



Civil Resolution Tribunal

Date Issued: June 12, 2020

File: SC-2020-002157

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Wiebe v. Holley*, 2020 BCCRT 653

BETWEEN:

ROBERT WIEBE

APPLICANT

AND:

TYLER HOLLEY

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This small claims dispute is about a motor vehicle accident that occurred on October 23, 2019 in Richmond, British Columbia.

2. The applicant, Robert Wiebe, says the respondent, Tyler Holley, sideswiped his vehicle after an altercation at the intersection of Sidaway Road and Blundell Road, and then left the scene without stopping to exchange information. Mr. Wiebe says his insurer, the Insurance Corporation of British Columbia (ICBC), held him 50% responsible for the accident. Mr. Wiebe says Mr. Holley should be found 100% at fault. Mr. Wiebe seeks \$250, the insurance deductible he was required to pay.
3. Mr. Holley, through his ICBC representative, says fault was apportioned equally because Mr. Holley reported to ICBC that Mr. Wiebe turned into Mr. Holley's vehicle, and there was no independent evidence corroborating either person's version of events.
4. Mr. Wiebe is self-represented. Mr. Holley is represented by an ICBC adjuster.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The CRT'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 CRT 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, he said" scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour 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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality

and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.

7. The CRT 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 CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
8. In resolving this dispute the CRT 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.
9. In his submissions, Mr. Wiebe alleges that ICBC failed to adequately investigate the accident. Mr. Holley's representative says ICBC acted fairly and with "utmost good faith". However, ICBC is not named as a party in this dispute. As such, I have no authority to make orders against it. Therefore, I make no findings about Mr. Wiebe's allegations against ICBC.

ISSUE

10. The issue in this dispute is who is responsible for the accident, and if not Mr. Wiebe, whether he is entitled to reimbursement of his \$250 paid insurance deductible.

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, the applicant Mr. Wiebe 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.

12. The following facts are not in dispute:

a. On October 23, 2019 at approximately 1:15pm, Mr. Wiebe was traveling south on Sidaway Road, when he approached a 4-way stop with Blundell Road. Mr. Wiebe's intention was to turn right to head westbound on Blundell Road.

b. At the time same, Mr. Holley approached the same 4-way stop intersection from westbound Blundell Road, intending to continue straight.

13. Mr. Wiebe says that there was another vehicle at the intersection, continuing straight on northbound Sidaway Road, who arrived at the intersection first. Mr. Wiebe says he was the second vehicle to arrive, and Mr. Holley was the third. Mr. Wiebe says that after the first vehicle proceeded through the intersection, he (Mr. Wiebe) commenced his right turn onto Blundell Road.

14. Mr. Wiebe says that after he cleared the intersection and continued onto westbound Blundell, Mr. Holley closely approached his vehicle from behind and was honking his horn and gesturing to Mr. Wiebe. Mr. Wiebe says he tapped his brakes to get Mr. Holley to back off, but says Mr. Holley then quickly overtook Mr. Wiebe's vehicle by crossing into the oncoming traffic lane to the left, and when Mr. Holley changed back into Mr. Wiebe's lane, the collision occurred. Mr. Wiebe says he immediately stopped his vehicle, expecting Mr. Holley to also stop, but that Mr. Holley continued on his way. Mr. Wiebe then followed Mr. Holley and phoned the police.

15. Mr. Holley's account is somewhat different. On Mr. Holley's behalf, ICBC provided an email message that was an ICBC employee's summary notes of Mr. Holley's statement. ICBC, as Mr. Holley's representative, did not produce any written statement directly from Mr. Holley. The summary document states that Mr. Holley arrived at the intersection ahead of Mr. Wiebe, and that Mr. Wiebe cut in front of Mr. Holley's turn to proceed through. It says Mr. Holley then honked at Mr. Wiebe, and

Mr. Wiebe completely stopped his vehicle on the roadway, blocking Mr. Holley. It states Mr. Holley then attempted to pass Mr. Wiebe and when he was almost done, Mr. Wiebe pulled into Mr. Holley's vehicle, causing the collision. The notes state that Mr. Holley thought it was unsafe to stop to exchange information, so he continued driving.

