



Civil Resolution Tribunal

Date Issued: November 8, 2019

File: SC-2019-001347

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lupick v. Insurance Corporation of British Columbia et al,*

2019 BCCRT 1278

BETWEEN:

DUSTIN LUPICK

APPLICANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA, HEATHER
BRYAN and 9957413 CANADA INC. DOING BUSINESS AS BUMPER
TO BUMPER

RESPONDENTS

AND:

DUSTIN LUPICK

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. This is a small claims dispute about a collision that occurred on July 17, 2018 when a moving car swerved to avoid a cyclist and collided with a parked car and damaged it (incident). The applicant and respondent by counterclaim, Dustin Lupick, was the cyclist. The respondent, Heather Bryan, was driving the moving car, which is owned by her employer, the respondent 9957413 Canada Inc. doing business as Bumper to Bumper (B2B). The respondent and sole applicant by counterclaim, the Insurance Corporation of British Columbia (ICBC), found Mr. Lupick responsible for the incident for negligently operating his bicycle and charged him \$4,580.29.
2. Mr. Lupick says ICBC's decision is wrong, and that it was Ms. Bryan's negligent operation of her car that caused the incident. He wants ICBC to reverse its decision that he is responsible for the incident and reverse its \$4,580.29 charge.
3. ICBC counterclaims and says Mr. Lupick is responsible for the incident. It wants Mr. Lupick to pay the \$4,280.29 charge for the cost of repairing the damaged car, plus \$300 to reimburse the owner of the parked car for his insurance deductible, for a total of \$4,580.29. The owner of the parked car is not a party to this dispute.
4. Mr. Lupick is self-represented. ICBC, Ms. Bryan and BRB are all represented by an ICBC employee.

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. Some of the evidence in this dispute amounts to a “he said, they said” scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanor 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. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. 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 the tribunal’s process and that oral hearings are not necessarily required where credibility is in issue.
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 Mr. Lupick improperly operated his bicycle, and if so, whether he is required to pay ICBC \$4,580.29 for damage to the parked car.

EVIDENCE AND ANALYSIS

10. In a civil claim like this one, Mr. Lupick must prove his claim on a balance of probabilities. This means I must find it is more likely than not that Mr. Lupick's position is correct. Likewise, ICBC is responsible for proving its counterclaim.
11. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision.
12. Mr. Lupick's claim for the tribunal to order ICBC to reverse its decision that he was responsible for the incident and must pay \$4,580.29 is a claim for injunctive and declaratory relief, which are outside the tribunal's jurisdiction. This is because Mr. Lupick has not paid the \$4,580.29 and so his remedy is solely a request for a declaration that he does not owe the money and for an order that ICBC reverse its internal billing against him.
13. If there was no counterclaim in this dispute, I would refuse to resolve Mr. Lupick's claim due to lack of jurisdiction. However, since ICBC's counterclaim is for Mr. Lupick to pay the \$4,580.29, which is within the tribunal's jurisdiction, I find Mr. Lupick's claim can be resolved by deciding ICBC's counterclaim. For the following reasons, I find Mr. Lupick must pay ICBC \$4,580.29.
14. The incident occurred on July 17, 2018 at the intersection of 6th Avenue and Keith Drive in Vancouver. Keith Drive runs north to south and 6th Avenue runs east to west. The intersection is controlled by stop signs and pedestrian walk signals on Keith Drive and traffic lights on 6th Avenue.
15. It is undisputed that at the time of the incident Mr. Lupick was cycling northbound from Keith Drive through the intersection. It is also undisputed that Ms. Bryan was travelling westbound on 6th Avenue towards the intersection in the northernmost lane.
16. Mr. Lupick says that as he approached the intersection, he entered the combined bicycle and pedestrian crosswalk on the west side of Keith Drive and crossed 6th

Avenue. He says when he started crossing 6th Avenue the traffic lights for east/west traffic on 6th Avenue were red. He says that when he was partway through the intersection, the traffic lights turned green. It is unclear how he was able to see the east/west traffic lights when he was travelling north. At no point in his evidence does Mr. Lupick refer to the status of the pedestrian walk signals on Keith Drive at the time of the incident.

