



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Bariteau v. ICBC*, 2020 BCCRT 943

B E T W E E N :

MARC BARITEAU and Rozanne Siska

APPLICANTS

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA and
STEPHANIE LYONS

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This small claims dispute is about a motor vehicle accident that occurred on January 21, 2020 in Burnaby, British Columbia. The applicant, Marc Bariteau, says

the other driver, the respondent Stephanie Lyons, should be held 100% responsible. Mr. Bariteau claims \$2,437.71 for vehicle repairs, plus \$101.23 for a car rental. He also seeks an order that he be found 0% liable for the accident. I infer the applicant Rozanne Siska is the owner of the vehicle driven by Mr. Bariteau.

2. The respondent Insurance Corporation of British Columbia (ICBC) insures both Mr. Bariteau and Ms. Lyons. The respondents say ICBC properly held Mr. Bariteau 50% responsible because ICBC was not able to prefer one driver's account over the other and had no other way to determine which driver crossed the road line and sideswiped the other. In contrast, Mr. Bariteau says the cars were not beside each other at the point of impact, and instead argues Ms. Lyons turned her car into his lane and hit him from behind.
3. Mr. Bariteau represents the applicants. An ICBC adjuster represents the respondents.

JURISDICTION AND PROCEDURE

4. 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.
5. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me.
6. 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.

7. 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 CRT considers appropriate.
8. In its Dispute Response, ICBC argued it is not a proper party to the claim, and that the claim should be against Ms. Lyons only. I disagree. Mr. Bariteau alleges ICBC acted unreasonably in investigating the accident and assigning fault, which is a claim against ICBC as his insurer. While Ms. Siska's own collision coverage was with a private insurer, that covers repair costs to her own vehicle if Mr. Bariteau is at fault. However, ICBC provided basic insurance coverage, which covers Ms. Siska's vehicle repairs if Mr. Bariteau is not at fault (see section 7 of the *Insurance (Vehicle) Act*). ICBC has a duty to the applicants as first insurer to determine fault. So, I find ICBC is a properly named party.

ISSUES

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

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, as the applicants Mr. Bariteau and Ms. Siska bear 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.

11. Mr. Bariteau's submissions are on behalf of both applicants. Since the heart of this dispute is about whether Mr. Bariteau should be held 50% or 0% responsible for the accident, for convenience below I have largely only referred to Mr. Bariteau's burden to prove the claims.

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

12. As noted above, Mr. Bariteau says that ICBC did not act fairly or reasonably in assigning fault for the accident. Specifically, he says ICBC unreasonably believed Ms. Lyons over him, without reviewing the vehicles' damage and instead choosing to rely on photos. He says ICBC showed a lack of due diligence in its investigation and took a blasé approach to it. As a result, Mr. Bariteau wants to be assessed 0% liability for the accident plus he seeks \$2,437.71 in compensation for his vehicle repair costs and \$101.23 for a car rental.

13. To succeed against ICBC, Mr. Bariteau 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 50% responsibility for the accident against Mr. Bariteau (see: *Singh v. McHatten*, 2012 BCCA 286, referring to *Innes v. Bui*, 2010 BCCA 322).

14. ICBC owes Mr. Bariteau 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).

15. As noted, the basis of Mr. Bariteau's claim against ICBC is that he says ICBC did not thoroughly investigate the accident. Specifically, he says ICBC did not investigate the vehicle damage in person and also wrongly concluded there was a windshield crack in a photo when Mr. Bariteau says there is no such crack visible.
16. Mr. Bariteau says at the time of collision Ms. Lyons was behind him and had tried to cut into his lane, hitting him on the right rear side of his vehicle. In contrast, ICBC says it reasonably apportioned fault 50/50 based on the two drivers' conflicting statements, because there was no other available evidence, such as witnesses or dash cam footage. ICBC says that inspecting the vehicles would not have determined which driver crossed the line into the other.
17. I acknowledge Mr. Bariteau's position that an ICBC employee effectively told him that a physical inspection would be required to determine if Ms. Lyons' vehicle was behind Mr. Bariteau's at the time of impact. There is nothing in the evidence before me to support that assertion. I also acknowledge Mr. Bariteau's argument that photos "do not do it justice" and that ICBC should have done a physical investigation. However, as discussed further below, Mr. Bariteau submitted no evidence that a physical investigation would have made any difference. His own diagram submitted to ICBC shows the cars beside each other, with Ms. Lyons' vehicle's front end beside his vehicle's rear end. It did not show a "rear end" situation. Considering proportionality, I find ICBC acted reasonably in not pursuing an in-person inspection of the vehicles' damage, given the overall value of this dispute and the relatively minor accident. That ICBC internally declines to assess credibility is, I find, not proven unreasonable.
18. In summary, although I acknowledge Mr. Bariteau disagrees with ICBC's fault assessment, I find he has not shown that ICBC breached its statutory obligations or its contract of insurance. Therefore, I dismiss the applicants' claims against ICBC.

