



Civil Resolution Tribunal

Date Issued: July 23, 2020

File: SC-2020-003210

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Clark v. ICBC*, 2020 BCCRT 817

B E T W E E N :

JACOB CLARK and Heather Stuart-Clark

APPLICANTS

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA and
BRUCE BAKER

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This small claims dispute is about liability for a motor vehicle accident that happened in a parking lot on February 21, 2020 in Blaine, Washington.
2. The applicant, Jacob Clark, parked beside a vehicle owned and driven by the respondent, Bruce Baker. After parking, Mr. Clark exited his vehicle and opened the

rear driver's side door to retrieve his child from the backseat. Mr. Baker drove forward to leave his parking spot and the rear passenger side of his vehicle collided with Mr. Clark's open door.

3. The applicant, Heather Stuart-Clark, is the owner of the vehicle Mr. Clark was driving.
4. The respondent insurer, Insurance Corporation of British Columbia, insures both vehicles and internally assessed Mr. Clark 100% responsible for the accident.
5. The applicants say that Mr. Baker failed to ensure it was safe to start moving his parked vehicle and that ICBC incorrectly held Mr. Clark at fault. The applicants claim \$1,500 for vehicle repairs.
6. ICBC says it is not a proper party to this dispute and that it assigned fault according to provisions of the *Motor Vehicle Act* (MVA).
7. Mr. Clark represents himself and Ms. Stuart-Clark. ICBC and Mr. Baker are represented by an ICBC adjuster.

JURISDICTION AND PROCEDURE

8. 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.
9. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.

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 a preliminary matter, I will address ICBC's submission that it is not a proper party to the applicants' claims. A key issue in this dispute is whether ICBC acted reasonably in assigning full responsibility for the collision to Mr. Clark. The British Columbia Court of Appeal held in *Innes v. Bui*, 2010 BCCA 322 that the issue of whether ICBC acted properly or reasonably in making its administrative decision to assign full responsibility for the collision to the plaintiff is strictly between the plaintiff and ICBC. The same applies to the applicant Mr. Clark's dispute. On this basis, I find that ICBC is a properly named party.

ISSUES

13. The issues in this dispute are:
 - a. Did ICBC breach its statutory obligations in investigating the accident and assessing fault?
 - b. Who is liable for the accident and, if not Mr. Clark, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

14. In a civil claim such as this, the applicants bear the burden of proof on a balance of probabilities. I have only addressed the evidence and submissions to the extent necessary to explain my decision. I note that ICBC chose not to provide submissions, despite having the opportunity to do so.

15. The circumstances of the accident are largely undisputed. The parties agree that Mr. Baker was parked in a longer pull-through parking stall, commonly meant for larger trucks or trailers. Mr. Clark parked to Mr. Baker's right, facing in the same direction. As Mr. Baker pulled forward to leave, his car contacted Mr. Clark's open rear driver's side door.
16. The dispute between the parties is about when Mr. Clark opened the door. Mr. Clark says Mr. Baker's car engine was still off when he got out of his car and opened the rear door. In contrast, Mr. Baker says he had already started pulling forward when Mr. Clark opened his rear door and struck Mr. Baker's vehicle.
17. ICBC assessed Mr. Clark 100% at fault, relying on section 203 of the MVA. Section 203(1) says that a person must not open the door of a motor vehicle on the side available to moving traffic unless and until it is reasonably safe to do so. Section 203(2) of the MVA says that a person must not leave a door open on the side of a vehicle available to moving traffic for longer than is necessary to load or unload passengers.

Did ICBC breach its statutory obligations in investigating the accident and assessing fault?

