



# Civil Resolution Tribunal

Date Issued: August 10, 2020

File: SC-2019-009748

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Middleton v. ICBC*, 2020 BCCRT 884

**BETWEEN:**

MICHELLE MIDDLETON

**APPLICANT**

**AND:**

Insurance Corporation of British Columbia, Landon Rempel and  
Jacqueline Rempel

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Julie K. Gibson

## INTRODUCTION

1. This small claims dispute is about a February 17, 2019 motor vehicle accident.
2. The applicant, Michelle Middleton, says her Honda CRV (CRV) was damaged by unidentified vehicle in an unwitnessed collision when she left it stationary in a parking lot. The respondents Jacqueline and Landon Rempel and ICBC says that

Ms. Middleton's CRV was damaged when it hit the Rempel's Chevrolet Impala (Impala), when the Impala was travelling on 240<sup>th</sup> Street and Ms. Middleton's CRV exited a parking lot and struck the Impala. ICBC found Ms. Middleton 100% liable for a collision between the CRV and the Impala that took place on 240<sup>th</sup> Street at Dewdney Trunk Road, on February 17, 2019. Ms. Middleton denies hitting the Impala while on 240<sup>th</sup> Street and instead says her CRV was damaged when she left it parked in a mall parking lot. Ms. Middleton says the Rempels should be held 100% liable for the 240<sup>th</sup> Street collision.

3. The respondents disagree. After a Special Investigation Unit (SIU) investigation, ICBC decided that Ms. Middleton made a false statement about parking her car on February 17, 2019 and returning to find it damaged. The damage to Ms. Middleton's CRV matched that on the Impala. The SIU also found black plastic debris that it reported had transferred from the CRV's bumper to the Impala. ICBC internally concluded Ms. Middle was 100% responsible for the collision on 240<sup>th</sup> Street.
4. ICBC says Ms. Middleton breached her insurance coverage by providing the willfully false statement to it, as set out in the *Insurance (Vehicle) Act* (IVA), section 75(c).
5. Ms. Middleton seeks an order that the respondents Jacqueline Rempel and Landon Rempel are 100% liable for the "hit and run". Ms. Middleton also seeks payment of \$4,027.24, the amount ICBC paid out for property damage under her insurance, but then demanded she repay after she provided a willfully false statement. I interpret this as Ms. Middleton seeking an order that she is not responsible to repay the \$4,027.24, which is declaratory relief outside the CRT's jurisdiction.
6. The respondents say the dispute should be dismissed because Ms. Middleton was 100% liable for the collision. They also say Ms. Middleton is not entitled to payment of \$4,027.24.
7. Ms. Middleton represents herself. An ICBC employee represents the respondents.

## 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. 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. 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.
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 Ms. Middleton's claims. ICBC says the Impala's registered owner Ms. Rempel, and the principal operator, Mr. Rempel are the only proper respondents.
13. A key issue in this dispute is whether ICBC acted reasonably in assigning full responsibility for the collision to Ms. Middleton. 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 Ms. Middleton's dispute. On this basis, I find that ICBC is a properly named party.

14. A further preliminary issue is Ms. Middleton's claim for \$4,027.24 to be paid to her by the respondents. Based on the documentary evidence, ICBC paid out this amount for property damage under Ms. Middleton's insurance policy. Then, ICBC determined that Ms. Middleton breached her insurance coverage by making a false statement. As a result, ICBC demanded that Ms. Middleton repay the \$4,207.24. There is no evidence that she has yet paid ICBC this amount.
15. If, instead of payment, Ms. Middleton is seeking an order that she does not have to pay ICBC the \$4,027.24, I find that is injunctive or declaratory relief outside the CRT's jurisdiction under section 118 of the CRTA. I refuse to resolve that issue under section 10 of the CRTA.

## **ISSUES**

16. The issues in this dispute are:
  - a. Did ICBC breach its statutory obligations investigating the collision and assessing fault?
  - b. Who is liable for the February 17, 2019 collision?
  - c. If not Ms. Middleton, what is the appropriate remedy?

## **EVIDENCE AND ANALYSIS**

17. In a civil claim such as this, the applicant Ms. Middleton bears the burden of proof on a balance of probabilities. While I have read the parties' evidence and

submissions, I have only addressed the evidence and arguments as necessary to explain my decision.

### ***Background Facts***

18. On February 17, 2019, Ms. Middleton says she parked her CRV in a parking lot in a Maple Ridge shopping plaza. When she returned to her CRV, Ms. Middleton says the CRV had new damage to the front driver's side. Ms. Middleton denies being involved in a collision with Ms. Rempel's Impala on 240<sup>th</sup> Street at Dewdney Trunk Road that same day.
19. Ms. Rempel says that, on February 17, 2019, she was driving her Impala on 240<sup>th</sup> Street at Dewdney Trunk Road when it was struck by a CRV that was exiting a coffee shop parking lot as she was driving on 240<sup>th</sup>. Ms. Rempel tried to signal the CRV to pull over, but it did not. Ms. Rempel then took a photograph of the CRV as it drove away. Based on the CRV's license plate in that photograph, I find that the CRV belonged to Ms. Middleton.
20. The Motor Vehicle Traffic Collision Police Investigation Report (police report) records a collision on February 17, 2019 on 240<sup>th</sup> Street at Dewdney Trunk Road between Ms. Middleton's CRV and Ms. Rempel's Impala. The police report records the collision as having left damage on the passenger rear of the Impala and on the CRV's front driver's side.
21. ICBC's SIU reported that Ms. Middleton initiated a claim for "hit and run" damages from the parking lot incident at 2:33 p.m. on February 17, 2019. Then, at 2:43 p.m. on February 17, 2019, Ms. Middleton initiated a further claim that, on February 3, 2019, her car was struck by wood that fell out of an unidentified truck, causing damage to the CRV's front end.
22. At about 4:56 pm on February 17, 2019, Ms. Rempel initiated a claim with ICBC saying that Ms. Middleton's CRV had struck her Impala earlier that day, at 240<sup>th</sup> Street and Dewdney Trunk Road, causing damage to the right rear quarter of Ms. Rempel's Impala, and the CRV's front left corner.