17. Mr. Lupick says that after the east/west traffic lights turned green Ms. Bryan drove westbound through the intersection, he heard brakes screeching, then he swerved to the left and rolled off his bicycle. He says Ms. Bryan swerved to her right and collided with a car parked on the north side of 6th Avenue approximately 10 to 15 feet west of the intersection. Mr. Lupick says Ms. Bryan told him she did not see him until the last moment because the sun was in her eyes.
18. In her statement to ICBC Ms. Bryan said a cyclist rode through a red light and would have hit her if she did not swerve to avoid him. She did not mention that the sun was in her eyes.
19. ICBC submitted a July 20, 2018 witness statement from P.M. who was at the northwest corner of the intersection at the time of the incident. He said traffic was heavy and Mr. Lupick entered the middle of Keith Drive and started riding across the intersection on either a very late yellow light or a red light. He said the light on 6th Avenue turned green and was green for at least 2 to 3 seconds before Ms. Bryan entered the intersection. He said Ms. Bryan seemed to be driving quite fast for the light having just turned green. He said Mr. Lupick shoulder checked and started to ride into the northernmost curb lane heading westbound on 6th Avenue when Ms. Bryan swerved to avoid him.
20. ICBC submitted a July 30, 2018 witness statement from K.K. who was driving westbound on 6th Avenue in the southernmost lane at the time of the incident. She was the first car in her lane stopped at the red light at the intersection with Keith Drive. She saw Mr. Lupick cross Keith Drive in front of her into her lane. K.K. said she saw Ms. Bryan in her rearview mirror driving down the hill towards her in the

same lane, and then Ms. Bryan changed into the right-hand lane to go around her. She said when she looked forward, she saw the light had turned green and Mr. Lupick was still in her lane in front of her. She said Ms. Bryan hit her brakes when she saw Mr. Lupick and skidded into the parked car.

21. ICBC submitted 2 witness statements from T.S., one from July 17, 2018 and one from August 1, 2018. T.S. said she was walking eastbound on the north side of 6th Avenue approaching the northwest corner of the intersection with Keith Drive. T.S. said the lights on 6th Avenue had turned green and Ms. Bryan began driving straight through the intersection. She said she heard honking and saw that Mr. Lupick had entered the intersection after his light had turned red and made a left turn onto 6th Avenue on a red light. She said the light on 6th Avenue had been green for “at least a couple of seconds” when Mr. Lupick entered the intersection. She said there were a lot of other witnesses, many of whom were upset with Mr. Lupick.
22. Ms. Lupick says there is no traffic light on Keith Drive, and therefore none of these witnesses has an accurate recollection of what happened. He says P.M.’s statement that there was a lot of traffic at the time of the incident supports his contention that he entered the intersection when the light on 6th Avenue was still red. He says otherwise he would have been hit by a car driving eastbound on 6th Avenue, as those were the lanes of traffic that he crossed first. He says Ms. Bryan should have slowed down as she approached the intersection because the light was still red, and that by changing lanes just before the intersection she could not have been paying attention to the intersection in front of her. He says she should have waited until the pedestrian crosswalk was clear before driving through the intersection, as required by ICBC’s driving manual.
23. ICBC says Mr. Lupick was not in the crosswalk on the west side of the intersection when he crossed it. It says its witness statements and the GPS evidence Mr. Lupick submitted of his cycling path indicate that he was travelling in the middle of the intersection on a diagonal east-to-west path across the intersection. ICBC says Mr. Lupick provided no evidence about the pedestrian walk signal, but that based on his

evidence that the 6th Avenue lights turned green when he was halfway through the intersection, the pedestrian signal must have indicated not to cross when he entered the intersection. ICBC also says Mr. Lupick failed to stop at the stop sign on Keith Drive before entering the intersection.

