



Civil Resolution Tribunal

Date Issued: November 29, 2019

File: SC-2019-005534

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Von Battenburg v. Stephen*, 2019 BCCRT 1340

BETWEEN:

DOLF VON BATTENBURG

APPLICANT

AND:

ELLEN SUSAN STEPHEN

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This small claims dispute is about liability for a May 30, 2019 motor vehicle collision. The applicant, Dolf Von Battenburg, says the respondent, Ellen Susan Stephen, caused the collision. He seeks an order that the parties' insurer, the Insurance Corporation of British Columbia (ICBC), change its decision that he was at fault, and

instead hold the respondent 100% liable for the collision. The applicant also asks for reimbursement of the fees he paid to the tribunal and unspecified “admin costs”. The respondent disagrees with the applicant’s position. ICBC is not a named respondent in this dispute.

2. The applicant is self-represented. The respondent is represented by an ICBC adjuster.

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. Under section 10 of the CRTA, the tribunal must refuse to resolve a claim that it considers to be outside the tribunal’s jurisdiction. A dispute that involves some issues that are outside the tribunal’s jurisdiction may be amended to remove those issues.
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. 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

8. The issue in this dispute is whether the respondent is responsible for the motor vehicle collision.

EVIDENCE AND ANALYSIS

9. In a civil dispute like this one, an applicant bears the burden of proof on a balance of probabilities. I have considered all of the evidence and submissions provided by the parties, but will refer to only what is necessary to provide context to my decision.
10. The applicant and the respondent had parked their vehicles “nose in” in a retailer’s parking lot. Their vehicles were parked close to each other, and were separated by 1 parking stall that was occupied by a van. The respondent reversed out of her parking stall and, in doing so, moved behind the applicant’s vehicle. There was an impact between the right rear bumper of the applicant’s vehicle and the left rear quarter panel of the respondent’s vehicle. The respondent says she had stopped her backward motion and was preparing to move forward when the collision occurred.
11. In investigating the collision, ICBC obtained a copy of surveillance footage from the area and gave the applicant an opportunity to review it. ICBC determined that the applicant was at fault for the collision under sections 169 and 193 of the *Motor Vehicle Act* (MVA). Section 169, “Starting vehicle”, says that a person must not move a vehicle that is stopped, standing or parked unless the movement can be

made with reasonable safety. Section 193, "Caution in backing vehicle", states that the driver of a vehicle must not cause the vehicle to move backwards unless the movement can be made in safety.

12. The applicant says that the respondent was responsible for the collision. According, to the applicant, the respondent was not paying attention, and did not give any "acoustical signal" that she was blocking his way. The applicant says he could not see the respondent's vehicle because of the van, and states that the respondent continued to reverse her vehicle into his path when she should have seen his back-up lights lighting up and then his vehicle moving.
13. The applicant's position is that the collision involved 2 vehicles moving backwards with "equal rights". While the applicant is correct that the MVA applied to both drivers, I do not agree that the parties' responsibilities were equal in these circumstances.
14. The key factor in the analysis is which vehicle started to move first. The surveillance footage is not necessary to make this determination as I find that other evidence establishes that the respondent's vehicle moved first. In stating that the respondent should have seen his back up lights illuminate before his vehicle started to move, the applicant is admitting that the respondent began to reverse before he did. I also find that the fact that the applicant's rear bumper struck the respondent's rear quarter panel establishes that her vehicle was behind the applicant's when he started to move. This means that the respondent was established as the dominant driver with the right of way, and the applicant was the servient driver who had to yield to her. Whether or not the van in the neighbouring parking stall affected the applicant's side view, he had an obligation to ensure that his path was clear before moving his vehicle.
15. I find that the applicant did not comply with sections 169 and 193 of the MVA when he caused his vehicle to move backwards when the movement could not be made safely. Accordingly, I find that the applicant was responsible for the collision. It is unclear whether the claim for "admin costs" relates to an increase in insurance rates

or some other expense but, in any event, I dismiss the applicant's claim for compensation. The tribunal does not have jurisdiction over declaratory relief such as fault reapportionment but, given the reasons above, the applicant's claim about liability for the collision is also dismissed.

16. The applicant also asks for an order that ICBC provide him with a copy of the surveillance footage in a different format. As ICBC is not a party to this dispute, I cannot make an order against it.

17. 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. As the applicant was not successful, I dismiss his claim for reimbursement of tribunal fees.

ORDER

18. I dismiss the applicant's claims and this dispute.

Lynn Scrivener, Tribunal Member