18. As noted above, Mr. Clark says that ICBC incorrectly assessed him at fault for the accident. I infer from his submissions that he believes Mr. Baker should have been held fully responsible.
19. To succeed in his claim against ICBC, Mr. Clark must prove on a balance of probabilities that ICBC breached its statutory obligations or its contract of insurance, or both. The issue is whether ICBC acted "properly or reasonably" in administratively assigning responsibility solely to Mr. Clark: see *Singh v. McHatten*, 2012 BCCA 286 referring to *Innes v. Bui*, 2010 BCCA 322.
20. ICBC owes Mr. Clark a duty of good faith, which requires ICBC to act fairly, both in how it investigates and assesses the claim and as to its decision about whether to pay the claim: see *Bhasin v. Hrynew*, 2014 SCC 71 at paras. 33, 55, and 93. As

noted in the Continuing Legal Education Society of BC's '*BC Motor Vehicle Accident Claims Practice Manual*', an insurer is not expected to investigate a claim with the skill and forensic proficiency of a detective. An insurer must bring "reasonable diligence, fairness, an appropriate level of skill, thoroughness, and objectivity to the investigation and the assessment of the collected information": see *McDonald v. Insurance Corp. of British Columbia*, 2012 BCSC 283.

21. The ICBC claim file notes show that ICBC imposed a heavy onus on Mr. Clark as the door opener based on section 203 of the MVA. ICBC expected Mr. Clark to provide proof contradicting Mr. Baker's statement that he opened his door into Mr. Baker's moving vehicle in order to shift that onus. Mr. Clark says that ICBC failed to properly weigh Mr. Baker's obligations under section 169 of the MVA, which says a driver must not move a stopped or parked vehicle unless the movement can be made with relative safety.
22. The evidence shows that ICBC obtained statements from the drivers, as well as Ms. Stuart-Clark, who was present at the time of the accident. Ms. Stuart-Clark said that both she and Mr. Clark had exited their vehicle, opened their respective rear doors, and were attending to their children in the backseat when she heard a noise and their car shook. Even though Ms. Stuart-Clark did not actually see the accident, I find that her statement is consistent with Mr. Clark's statement that he opened his rear door and was already attending to his child before Mr. Baker started moving his vehicle.
23. ICBC also obtained the police report which described the accident as follows: "one driver pulled away from a parking stall as the other driver opened their door which caught the moving vehicle". Although, the officer did not comment on which party was at fault, the description appears to support Mr. Baker's version of the accident.
24. The evidence shows that ICBC gave Mr. Clark the opportunity to check for video surveillance in the area, but he was unable to locate any. It is undisputed that there were no independent witnesses and neither party had a dash cam.

25. I find that ICBC considered the available evidence and that the parties' statements and the police report provided sufficient evidence for ICBC to make its decision. Although the applicants disagree with ICBC's assessment and its weighting of the relevant MVA provisions, I find the applicants have not shown that ICBC breached its statutory obligations or its contract of insurance. Therefore, I dismiss the applicants' claims against ICBC.
26. However, I am not bound by ICBC's internal liability determination. I turn now to my own fresh assessment of who is liable for the accident.

Who is liable for the accident?

27. First, I will consider whether Mr. Clark violated section 203(1) of the MVA by opening his vehicle door on the side available to moving traffic when it was not reasonably safe to do so. Mr. Clark does not dispute that section 203 applies to this accident.
28. It is undisputed that Mr. Baker was aware that Mr. Clark pulled in and parked beside him, while he was seated in his driver's seat preparing to leave. In his initial statement to ICBC, Mr. Baker said Mr. Clark's door was not open before he moved forward, and he was not sure who opened the door. In a further statement about 1 month after the accident, Mr. Baker told ICBC that he did not see what "the other person" was doing after he parked. I infer that Mr. Baker is referring to Mr. Clark as "the other person". He also told ICBC that he "moved about 1 foot – it happened almost instantly", that when he began to move forward, he felt the cars scrape.
29. While Mr. Baker says he doesn't know who opened Mr. Clark's rear door, I accept the applicants' statements that Mr. Clark opened the rear door to retrieve his child, who was strapped in a car seat. I find that only Mr. Clark was present between his and Mr. Baker's car and only Mr. Clark could have opened his vehicle's rear door.
30. Further, I do not accept Mr. Baker's statement that Mr. Clark's rear door was closed before he started moving forward. I say this because Mr. Baker admitted that he did not see what Mr. Clark was doing after he parked, and he did not know who opened