23. On April 6, 2019, Kirmac Collision assessed the CRV vehicle damage. Based on the photographs of the damage, ICBC estimator RJ noted that the damage to the Impala matched the CRV damage, comparing height measurements of the damage on each vehicle.
24. In support of her claim, Ms. Middleton relies on an undated witness statement from PW, a mechanic. PW writes that he examined the CRV the day “it happened” and concluded that Ms. Middleton’s CRV could not have done \$4,000 worth of damage to another car. PW also writes that there were no pieces missing from the CRV. Because PW failed to examine the Impala, I place little weight on his opinion as to the extent of the damage to it. As well, PW’s qualifications were mentioned but not detailed or proven in evidence. I therefore do not accept his evidence as expert evidence.
25. PW then offers his view that he does not believe that Ms. Middleton gave ICBC a willfully false statement about the parking lot incident. I do not accept PW’s opinion regarding the willfully false statement, because that assessment is outside his expertise.
26. Because PW did not examine or see photographs of the Impala, I give his evidence little weight. In contrast, RJ had access to photographs and damage measurements for both vehicles. While I do not accept RJ’s evidence as expert opinion, because I do not have his qualifications, I accept RJ’s observation that the damage on the Impala and CRV was matching in height. Based on RJ’s observation, which is consistent with the photographs filed in evidence, I find that the damage indicates that, more likely than not, the CRV and Impala were involved in a collision together.
27. The SIU report also noted that there was some black plastic missing from the CRV’s bumper, and that black plastic debris was found lodged in the Impala’s right wheel after impact. Photographs were filed in evidence that I find confirm this transfer of black plastic debris from the CRV to the Impala.

28. The SIU report concluded that "...on a balance of probabilities, it is very likely that MIDDLETON was the driver of her Honda CR-V when it collided with \*\*\*\*'s vehicle and fled the scene ...." The SIU report recommended that liability be assigned to Ms. Middleton.
29. On October 28, 2019, ICBC wrote to Ms. Middleton to say it would not pay her claim because she made a "willfully false statement" with respect to the claim. As a result, on November 1, 2019, ICBC wrote to Ms. Middleton asking her to reimburse it \$4,027.24, the amount it paid to repair the Rempels' Impala.

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

30. As noted above, Ms. Middleton implies that ICBC did not act fairly or reasonably in assigning her fault for the accident by seeking a reversal of ICBC's internal liability assessment.
31. To succeed on this issue, Ms. Middleton 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 accident against Ms. Middleton: *Singh v. McHatten*, 2012 BCCA 286, referring to *Innes v. Bui*, above.
32. ICBC owes Ms. Middleton 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: *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": *MacDonald v. Insurance Corporation of British Columbia*, 2012 BCSC 283.

33. I find Ms. Middleton has not proven that ICBC acted unfairly in the investigation or assessment of her claim. Her submission is that her statement about her CRV being damaged while it was stationary in a parking lot is true, whereas ICBC found it to be a false statement.
34. Ms. Middleton further submits that the collision on 240<sup>th</sup> Street did not occur and that her CRV did not hit the Impala. I find this unlikely given that her CRV was photographed leaving the collision site. Based on RJ's evidence, the damage photographs, Ms. Rempel's account of the collision, the photograph of Ms. Middleton's CRV driving away and Ms. Middleton's conflicting reports about how the CRV damage occurred, I find that the CRV and the Impala collided, as reported by Ms. Rempel, on February 17, 2019. I find that Ms. Middleton is 100% liable for the collision.
35. For the same reasons, I find that Ms. Middleton made a false statement to ICBC, when she reported that her CRV was damaged while stationary in a parking lot on February 17, 2019. Section 75(c) of the IVA says an insured's claims are invalid and the right of an insured to insurance money under the contract is forfeited if the insured makes a willfully false statement with respect to a claim. I find that ICBC has proven that Ms. Middleton made a false statement, forfeiting her vehicle insurance and that it properly demanded repayment of monies it paid out for property damage: see the non-binding but useful analysis in *Richard v. ICBC*, 2020 BCCRT 808.
36. For all the above reasons, I find Ms. Middleton has not met the burden of proving the CRV's damage was a result of a parking lot "hit and run": see the non-binding analysis in *Yeung v. ICBC*, 2020 BCCRT 715, which I find instructive.
37. Given my findings that Ms. Middleton is liable for the February 17, 2019 collision on 240<sup>th</sup> Street, I dismiss Ms. Middleton's remaining claims against the respondents. As noted above, I have refused to resolve her claim regarding the \$4,027.24.



38. 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. I see no reason in this case not to follow that general rule. The respondents were successful in this dispute but paid no tribunal fees and did not claim dispute-related expenses. I therefore make no order in this regard.

## **ORDER**

39. I dismiss Ms. Middleton's remaining claims and her dispute.

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Julie K. Gibson, Tribunal Member