



Civil Resolution Tribunal

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File: SC-2019-004906

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kondopulos et al v. Insurance Corporation of British Columbia et al*,
2019 BCCRT 1277

B E T W E E N :

DEMETRE JACOBUS KONDOPULOS and EVRIDIKI KONDOPULOS

APPLICANTS

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA, JAMES
ANTHONY WATSON, and QUALITY MOVE MANAGEMENT INC.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. This is a small claims dispute about an alleged motor vehicle accident. The applicants, Demetre Jacobus Kondopulos and Evidiki Kondopulos, jointly own a 1994 Oldsmobile Achieva. They say that on February 15, 2019 the respondent, Anthony Watson, who was driving a truck owned by his employer, the respondent Quality Move Management Inc. (Quality Move), collided with the applicants' car, causing damage.
2. The applicants reported the incident to the respondent, the Insurance Corporation of British Columbia (ICBC), who investigated the applicants' claim. ICBC determined that Mr. Watson did not hit the applicants' car, and that the incident was a hit-and-run. ICBC charged the applicants a \$300 deductible to repair their car.
3. The applicants say Mr. Watson is responsible for the accident and the damage to their car, and they want ICBC to refund their \$300 deductible.
4. ICBC says it conducted a full investigation into the incident and was unable to confirm that the truck Mr. Watson was driving hit the applicants' car. It says it determined the incident was a hit-and-run claim, which is subject to a deductible.
5. The applicants are each self-represented. ICBC, Mr. Watson, and Quality Move are all represented by K.H., an ICBC claims adjuster.

JURISDICTION AND PROCEDURE

6. 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.

7. 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 “they 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.
8. 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.
9. 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

10. The issue in this dispute is whether Mr. Watson hit the applicants’ car, and if so, whether ICBC is required to refund the applicants’ \$300 insurance deductible.

EVIDENCE AND ANALYSIS

11. In a civil claim like this one, the applicants must prove their claim on a balance of probabilities. This means I must find it is more likely than not that the applicants' position is correct.
12. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision. For the following reasons, I dismiss the applicants' claims.
13. The parties agree that the alleged incident occurred at approximately 1:30 p.m. on February 15, 2019 on Marine Drive in North Vancouver. The applicants and Mr. Watson were both driving eastbound on Marine Drive. It is also undisputed that the left rear panel of the applicants' car was damaged, but the parties dispute what caused it.
14. The applicants each submitted their own statements which are virtually identical. They say Mr. Kondopulos was driving the car at the time of the incident and Ms. Kondopulos was in the front passenger seat. They say that it was raining, traffic was light, and they were driving in the right lane between 35 and 40 kilometers per hour. They say Mr. Kondopulos first saw Quality Move's truck and trailer in his rearview mirror driving in the same direction as them but in the left lane. They say the truck was gaining on them, and it started entering the right lane, so Mr. Kondopulos moved the car to the right to avoid a collision. They say the truck hit the car near the rear end of the driver's side, and that the car started zig-zagging, but eventually came to a stop. They say the truck did not stop and continued driving in the right lane. They say D.J. Kondopulos restarted the car, caught up with the truck, then passed the truck from the left lane and cut it off so it was forced to stop.
15. Mr. Watson said he was in the right eastbound lane the entire time he was on Marine Drive, and that he did not recall changing lanes. He said he did not notice the applicants' car until it passed him in the left lane and cut him off by slamming its brakes in front of him.

