, which their third party insurer paid and the Horns paid only the \$200 deductible. That third party insurer is not a party to this dispute.

2. The applicant Dave Horn was driving a Ford Escape SUV owned by his wife and passenger, the applicant Heather Horn. The applicants say Mr. Horn was stopped on Regina Avenue "just before the intersection", when the respondent Baljit Longia, who was driving a Hyundai Elantra car owned by her husband, the respondent Bikramdeep Singh Longia, struck his left front end.
3. Mr. Horn was found 100% responsible for the accident by the Insurance Corporation of BC (ICBC), but the applicants say Ms. Longia should be held entirely responsible because she allegedly "cut the corner" when she turned left onto Regina Avenue off Harriet Road. The respondents say that Mr. Horn unsafely left his stop sign and hit Ms. Longia in the intersection. The respondents deny Ms. Longia left her lane of travel.
4. Ms. Horn represents the applicants. An ICBC employee represents Ms. Longia. Mr. Longia represents himself.

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 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. 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, credibility is at issue in this dispute, in terms of how and where the accident happened. Credibility of 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. In the circumstances of this dispute, I find that I am properly able to hear this dispute based on the documentary evidence and written 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.
8. Under tribunal rule 9.3(2), in resolving this dispute the tribunal may do one or more of the following where permitted under section 118 of the CRTA: 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.
9. The applicants objected to the respondents' submission of the ICBC Claims Assessment Review (CAR) report. I have not looked at it. While I do not necessarily agree with the applicants that it is irrelevant or prejudicial, I do agree that it is not useful. My role is to assess who is responsible for the accident in this civil dispute and I am not bound by any findings made in the CAR report. In the circumstances here, I find it unnecessary for me to review the CAR report.

ISSUE

10. The issue in this dispute is who is responsible for the motor vehicle accident. This requires me to determine whether Mr. Horn unsafely entered the intersection to turn right, and, whether Ms. Longia failed to stay in her lane when making her left turn.

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, the burden of proof is on the applicants to prove their claims on a balance of probabilities. Although I have reviewed all of the parties' evidence and submissions, I have only referenced what I find necessary to give context to my decision.
12. First, I will describe the accident scene. The Regina Avenue and Harriet Road intersection is irregular, in that the streets are not squared or at right angles. Regina Avenue has stop signs but has no marked crosswalk and no marked stop line. Harriet Road is the dominant highway with no stop signs or traffic controls. Mr. Horn was eastbound on Regina Avenue, planning to turn right on Harriet Road. Ms. Longia was northbound on Harriet, turning left onto Regina. None of this is disputed.
13. The dispute turns on exactly where and how the accident happened. The applicants say Ms. Longia 'cut the corner' and hit their stopped vehicle on Regina Avenue in the Horns' vehicle lane. Ms. Longia denies this. In contrast, the respondents say Mr. Horn caused the accident when he moved past the stop sign and hit Ms. Longia in the intersection as she was making her left turn. The Horns deny this.
14. The respondents say Mr. Horn had a duty to remain stopped at the stop sign and yield until it was safe to move, as required by sections 169 and 175 of the *Motor Vehicle Act* (MVA). I agree with the Horns that the stop sign's position is irrelevant in this case. Under section 186(c) of the MVA, if there is no marked crosswalk or stop line, a driver must stop at the point that they can see approaching traffic, effectively creating an invisible stop line. Therefore, what matters is at what point Mr. Horn had a view of approaching traffic on Harriet Road, given there was no marked stop line and no marked crosswalk. I find the invisible stop line was at a point beyond the stop sign. Mr. Horn says he was 16 feet past the stop sign at the time of the collision, which is where he says he needed to be to see the traffic on Harriet Road. More on this below.