16. I find the email summary statement is hearsay. The CRT has discretion to admit evidence that would not be admissible in court proceedings, including hearsay. In *Medel v. Grewal*, 2019 BCCRT 596, I accepted similar hearsay evidence on the basis that ICBC, as part of its standard procedures when investigating an accident, receives oral reports from witnesses and records those summaries in its file. I find the summary is admissible.
17. That said, I place little weight on the summary document. First, while I accept that the ICBC employee's job involves accurately recording a witness's recollections, the words are still those of an ICBC employee, not Mr. Holley himself. Here, I find it would be inappropriate and unfair to rely on the exact words in the summary. Second, the summary has clearly been taken from another document and reproduced into an email message for the purposes of this dispute. It is unclear whether the statement was reproduced as is, or was edited in some way. ICBC did not explain why the statement was extracted from its original document, and the source document is not in evidence. Further, the summary does not indicate when it was given, how it was given, or to whom. As a sophisticated litigant, I would expect ICBC would understand the importance of providing direct evidence and all relevant source documents wherever possible, if it wants the CRT to rely on the details of a witness's disputed evidence.
18. Because I have given Mr. Holley's evidence little weight, Mr. Wiebe's evidence is mostly uncontradicted. Therefore, on balance, I accept Mr. Wiebe's version of events. That is, I find when Mr. Holley attempted to change into Mr. Wiebe's lane after overtaking his vehicle, Mr. Holley cut too close to Mr. Wiebe's vehicle and caused the accident.

19. Section 159 of the *Motor Vehicle Act* (MVA) says that a driver must not drive to the left side of the road to overtake or pass a vehicle unless the driver can do so in safety. I find Mr. Holley was negligent when he attempted to pass Mr. Wiebe and re-entered Mr. Wiebe's lane when it was unsafe to do so. I find Mr. Holley 100% responsible for the October 23, 2019 accident.
20. I turn then to the appropriate remedy. As noted above, Mr. Wiebe claims reimbursement of \$250, his paid deductible. This amount was not challenged. As I have found Mr. Holley fully responsible for the accident, I find he must reimburse Mr. Wiebe the claimed \$250.
21. The *Court Order Interest Act* applies to the CRT. There is no evidence before me as to when Mr. Wiebe paid the deductible. On a judgment basis, I find Mr. Wiebe is entitled to pre-judgment interest on the deductible from December 11, 2019, the approximate date Mr. Wiebe had his vehicle repaired. This equals \$2.47.
22. Under section 49 of the CRTA, and the CRT's rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. I see no reason to deviate from that general rule. As Mr. Wiebe was successful, I find that he is entitled to reimbursement of the \$125 he paid in tribunal fees. No dispute-related expenses were claimed.

ORDERS

23. Within 30 days of the date of this decision, I order the respondent, Tyler Holley, to pay the applicant, Robert Wiebe, a total of \$377.47, broken down as follows:
 - a. \$250 for reimbursement of his deductible,
 - b. \$2.47 in pre-judgment interest under the *Court Order Interest Act*,
 - c. \$125 in tribunal fees.
24. Mr. Wiebe is also entitled to post-judgment interest, as applicable.

25. Under section 48 of the CRTA, the CRT will not provide the parties with the order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the CRT's final decision. The Minister of Public Safety and Solicitor General has issued a Ministerial Order under the *Emergency Program Act*, which says that tribunals may waive, extend or suspend a mandatory time period. The CRT can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the state of emergency ends, the tribunal will not have this ability. A party should contact the CRT as soon as possible if they want to ask the CRT to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.
26. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Andrea Ritchie, Vice Chair