16. In the applicants' initial report to ICBC they said they drove up next to Mr. Watson in the truck and asked him to pull over. I find this contradicts their statements that Mr. Kondopulos pulled the car in front of the truck forcing it to stop. While the applicants may have initially been hesitant to tell ICBC that they cut off the truck, I find this discrepancy in their evidence detracts from their credibility.
17. Regardless of how the applicant got Mr. Watson's attention, it is undisputed that Mr. Watson stopped the truck and approached the applicants' car.
18. The applicants say Mr. Watson told them he did not see their car when he changed into the right lane, asked if anyone was hurt, and offered to pay cash for the damage. This allegation is not supported by any other evidence. The applicants say they declined this offer because they wanted to deal with the incident through ICBC.
19. It is undisputed that the parties exchanged information, and Mr. Watson's wife emailed the applicants photocopies of Mr. Watson's license and the truck's certificate of insurance later that day. The applicants say that someone who did not notice another car until it cut him off would not act this way. On the other hand, ICBC says it is common for people accused of involvement in a motor vehicle accident to provide their information, and that doing so is not an admission of guilt. I agree.
20. The applicants reported the incident to ICBC on February 15, 2019. ICBC says that after investigating the incident it determined the truck Mr. Watson was driving did not hit the applicants' car. It had its estimator review the photos of both vehicles involved in the incident. The estimator said the damage to the applicants' car was consistent with rotating wheel impact and damage from lug nuts. It said Quality Move's trailer wheels did not cause the damage, but it was possible the right front "steer wheel" of Quality Move's truck caused the damage. However, ICBC says its height photos of the damage to the applicants' car do not match the potential point of impact on the truck Mr. Watson drove.

21. Based on this evidence, ICBC determined the incident was a hit-and-run with no liability to the applicants. As it was a hit-and-run, ICBC charged the applicants a \$300 deductible to repair their car, with no insurance rate increase. A body shop repaired the applicants' car on March 27, 2019, and they paid the body shop \$300 for their ICBC deductible.
22. ICBC's alternate position is that if the applicants are successful in establishing that the truck Mr. Watson was driving hit their car, each party gave different versions of what happened, and there are no independent witnesses. In such circumstances, ICBC says it would apportion liability 50/50, and the applicants would be required to pay \$150 as a deductible, as opposed to \$300, but their insurance rate would increase.
23. The applicants say Mr. Watson and Quality Move failed to provide information ICBC requested during its investigation. In their submissions the applicants ask the tribunal to order the respondents to produce the following:
 - a. The statement Mr. Watson provided to Quality Move immediately after the incident,
 - b. The transcripts and/or statement Mr. Watson and Quality Move gave to ICBC, and
 - c. The transcripts of all inter-office ICBC memos exchanged among ICBC employees or agents in relation to the incident.
24. ICBC says it has provided the applicants with all documents and information in its file. ICBC's evidence before me in this dispute includes a report from Quality Move about the incident and Quality Move's answers to ICBC's questions about the incident provided on April 1, 2019. ICBC also says the inter-office memos the applicants seek do not exist. ICBC says it notified the applicants that they could make a request for their entire file under the *Freedom of Information and Protection of Privacy Act* (FOIPPA), but they have not done so.

25. Under rule 8.2 (3) the tribunal may order a party to provide evidence or produce a record within its control. However, in the circumstances I find such an order is not warranted. ICBC says it has already produced all documents in its file, and there is no evidence the applicants pursued a request under the FOIPPA process when instructed to do so. Quality Move has already provided ICBC with its report of the incident, from Mr. Watson, which is in evidence. I also find that in the circumstances, and given the principle of proportionality, the tribunal's mandate to provide speedy and economical dispute resolution services outweighs the applicants' interest in obtaining documents that likely do not exist for their \$300 claim. For these reasons, I dismiss this aspect of the applicants' claim.
26. On the evidence before me, I find the applicants have not established that Mr. Watson hit their car. They provided no expert or other additional evidence to contradict ICBC's finding that the truck did not hit their car. That finding was based on photos, measurements, and an opinion from its estimator. Aside from their 2 statements which are virtually identical, there are no other witnesses, and I have found their evidence to be internally inconsistent. I find Mr. Watson's version of the incident is reasonable. In the circumstances, I find the applicants have not established that they are entitled to a refund of their \$300 deductible. I dismiss their claim.
27. 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 the applicants were unsuccessful, I find they are not entitled to reimbursement of their tribunal fees. They have not claimed any dispute-related expenses, so I make no order about it.

ORDER

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

Sarah Orr, Tribunal Member