



Civil Resolution Tribunal

Date Issued: December 24, 2019

File: SC-2019-006272

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ketsa v. Lemos*, 2019 BCCRT 1438

B E T W E E N :

KEN KETSA

APPLICANT

A N D :

RACHEL LEMOS

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. This is a small claims dispute about a motor vehicle accident. The applicant, Ken Ketsa, and the respondent, Rachel Lemos, are coworkers. Their vehicles were involved in a motor vehicle accident in an underground parkade on August 8, 2018. The Insurance Corporation of British Columbia (ICBC) internally determined that the applicant was 100% at fault for the accident.

2. The applicant says the respondent was responsible for the accident. He wants the respondent to pay him \$4,000 for damages and increased insurance rates.
3. The respondent says the applicant was responsible for the accident and she does not owe him anything.
4. The applicant is self-represented, and the respondent is represented by L.B., 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, she 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.

ISSUES

9. The issues in this dispute are
 - a. Who is responsible for the accident?
 - b. Is the respondent required to pay the applicant \$4,000 for damages and increased insurance rates?

EVIDENCE AND ANALYSIS

10. In a civil claim like this one, the applicant must prove their claim on a balance of probabilities. This means I must find it is more likely than not that the applicant's position is correct.
11. 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 applicant's claims.
12. The parties agree that at some point on August 8, 2018 the applicant's car collided with the respondent's SUV in an underground parkade at their workplace, and there is no video footage of the collision. It is undisputed that at approximately 8:12 a.m.

that day, the applicant parked his car front-first in a parking spot in the parkade. It is also undisputed that at approximately 9:06 a.m., the respondent backed her SUV into a space on the right side of the applicant's car.

13. The parties agree that as a result of the accident the front passenger fender and bumper of the applicant's car were pushed out of alignment and scratched. The parties also agree that the accident caused a dent, scrapes, tire marks and red paint transfer onto the front passenger door of the respondent's SUV. However, the parties dispute which of them caused the accident.
14. The applicant says that on the day of the accident he parked his car in the last spot in a row of the parkade, and when he and his wife exited the car there was no one parked near it. He submitted a statement from his wife which confirms his description of how he parked his car that day. He submitted a photo taken on a different day which he says roughly shows how he parked his car on the day of the accident. The photo shows the right front wheel of his car crossed over the yellow boundary line between his parking stall and the empty space to the right of it, which was not a parking stall. There is a large pillar at the back of that parking stall straddling the yellow boundary line between the stall and the no-parking space where the applicant says the respondent parked her SUV on the day of the accident.
15. The applicant says at approximately 4:15 p.m. on August 8, 2018, he returned to the parkade and noticed the respondent's white SUV parked to the right of his car in the no-parking space with only 4 to 6 inches of space between the vehicles. He says the parking stall to the left of his car was vacant. The applicant says he backed out of the parking stall by turning his wheels away from the respondent's SUV which caused the front of his car to move further away from the SUV and proceeded to the left to follow the flow of traffic to exit the parkade. He says there is no way his car could have damaged the respondent's SUV while he was backing out of the parking stall in this manner. The applicant says the respondent's SUV must have "rubbed up against" his car while she was trying to park next to it earlier in the day.

16. The respondent says when she returned to her SUV after work, she noticed the damage on her front passenger door. She says she immediately knew it was caused by the applicant's car, which she had parked next to earlier in the day. She immediately reported the incident to the security team who created an incident report. The incident report shows her SUV parked with a significant amount of space between the right side of her car and the yellow parking stall boundary line. It is unclear from the photos whether her SUV is parked in a designated parking stall, or in the no-parking exit lane as the applicant alleges.
17. The next day the respondent left a note on the applicant's car, and the applicant phoned her. She says he told her he noticed she had parked next to him the previous day and that their vehicles were parked very close to each other. She says he told her he did not realize he had hit her SUV and apologized for not leaving a note. The applicant denies this.
18. After investigating the accident in the fall of 2018 ICBC determined that the applicant was 100% liable. The applicant applied for an internal claims assessment review (CAR), and the ICBC arbiter upheld the original decision finding him 100% liable for the accident. The arbiter's decision stated that the damages and evidence of paint transfer on the respondent's SUV indicated a greater likelihood that the damage occurred when the applicant reversed his car. It relied on section 193 of the *Motor Vehicle Act* (MVA) which prohibits a driver from moving their vehicle backwards unless it can be done safely. It also relied on section 169 of the MVA which prohibits a driver in a parked vehicle from moving the vehicle unless it can be done with reasonable safety and the driver gives the appropriate signal.
19. I note that throughout his submissions and evidence the applicant makes various allegations against ICBC for the manner in which it conducted its investigation. He says he gave ICBC his wife's statement which it did not accept because it said his wife was not an independent witness. He also says ICBC made inconsistent findings between its initial decision and its CAR decision. However, the applicant did not name ICBC as a respondent to this dispute, and therefore I am not required to

determine whether ICBC's investigation was unreasonable. Rather, on the evidence before me, I am required to determine who is liable for the accident. I am not bound by ICBC's decision or the CAR decision. For the following reasons, I find the applicant was liable for the accident.

20. The applicant relies on notes from an ICBC estimator which state that the damage to the respondent's SUV shows "front to rear paint transfer" and angled rubber marks showing tire motion from the applicant's car. He says that he backed out of the parking stall, so he could not have collided with the respondent's SUV front-to-back. He also says that if he had collided with the respondent's SUV while backing out, the bumper of his car would have been pulled away from the fender, not pushed into it. He submitted photos of the damage to his car which he says show the bumper pushed into the fender, but I find these photos do not clearly show what the applicant describes. I also find, given the angle on which the applicant admits to parking his car that day, it is plausible that he would have had to maneuver his car backwards and forwards to exit the parking stall, and the collision could have occurred while driving forward.
21. However, the evidence I find most compelling is that of the tire marks on the respondent's SUV. The applicant does not dispute the presence of his car's tire marks on the SUV. Rather, he says his parking brake was not engaged at the time of the accident, so when the respondent's SUV hit his car it moved a few centimeters, which must have caused the tire marks. However, he provided no expert or other evidence supporting this explanation. The marks on the respondent's SUV appear to be 1 to 2 feet in length, and therefore I find the applicant's explanation for the tire marks unlikely. I find it more likely that the applicant's maneuvering out of his parking stall caused his tire to scrape across the respondent's SUV.
22. On balance, I find the applicant has failed to establish that the respondent was responsible for the accident. Therefore, I dismiss his claim.

23. Even if I am wrong in my liability assessment, I find the applicant has not proven that he is entitled to the remedy he seeks. He claims \$4,000 for damages and increased insurance rates, but he did not provide an invoice, receipt, or other evidence of the cost of repairing the damage to his car. He also provided no evidence that his insurance rates have increased.
24. 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 applicant was unsuccessful, I find he is not entitled to reimbursement of his tribunal fees. He has not claimed any dispute-related expenses.

ORDER

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

Sarah Orr, Tribunal Member