the door. Therefore, on Mr. Baker's own evidence, I find that he did not look to see whether Mr. Clark's rear door was open or closed before he started moving. If he had, he would have seen either Mr. Clark between their vehicles or the open rear door. Again, I accept the applicants' statements about when Mr. Clark opened his rear door. I find that Mr. Clark's rear door was already open, and he was in the process of unstrapping his child, when Mr. Baker started pulling away.

31. This brings me to the question of when Mr. Baker turned on his vehicle. Mr. Clark says that Mr. Baker's engine was off when he opened his rear door and it was while he was unstrapping his child that Mr. Baker turned his car on and started driving forward. Mr. Baker's statements to ICBC do not suggest there was any delay between him turning on his car engine and starting to pull forward. Therefore, I accept that Mr. Baker did not turn his car on until after Mr. Clark had opened his rear door.
32. Because Mr. Baker's car was turned off at the time, I find it was reasonably safe for Mr. Clark to open his rear door. Further, there is no suggestion that Mr. Clark had his rear door open for longer than necessary to retrieve his child from the back seat. Therefore, I find Mr. Clark did not violate section 203 of the MVA.
33. This does not necessarily mean that Mr. Clark does not bear any responsibility for the accident. I find that under the circumstances, Mr. Clark had a continuing obligation to ensure his open rear door was not interfering with the vehicle beside him. Even though it was reasonably safe for Mr. Clark to open his rear door when he did, once he heard Mr. Baker's car engine start, Mr. Clark ought to have ensured that his door was not open so far that it would hit Mr. Baker's vehicle. The fact that Mr. Clark's door collided with Mr. Baker's vehicle shows that his door was either already contacting Mr. Baker's car or that the door was somehow pushed further open as Mr. Baker pulled away. Therefore, I find that Mr. Clark was negligent for failing to ensure his car door would not hit Mr. Baker's vehicle and his negligence caused the accident.
34. I turn now to whether Mr. Baker also bears any responsibility.

35. As noted above, Mr. Clark argues that Mr. Baker violated section 169 of the MVA by moving his stopped vehicle when it was unsafe to do so. I find that a reasonable person who was aware that someone had recently parked beside them would look to see where the occupants of the other vehicle were before moving their vehicle. I find that Mr. Clark and his open rear door were there to be seen.
36. Therefore, I find that it was not reasonably safe for Mr. Baker to move his stopped vehicle and he violated section 169 of the MVA. I also find that Mr. Baker was unaware of his surroundings and he ought to have looked in his mirrors and checked his blind spots before he started moving forward. In failing to do so, Mr. Baker was contributorily negligent in causing the accident.
37. On a judgment basis, I find that Mr. Clark and Mr. Baker bear equal responsibility and are each 50% liable for the accident.

Damages

38. Given that I have found Mr. Clark and Mr. Baker each 50% at fault for the accident, the applicants are entitled to 50% of their proven damages.
39. The applicants claim \$1,500 for the cost of fixing their rear door. However, they have provided no evidence or documentation, such as an estimate or repair bill, to prove this expense. I note that ICBC's March 19, 2020 letter to Mr. Clark says that his vehicle's collision deductible for repairs is \$300, but I have no evidence before me that the applicants paid the deductible to have their vehicle repaired. In the absence of any evidence of the applicants' damages, I must dismiss their claims.
40. 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. Given that I have dismissed the applicants' claims, I find they were unsuccessful and are not entitled to reimbursement of their CRT fees. The respondents did not pay and fees and neither party claimed any dispute-related expenses.

ORDER

41. I dismiss the applicants' claims and this dispute.

Kristin Gardner, Tribunal Member