



Civil Resolution Tribunal

Date Issued: February 19, 2020

File: SC-2019-008150

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *De Greiff Lara v. Dong*, 2020 BCCRT 188

BETWEEN:

MARIO DE GREIFF LARA

APPLICANT

AND:

CRYSTAL NICOLE DONG

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. The applicant, Mario De Greiff Lara, runs a driving school. One of his students was using the applicant's vehicle in a driving test when the respondent, Crystal Nicole Dong, rear-ended the vehicle. It is undisputed that the accident was the respondent's fault.

2. The applicant claims that it took 11 days for the vehicle to be repaired. He claims that he lost \$5,000 in driving school income during this time, which he claims in this small claims dispute. The respondent says that the vehicle was drivable after the accident and the applicant should have kept driving it. She also disputes that the applicant has lost \$5,000 in income as he claims. She asks that I dismiss the applicant's claims.
3. The parties are each self-represented.

JURISDICTION AND PROCEDURE

4. 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.
5. The tribunal has discretion to decide the format of the hearing, including in writing, by telephone, videoconferencing, or a combination of these. I am satisfied an oral hearing is not required as I can fairly decide the dispute based on the evidence and submissions provided.
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. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may order a party to pay money or to do or stop doing something. The tribunal's order may include any terms or conditions the tribunal considers appropriate.

ISSUES

8. The issues in this dispute are:
 - a. Did the applicant lose the use of his vehicle because of the accident?
 - b. If so, how much income did the applicant lose, if any?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant must prove his case on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision.
10. The facts of the accident are undisputed. On September 11, 2019, one of the applicant's students was completing a road test with an ICBC examiner in the vehicle. While the student was stopped at an intersection, the respondent rear-ended the vehicle.
11. The respondent says that she observed only slight damage to both vehicles. She says that there were scrapes and scratches on the applicant's bumper other than where the vehicles impacted each other. She estimates that she was going 10 km/h at the time of impact.
12. According to the ICBC claims file in evidence, the applicant immediately cancelled the next 15 days of driving lessons.
13. The applicant claims that he could not find an autobody repair shop to fix the vehicle until September 16, 2019. He says that it took until September 21, 2019, for the repairs to be complete, which is undisputed. He therefore claims 11 days of lost income.
14. The applicant's claim against the respondent is a negligence claim. The elements of a negligence claim are:
 - a. The respondent owed the applicant a duty of care.

- b. The respondent failed to meet the applicable standard of care.
 - c. The respondent's failure caused the applicant to suffer reasonably foreseeable damages.
15. As mentioned above, the respondent does not dispute that she is responsible for the accident. This dispute is whether the applicant has proven that he suffered any income loss damages. There is no claim for repair costs or personal injuries before me in this dispute.
16. The respondent takes issue with 2 aspects of the applicant's claim. First, she says that the applicant did not have to stop using the vehicle for 11 days because it was drivable after the accident. Second, she disputes that the applicant lost \$5,000 in income between September 11 and 21, 2019.
17. With respect to the first point, the applicant says that he actively looked for an autobody shop as soon as the accident happened, but the first appointment he could get was September 16, 2019. He says that he could not use the vehicle from between the accident and the appointment for safety reasons.
18. The autobody shop's estimate and invoice are in evidence. Neither document says anything about whether the vehicle was safe to drive prior to the repairs.
19. The applicant does not provide any objective evidence to support his belief that the car was unsafe to drive after the accident. In his submissions he simply says that bumpers are important to protect the occupants of a vehicle. However, he does not provide any evidence from a mechanic or other professional that the damage to his bumper made his vehicle unsafe to drive.
20. In the ICBC claims file, the ICBC adjuster notes that the mechanic who worked on the applicant's vehicle told the adjuster that the vehicle was drivable before the repairs. While this note is hearsay evidence, the tribunal has discretion to accept hearsay evidence. In the circumstances, I find that this note is the best evidence about the extent of the damage to the vehicle. I also find that it is consistent with the

photographs of the vehicle's bumper, which appear to show only superficial damage. I find that the applicant has not proven that he could not safely use the vehicle to operate his driving school between September 11 and 16, 2019.

21. As for the remaining time, the ICBC adjuster who handled the applicant's claim told the applicant that his insurance transferred to the rental car so he could have used it to teach while the vehicle was in the shop. The applicant does not explain why he did not use the rental car to teach. On balance, I find that the applicant could have used the rental car for his business from September 16 to 21, 2019.
22. Therefore, I find that the applicant could have operated his business continuously from September 11 to 21, 2019. For this reason, I find that the respondent's negligence did not cause the applicant any business loss.
23. Even if I had found that the accident caused an interruption to the applicant's business, I still would have dismissed his claim because I find that he failed to prove that he lost any income.
24. The applicant provided invoices from September 6, 7 and 8, and October 26, 2019. He says that these invoices represent typical days. However, the applicant did not provide any evidence about what lessons scheduled between September 11 and 21, 2019, he cancelled. It is unclear whether he actually lost these customers as opposed to rescheduling their lessons to a later date. I find that it is impossible to determine whether he lost any income.
25. For these reasons, I dismiss the applicant's claim for lost business income.
26. 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. The applicant was unsuccessful so I dismiss his claim for tribunal fees and dispute-related expenses. The respondent did not claim any dispute-related expenses.

ORDER

27. I dismiss the applicant's claims, and this dispute.

Eric Regehr, Tribunal Member