



Civil Resolution Tribunal

Date Issued: July 8, 2020

File: SC-2020-002885

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Noftle v. ICBC*, 2020 BCCRT 761

BETWEEN:

DREW NOFTLE

APPLICANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA and
MARIA PAFUNDI

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This small claims dispute is about liability for a November 30, 2019 motor vehicle accident that occurred between the applicant, Drew Noftle, and respondent, Maria Pafundi.

2. The respondent insurer, Insurance Corporation of British Columbia (ICBC), internally assessed Mr. Nofle 100% at fault for the accident.
3. Mr. Nofle says he was incorrectly held responsible for the accident. While ICBC is named as a respondent, Mr. Nofle does not make any allegations that ICBC breached its statutory obligations or its contract of insurance in investigating the accident and assessing fault.
4. Mr. Nofle seeks an order that he not have to pay for the damage to Ms. Pafundi's vehicle, and \$3,000 in unspecified damages.
5. ICBC and Ms. Pafundi say that ICBC properly assigned fault according to the provisions of the *Motor Vehicle Act* (MVA). ICBC also says it is not a proper party to the claim.
6. Mr. Nofle is self-represented. ICBC and Ms. Pafundi are represented by an ICBC claims adjuster.

JURISDICTION AND PROCEDURE

7. 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 CRT 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.
8. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Some aspects of this dispute amount to a "he said, she said" scenario with both sides calling into question the credibility of the other. Credibility of 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. In the

circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me.

9. 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. In *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the court recognized that oral hearings are not necessarily required where credibility is in issue. I decided to hear this dispute through written submissions.
10. 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.
11. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.
12. As noted above, ICBC says it is not a proper respondent to Mr. Noffle's claims. I disagree. This dispute is about liability under the insurance contract.
13. In *Morin v. ICBC, Clark & Berry*, 2011 BCPC 290, the claimant brought an action against both ICBC and the driver of the other vehicle involved in a collision. The court held that ICBC had incorrectly charged the claimant a deductible under a "hit and run", when it found the defendant driver's negligence had caused the accident. Therefore, the court determined the claimant was entitled to reimbursement for the deductible he paid. The court decided that because the claimant had paid money to ICBC, ICBC was the proper party for the claimant to recover that money from.
14. Given that Mr. Noffle says ICBC wrongfully determined he was 100% responsible for the accident and he seeks an order preventing ICBC from making him pay for the damage to Ms. Pafundi's vehicle, I am satisfied that ICBC is a properly named party in this dispute.

ISSUES

15. The issue in this dispute is who is at fault for the accident and, if not Mr. Nofle, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

16. In a civil claim such as this, the applicant Mr. Nofle bears the burden of proof on a balance of probabilities. I have only referenced the evidence and arguments to the extent necessary to give context to my decision.
17. Before the collision, Mr. Nofle was stopped in a cultural centre parking lot. He was not parked neatly within a spot. Rather, his vehicle was positioned lengthwise across several spots, as he says he had pulled over temporarily. When he was ready to leave, Mr. Nofle says he lifted his foot off the brake “slightly” but then saw through his driver’s side window that Ms. Pafundi’s vehicle was approaching.
18. Mr. Nofle says that he braked and came to a complete stop before the impact. He says that Ms. Pafundi’s vehicle drifted into the parking area towards his vehicle and the front passenger side fender of Ms. Pafundi’s vehicle impacted his driver side mirror. He says Ms. Pafundi continued driving for “at least a full 4 seconds” after the initial contact.
19. Ms. Pafundi says that as she was driving through the parking lot, she saw Mr. Nofle’s vehicle pulled over to the right of the lane of travel. She agrees that Mr. Nofle was not properly parked in a parking spot. She says she did not see any lights on Mr. Nofle’s vehicle. As she passed him, she says Mr. Nofle pulled out and his vehicle hit her front passenger side fender. She denies that her vehicle drifted out of the lane of travel.
20. In finding Mr. Nofle at fault, ICBC relied on section 169 of the MVA which states that a driver must not move a stopped or parked vehicle unless the movement can be made with relative safety and they first give the appropriate signal. ICBC says that even if Mr. Nofle came to a stop prior to the impact as he claims, he must have

moved into the lane of travel far enough to create a hazard that Ms. Pafundi was unable to avoid.

21. ICBC's evidence shows it initially obtained telephone statements from both drivers and then requested Mr. Nofle provide a further statement to clarify his version of the accident, which he did in writing by email. His written statement is essentially reproduced in his Dispute Notice claim description. Mr. Nofle also provided ICBC with two photographs showing the damage to each of the vehicles.
22. Mr. Nofle says that the photograph of his vehicle was taken at the location of the accident and shows a yellow line in front of his car, proving that his vehicle was still within the parking area and not the lane of travel. However, I find that I cannot draw any conclusions about the location of Mr. Nofle's vehicle from the photograph in evidence. While the damage to his driver side mirror is apparent, the photograph does not provide a wide enough angle to clearly show the position of his vehicle in relation to the parking spots around it or the lane of travel.
23. Further, I do not find the damage to the vehicles helpful in determining whether Mr. Nofle was moving or stopped at the time of the collision. There were no other photographs of the accident scene or the vehicles' positions. I am left with two different versions of the how the accident happened and no supporting evidence weighing in favour of one version or the other.
24. However, I find that on Mr. Nofle's own evidence, he started moving his vehicle from a stopped position without ensuring it was safe to do so, in contravention of MVA section 169. Mr. Nofle admits that he took his foot off the brake before checking for other vehicles around him. While he says he was only moving about 3 metres per hour, he does not dispute that his vehicle was moving before he saw Ms. Pafundi's vehicle. I find it is more likely than not that Mr. Nofle's vehicle moved at least partly into Ms. Pafundi's path of travel before he came to a stop. I also find that Mr. Nofle did not put his turn signal on before he started moving to alert Ms. Pafundi of his intention to move into the lane of travel. I find that these failures of

Mr. Nofle to comply with MVA section 169 constitute negligence and were the cause of the accident.

25. On balance, I find Mr. Nofle has failed to establish that Ms. Pafundi drifted out of the lane of travel or that she was otherwise responsible for the accident. Therefore, I dismiss Mr. Nofle's claim.
26. Even if I had found Ms. Pafundi liable, I would not have allowed Mr. Nofle's claimed damages. Mr. Nofle asked for an order that he not have to pay for Ms. Pafundi's vehicle damage. This amounts to an order for injunctive or declaratory relief. Ordering someone to do something, or to stop doing something, is known as "injunctive relief". An order declaring who is responsible for the accident or that Mr. Nofle does not have to pay is known as "declaratory relief". Both injunctive relief and declaratory relief are outside the CRT's small claims jurisdiction, except where section 118 of the CRTA permits it. Mr. Nofle brought this dispute under the CRT's small claims jurisdiction over debt or damages. There are no relevant CRTA provisions here that would permit me to grant the injunctive and/or declaratory relief Mr. Nofle seeks.
27. Further, Mr. Nofle claims \$3,000, which I infer represents his cost to pay for Ms. Pafundi's vehicle damage. However, he did not provide an invoice or any other evidence of this expense. For these reasons, I would have dismissed Mr. Nofle's claim for damages in any event.
28. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. As Mr. Nofle was unsuccessful, I dismiss his claim for CRT fees. The respondents did not claim any fees or dispute-related expenses.

ORDER

29. I dismiss Mr. Nofle's claims and this dispute.

Kristin Gardner, Tribunal Member