



Civil Resolution Tribunal

Date Issued: August 5, 2020

File: SC-2020-002532

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Espena v. ICBC*, 2020 BCCRT 872

BETWEEN:

RONALDO ESPENA

APPLICANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA and Jennifer
Routliffe

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This small claims dispute is about responsibility for vehicle damage following a December 8, 2019 parking lot incident in New Westminster, British Columbia.
2. The respondent insurer, Insurance Corporation of British Columbia (ICBC), held the applicant, Ronaldo Espena, 100% responsible for the incident, on the basis his car door opened into Ms. Routliffe's parked vehicle and caused damage. Mr. Espena says the other driver, the respondent Jennifer Routliffe, was responsible for the incident and so he should not have had to pay anything. Mr. Espena asks for an order that Ms. Routliffe be found 100% liable. He also claims \$500, but does not explain what this is for.
3. ICBC and Ms. Routliffe say Mr. Espena is responsible for his family member's opening his rear right door and hitting Ms. Routliffe's fender. Mr. Espena says his vehicle could not have caused the alleged damage, given the height and style of his vehicle's door, and because the damage was a sharp scratch with paint that did not match his vehicle's.
4. Mr. Espena is self-represented. An ICBC employee represents the respondents.

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 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.
6. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, the parties in this dispute call into question the credibility, or truthfulness, of the

other. Nonetheless, in the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and written submissions before me and come to a fair decision.

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. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.
9. Although ICBC argues it is not a proper party to the claim, I disagree. Mr. Espena alleges ICBC failed to properly investigate the accident and assigning fault, which is a claim against ICBC as his insurer. I find ICBC is a properly named party.

ISSUES

10. The issues in this dispute are:
 - a. Did ICBC breach its statutory obligations in investigating the incident and assessing fault?
 - b. Is Mr. Espena liable for Ms. Routliffe's vehicle damage, and if not, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, as the applicant Mr. Espena bears the burden of proof, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.

12. Mr. Espena's and Ms. Routliffe's vehicles were parked adjacent in a New Westminster parking lot. He parked his car facing into the parking space, while Ms. Routliffe reversed into the space to Mr. Espena's right. Video taken at the scene shows Mr. Espena's vehicle parked on the white parking space line between Ms. Routliffe's parking space. I prefer this "scene" video over Mr. Espena's later reenactment that shows his car parked in the middle of his parking space. I note that according to ICBC's telephone notes, Mr. Espena told ICBC on January 9, 2020 that his vehicle was parked "completely straight within the lines", which I have found is not accurate.
13. Mr. Espena admits that Ms. Routliffe and her companion were walking up to their parked car when this incident occurred. It is undisputed there was damage to Ms. Routliffe's right rear fender. However, while Mr. Espena admits his family member opened his vehicle's right rear door, he says that this did not cause Ms. Routliffe's damage. It is undisputed and I find that Mr. Espena was not in a position to see whether or how his rear door made contact with Ms. Routliffe's vehicle. There is no statement in evidence from Mr. Espena's other passengers.
14. Mr. Espena says with his 20 years of experience as a licensed autobody technician he knows his door could not have caused the damage because: a) his Mercedes R350 vehicle has longer rear doors and his car could not have opened wide enough to have caused the scratch, and b) Ms. Routliffe's vehicle scratch was sharp with white paint and Mr. Espena's vehicle is silver.
15. Ms. Routliffe says that when she and her companion were walking back to her parked car, she saw Mr. Espena's family member open the passenger side rear door and saw and heard the door impact her side front fender. Ms. Routliffe says immediately after, Ms. Espena got into his vehicle with his passengers and prepared to leave, but Ms. Routliffe's companion stood behind his car so he could not leave the scene. Mr. Routliffe says Mr. Espena released the parking brake, which Mr. Espena denies. I find nothing turns on whether he did so.

16. Ms. Routliffe says at that point Mr. Espena got out of his vehicle and proceeded to open his door into her car another 4 to 6 times, causing 2 additional areas of damage, in an effort to show the damage from the initial impact was not caused by his door. Video in evidence shows Mr. Espena demonstrating how his car door contacted with Ms. Routliffe's car, although I cannot see any fresh damage being made in the video. Mr. Espena admits that at the time of the incident he "positioned my door near their fender to show them" that his vehicle did not cause the damage.

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

17. Mr. Espena says ICBC's decision was "baseless", and that they unreasonably refused to explain to him how they arrived at their decision his vehicle was at fault for Ms. Routliffe's vehicle damage. In his later submissions, Mr. Espena says ICBC unreasonably found the vehicles' heights matched the location of damage, with ICBC accounting for a difference in height due to passenger weight. Mr. Espena says ICBC measured the vehicles' respective heights a month after the incident, which he says is unfair because there could be many factors that might impact changes in the heights. I infer Mr. Espena argues that ICBC did not act fairly or reasonably in assigning fault for the accident.

18. To succeed against ICBC, Mr. Espena 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 sole responsibility for the incident against Mr. Espena (see *Singh v. McHatten*, 2012 BCCA 286, referring to *Innes v. Bui*, 2010 BCCA 322).

