



Civil Resolution Tribunal

Date Issued: December 17, 2019

File: SC-2019-004574

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Auchinleck v. Demmers*, 2019 BCCRT 1420

BETWEEN:

GILBERT AUCHINLECK

APPLICANT

AND:

MELISSA DEMMERS and Insurance Corporation of British Columbia

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This is a summary decision about whether the Civil Resolution Tribunal (tribunal) should refuse to resolve this dispute under section 10(1) of the *Civil Resolution Tribunal Act* (CRTA) for being outside the tribunal's jurisdiction.

2. The applicant, Gilbert Auchinleck, says he was improperly assessed fault for a hit and run accident reported by the respondent, Melissa Demmers. The respondent insurer, Insurance Corporation of British Columbia (ICBC), insures both Mr. Auchinleck and Ms. Demmers. After investigating the accident, ICBC held Mr. Auchinleck 100% at fault. Mr. Auchinleck's only requested remedy is a declaration that Ms. Demmers is 100% at fault. Ms. Demmers and ICBC say ICBC properly assessed fault and they ask that the claim be dismissed.
3. Mr. Auchinleck is self-represented. The respondents are represented by an ICBC adjuster.

JURISDICTION AND PROCEDURE

4. These are the tribunal's formal written reasons. The tribunal has jurisdiction over small claims brought under section 118 of the 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.
5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and 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.
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 section 10 of the CRTA, the tribunal must refuse to resolve a claim that it considers is not within the tribunal's jurisdiction. A dispute that involves one or more issues that are within the tribunal's jurisdiction and one or more that are outside its jurisdiction may be amended to remove those issues that are outside its jurisdiction.
8. Under tribunal rule 9.3(2), in resolving this dispute the tribunal may make one or more of the following orders, where permitted by 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 is whether the tribunal should refuse to resolve this dispute under section 10(1) of the CRTA.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant bears the burden of proof on a balance of probabilities. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision. For the following reasons, I find this dispute is outside the tribunal's jurisdiction and therefore I must refuse to resolve it.
11. As noted above, this dispute is about a motor vehicle accident that occurred sometime in February 2019. Ms. Demmers reported to ICBC that Mr. Auchinleck struck her parked car in their shared driveway, causing damage. Mr. Auchinleck denied doing so. He stated that his car was also parked during the time in question, and alleges it was Ms. Demmers who actually struck his vehicle. ICBC investigated and found Mr. Auchinleck 100% responsible for the accident.

12. Now, Mr. Auchinleck wants the tribunal to declare that Ms. Demmers is 100% responsible for the accident. In his initial Dispute Notice, Mr. Auchinleck claimed \$300 as compensation along with the declaration sought. However, in an amended Dispute Notice, the \$300 claim was removed. I also note Mr. Auchinleck made no submissions about monetary compensation.
13. Under section 118 of the CRTA, for small claims matters the tribunal has jurisdiction over claims for debt or damages, recovery of personal property, specific performance of an agreement relating to personal property or services, and relief from opposing claims to personal property. The tribunal does not have jurisdiction to order a declaration the applicant is not liable (see: *Evans v. Campbell*, 1993 CanLII 2600 (BCCA) at paragraph 5).
14. Given there is no substantive compensation claim, I find the nature of Mr. Auchinleck's claim is strictly for declaratory relief. Therefore, I find the tribunal does not have jurisdiction to resolve the dispute.
15. The parties' submissions focused on who was responsible for the accident. As I have found the tribunal does not have jurisdiction to resolve the dispute, it is unnecessary for me to determine who was at fault for the accident.

ORDER

16. Under section 10(1) of the CRTA, I refuse to resolve this dispute.

Andrea Ritchie, Vice Chair