15. I note the police report concluded Ms. Longia was inattentive. However, I also note the respondents' undisputed evidence that the police report was created based only on the Horns' evidence, after Ms. Longia had left the scene. Further, the police report is at times hard to read, and either marks Mr. Horn's conduct as "98" (not applicable) or "18" (failing to yield right of way). Given these limitations, I place little weight on the police report.
16. Under section 169 of the MVA, Mr. Horn could only move his vehicle from the invisible stop line if he could do so safely. I find Mr. Horn had moved past the invisible stop line at the time of impact, when it was not safe to do so as Ms. Longia was turning left and had the right of way. My reasons follow.
17. First, I do not agree with the applicants' assessment of where the invisible stop line was located. They submitted numerous photos from different positions around the intersection, with 'live' markings to illustrate their vehicle's position behind what they say was the invisible stop line. I reviewed the photos and the bush at the corner to Mr. Horn's left plus the applicants' own pinpoint of their vehicle's location. I find the applicants have not shown that the invisible stop line was as far into the intersection as they say. I find Mr. Horn likely could have seen approaching traffic farther back, closer to the stop sign. In other words, I find the Horns' vehicle was likely in the intersection at the time of the accident.
18. I find my conclusion is supported by 2 witness statements from a nearby resident, RL, obtained by ICBC. RL's house is located at the corner of Regina and Harriet. While she did not witness the accident happen, she heard the impact and looked out her bedroom window. I place no weight on RL's opinion both vehicles were in motion at the time of the accident, since RL said she did not see the accident happen. RL said that there were no trees or shrubs blocking a driver's view "down Harriet" but a telephone pole blocks the view "looking right", so a driver has "to move forward". Yet, Mr. Horn's stated focus was looking left so he could turn right. Most significantly, RL described the Horns' vehicle as being "way past the stop sign" and "in the intersection". The Horns do not suggest Mr. Horn moved their vehicle

forward after the impact. I find all this supports a conclusion the Horns' vehicle was in the intersection at the time of the accident.

19. Second, I do not agree with the Horns' submission that their vehicle was stopped at the time of impact. As noted, Ms. Longia says Mr. Horn hit her in the intersection. It is undisputed there are no independent witnesses to the collision. Based on Mr. Horn's own statement to ICBC, while he says he had originally stopped at the stop sign, he was "just starting to make the right turn" but had not put his foot on the gas. The Horns also gave submissions about how it was impossible for their vehicle to 'roll' into the intersection because Harriet Road was at a higher elevation. I find I am unable to reconcile Mr. Horn's "just starting" to make a right turn but also not having his foot on the gas. I find the Horns have not proved they were stopped at the time of impact. The fact Mr. Horn was so far into the intersection is support for this conclusion.
20. Third, based on Mr. Horn's statements, I find his focus was only to his left so that he could see approaching traffic so he could make his right turn. I find he has not shown that he was properly aware of Ms. Longia who had the right of way and who was undisputedly turning left onto Regina Avenue at the time of the accident. I find the applicants have not shown Mr. Horn was not responsible for the accident.
21. So, does Ms. Longia have any responsibility for the accident? Did she improperly "cut the corner", contrary to the requirements in section 165(2) of the MVA? Ms. Longia says Regina Avenue was narrow and the Horns ought to have remained stopped and allowed her to complete her turn, given she had the right of way.
22. First, I place little weight on the applicants' generic diagrams and their own lay opinions about the physics of how Ms. Longia must have strayed into their lane. They did not provide any expert evidence to show how the accident likely occurred.
23. Second, what about the evidence that Regina Avenue was narrow? The parties each made submissions and provided evidence about whether it was narrow or not, but I find nothing turns on it.

24. Again, it is undisputed that Ms. Longia had the right of way as she had no traffic controls on Harriet Road. I find by moving into the intersection, Mr. Horn was responsible for creating the hazard. As noted above, the applicants bear the burden of proof and I find they have not shown Ms. Longia hit them in their lane. There is no witness evidence to support this conclusion and the applicants are not disinterested. The evidence of skid marks is not determinative, as I cannot conclude they are fresh in the applicants' photos nor do they show Ms. Longia strayed into the applicants' lane of travel. For the reasons above, I dismiss the applicants' claims. As such, I do not need to address their damages claim.
25. According to the CRTA and the tribunal's rules, the successful party is usually entitled to reimbursement of their tribunal fees and reasonable dispute-related expenses. I see no reason to deviate from that here. The applicants were unsuccessful so I dismiss their claims for fees and expenses. The respondents did not pay any fees or claim any expenses.

ORDER

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

Shelley Lopez, Vice Chair