19. ICBC owes Mr. Espena a duty of good faith, which requires ICBC to act fairly, both in how it investigates and assesses the claim, and in its decision about whether to pay the claim (see: *Bhasin v. Hrynew*, 2014 SCC 71, at paragraphs 22, 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 *MacDonald v. Insurance Corporation of British Columbia*, 2012 BCSC 283).

20. I find there is no evidence before me to conclude ICBC failed to reasonably investigate or consider Mr. Espena’s position, as he alleges. ICBC took statements from both drivers and had its estimators examine the vehicles to determine the cause of Ms. Routliffe’s vehicle damage. I say this although I acknowledge ICBC measured the vehicles separately, about a month after the incident. As noted, the standard is not perfection and I find measuring the vehicles and coming to a decision about the relative heights and damage location does not lead to a conclusion ICBC acted unreasonably or unfairly.
21. In the circumstances, I find Mr. Espena has not proved ICBC failed to act reasonably in investigating the accident and assigning fault to him. I find the evidence shows that ICBC did not breach its statutory obligations or its contract of insurance. Therefore, I dismiss Mr. Espena’s claims against ICBC. I turn then below to my own assessment of whether Mr. Espena is responsible for Ms. Routliffe’s vehicle damage.

Is Mr. Espena liable for Ms. Routliffe’s vehicle damage?

22. Mr. Espena’s position rests on his assertion that his photos and video demonstrate 2 things. First, that the point of contact between his door and Ms. Routliffe’s is lower than the damage location. Second, that the damage on Ms. Routliffe’s black car is a white scratch, but his car is silver. In contrast, ICBC says the evidence shows the height of the doors’ relative locations matches the damage.
23. At this point, I will address Mr. Espena’s assertion that he is qualified to address the question of his vehicle causing the damage. He says he is a licensed 20-year autobody technician. Mr. Espena however provided no supporting documentation of his qualifications. However, even if he had, I would not accept his opinion as expert evidence under the CRT rules because he is not a neutral person providing an

objective position. Rather, he is an interested party advocating for a conclusion in his favour.

24. Apart from his own submissions I have addressed above, Mr. Espena did not submit any expert evidence in support of his position that his vehicle's door could not have caused the damage to Ms. Routliffe's fender. While Mr. Espena says that he asked fellow autobody technicians and that they agreed he did not cause the damage, Mr. Espena submitted no opinions from them.
25. Mr. Espena submitted photos showing that the point of contact between his silver car door and the alleged damage (circled on his photo) do not match up, as the damage is a little higher than the contact point. The evidence shows Mr. Espena took these photos at the scene after his passengers had got into the car. However, ICBC relies on evidence from its Material Damage estimator Suresh Lal, who stated that "direction of dent, height and type of dent all match". Significantly, it is undisputed Mr. Espena's car was empty when his family member opened the rear door. ICBC says the weight of Mr. Espena's two passengers later lowered the vehicle when Mr. Espena took the photos to demonstrate the heights did not match.
26. I do not have Mr. Lal's qualifications before me in evidence and so I do not accept his statement as expert opinion under the CRT's rules. However, it is undisputed he examined the vehicle as part of his regular job duties. Similarly, Wade Adams, ICBC's Material Damage Operations Manager, stated that he agreed with Mr. Lal's conclusion that "the damage is a match".
27. Mr. Espena questions the fact that the vehicles were measured separately, but he does not adequately explain why this would alter the liability issue in his favour. He also says ICBC measured the cars a month after the incident and that a variety of factors could have changed in that period, such as a change of tires, tire pressure and weight in the car. There is no evidence before me either party changed their tires or tire pressure. In any event, this does not address the fact that Mr. Espena relies on photos and videos he took at the scene, which were taken with his

passengers in the vehicle, when his family member had opened the door with no passengers in it.

28. Next, Mr. Espena provided no evidence about the scratch's colour beyond his initial assertion and based on the photos I cannot say the scratch is white as opposed to silver, or, that the scratch colour simply shows whatever material is under Ms. Routliffe's darker car paint.
29. As noted above, Mr. Espena bears the burden of proof as the applicant and I find he has not met the burden here. Further, there is nothing in the photos or videos in evidence that would, in the absence of expert evidence, allow me to obviously conclude Mr. Espena's vehicle door did not cause the damage. I say this because while I acknowledge there is no alignment in some of Mr. Espena's photos, I accept that passenger weight may have played a role. Also, as noted, I find Mr. Espena's car was parked on the white line rather than completely within his parking space as he asserted. I find this does not favour his argument as it is more likely that if the space to open a door is tight that the door will contact the car adjacent. Further, in Ms. Routliffe's video filmed as she and her companion approached Mr. Espena at the time of the incident, both say they heard the door hit her vehicle.
30. On balance, I find the weight of the evidence does not support Mr. Espena's claims that, due to the height of the damage and the scratch's colour, his vehicle could not have caused the damage. Given my conclusions above, I dismiss Mr. Espena's claims. So, I do not need to consider the details of his damages claim.
31. Under section 49 of the CRTA and CRT rule 9.5, a successful party is generally entitled to the recovery of their CRT fees. I see no reason to deviate from that here. Mr. Espena was unsuccessful and the respondents did not pay CRT fees. No dispute-related expenses were claimed. I make no order for fees or expenses.

ORDER

32. I order Mr. Espena's claims and this dispute dismissed.

Shelley Lopez, Vice Chair