24. ICBC says Mr. Lupick entered the intersection when it was unsafe to do so and travelled into Ms. Bryan's path. It says Mr. Lupick's negligent actions, which were in breach of sections 125, 183, and 186 of the *Motor Vehicle Act* (MVA), forced Ms. Bryan to take evasive action to avoid colliding with him, which resulted in her colliding into a parked car.
25. Section 125 of the MVA requires every driver, cyclist or pedestrian to obey the instructions of the applicable traffic control device. Section 183 (1) of the MVA says a cyclist on the road has the same rights and duties as a driver of a vehicle, in addition to other specific duties imposed by the MVA. Section 186 of the MVA required Mr. Lupick to stop at the stop sign at the intersection before entering the marked crosswalk across the southern side of 6th Avenue.
26. In the alternative, ICBC says Mr. Lupick breached section 175 of the MVA by failing to yield the right of way to traffic that had already entered the intersection or was approaching so closely that it constituted an immediate hazard.
27. ICBC also relies on the BC Supreme Court's decision in *Hunstad v. Cormier*, 2011 BCSC 1881. The facts in that case are similar, though not identical, to this case, in that a cyclist had not completed crossing an intersection when the traffic lights controlling traffic in the opposite direction turned green, and a car driving through a green light struck the cyclist. The Court found the cyclist solely responsible for the accident. Mr. Lupick says the facts in *Hunstad* are significantly different than in this case, and therefore the case is unhelpful in determining liability for the incident.
28. The problem for Mr. Lupick, and what I find fatal to his position, is that he did not give any evidence about the status of the pedestrian walk signal on Keith Drive. Since that was the signal he was required to obey when crossing the intersection, I

make an adverse inference against him for failing to provide that evidence. He said the traffic lights on 6th Avenue turned green while he was partway through the intersection, and it is undisputed that he was cycling across the intersection, meaning he would have been travelling faster than a pedestrian on foot. In these circumstances I find the pedestrian signal on Keith Drive could not have indicated “walk” when he entered the intersection.

29. I find this conclusion is supported by the witness statements. Although these statements all erroneously refer to Mr. Lupick entering the intersection on a late yellow or red light when there were in fact no traffic lights on Keith Drive, I find this inaccuracy in the witness statements does not detract from their credibility. I say this because none of the witnesses were crossing Keith Drive at the time, and because there were traffic lights on 6th Avenue to gauge the timing of traffic controls at the intersection. I also find all of the witness statements are consistent with Mr. Lupick entering the intersection when it was unsafe to do so in relation to the traffic lights on 6th Avenue. For all of these reasons, I find Mr. Lupick entered the intersection against the pedestrian signal, in breach of section 125 of the MVA.

30. I also find that the balance of the evidence, including the multiple witness statements and the GPS evidence, indicate that Mr. Lupick did not cross the intersection in the crosswalk as he stated, but that he crossed the intersection on a diagonal. It is undisputed that he did not enter the cycling lane on the westbound sidewalk of 6th Avenue when he reached the end of the intersection, but instead continued cycling westbound along the road. While Mr. Lupick and one of the witnesses say Ms. Bryan was driving fast, there is no evidence of her actual speed, and I find the weight of the evidence suggests she did not enter the intersection until the light had been green for several seconds.

31. On the evidence before me, I am satisfied that Mr. Lupick was responsible for the incident.

32. ICBC submitted an August 1, 2018 estimate to repair the parked car for \$4,567.69 plus tax. It says it has already paid for the repairs to the car, and Mr. Lupick does

not dispute this. Although ICBC did not submit an invoice or receipt for the actual repairs, which it says cost \$4,280.29, Mr. Lupick does not dispute the amount, and it is less than the amount of the estimate. For these reasons, I allow this claim, and I find Mr. Lupick is required to pay ICBC \$4,280.29.

33. ICBC also claims \$300 to reimburse the owner of the parked car for his insurance deductible. However, ICBC submitted no evidence to indicate that it received a \$300 payment from the owner of the parked car, and the owner is not a party to this dispute. For these reasons, I dismiss this part of ICBC's claim.
34. The *Court Order Interest Act* applies to the tribunal. ICBC is entitled to pre-judgment interest on the \$4,280.29 owing calculated from January 24, 2019, which is the date of ICBC's only demand letter in evidence, to the date of this decision. This equals \$66.09.
35. 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. I see no reason in this case not to follow that general rule. Since ICBC was generally successful, I find it is entitled to reimbursement of \$125 in tribunal fees. Since Mr. Lupick was unsuccessful, I find he is not entitled to reimbursement of his tribunal fees. Neither party claimed any dispute-related expenses.

ORDERS

36. Within 14 days of the date of this order, I order Mr. Lupick to pay ICBC a total of \$4,471.38, broken down as follows:
 - a. \$4,280.29 in damages,
 - b. \$66.09 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 in tribunal fees.
37. ICBC is entitled to post-judgment interest, as applicable.

38. Mr. Lupick's claims are dismissed.
39. Under section 48 of the CRTA, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.
40. Under section 58.1 of the CRTA, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Sarah Orr, Tribunal Member