Who is liable for the accident?

19. The evidence shows Mr. Bariteau and Ms. Lyons have very different accounts of the events leading up to the accident and at the time of the collision. Notably, there are no witnesses and no dash cam footage.
20. At the outset, I find in the circumstances of this dispute nothing turns on whether after the accident Mr. Bariteau ripped Ms. Lyons' dash cam out of her car, causing a windshield crack, and threw it down a ravine, which she alleges and he denies. I note that Mr. Bariteau says there is no visible crack in her windshield in the photos in evidence, but I do see a crack in at least one of them. However, I find nothing turns on the dash cam allegation and I do not need to make a finding of fact about it. What matters is the evidence of how the accident happened.
21. The January 21, 2020 accident occurred as Mr. Bariteau and Ms. Lyons were both northbound on Cariboo Road, proceeding to turn right onto Gaglardi Way.
22. As set out in his diagram submitted to ICBC, Mr. Bariteau says Ms. Lyons was "pulled over on the side of Cariboo Road", essentially driving on the shoulder, and that when she re-entered the lane her front tires were pointing to the left. Mr. Bariteau submits this is consistent with her hitting his vehicle in an attempt to cut him off. As noted above, based on his own diagram, I find Ms. Lyons did not rear-end Mr. Bariteau to the extent he alleges she did. Mr. Bariteau's diagram suggests Ms. Lyons' front bumper hit his right passenger rear door. However, photos of Ms. Lyons' vehicle show the damage is to the left side of her vehicle, just over her wheel well. More on the photos below.
23. Mr. Bariteau argues Ms. Lyons had been engaging in road rage and was aggressively trying to cut him off at the time of the accident, which she denies.
24. In contrast, Ms. Lyons says that before the accident she had passed Mr. Bariteau, and before the Gaglardi Way intersection she went into the right turning lane and Mr. Bariteau then came up beside her and was trying to get in front of her. Ms. Lyons says that given Mr. Bariteau's earlier road rage behaviour (which he denies),

she was scared after the accident when he got out of the car and approached her car door, and so she drove away. As noted above, Mr. Bariteau followed her and spoke with her at a stop light, which is when Ms. Lyons says Mr. Bariteau ripped out her dash cam, as discussed above.

25. Mr. Bariteau argues Ms. Lyons' leaving the accident scene shows she is not credible. I am unable to prefer either version of the alleged road rage or how the accident actually occurred. I find I have insufficient proof that Ms. Lyons was not reasonably scared after the accident, noting that she admits she left the scene frightened, contrary to the *Motor Vehicle Act* (MVA) requirement to stay at the scene of an accident. Mr. Bariteau caught up with her at a stop light a short distance later, and so ultimately this is not a hit and run situation.

26. I have no evidence before me about the specifics of the Cariboo Road and Gaglardi Way intersection, such as whether it is a laned roadway with a broken line. However, it is non-controversial that sections 151 and 157 to 159 of the MVA require a driver to change lanes or pass only when reasonably safe to do so. Here, I am unable to determine that it is more likely than not that Ms. Lyons was the driver who changed lanes and hit Mr. Bariteau as he alleges.

27. In terms of which vehicle hit the other, I find an assessment in this context requires expert evidence, as it is outside ordinary knowledge (see *Bergen v. Guliker*, 2015 BCCA 283). Given there is none, I am left with an evidentiary tie between Mr. Bariteau's and Ms. Lyons' versions of events. Given Mr. Bariteau has the burden of proof in this dispute as the applicant, I find he has not met that burden to break the tie.

28. I acknowledge Mr. Bariteau's submission that his photos show that Ms. Lyons must have hit him, rather than his hitting her. However, I find the photos do not show that Ms. Lyons turned her car into his or which car sideswiped the other. While Mr. Bariteau says he spoke with an estimator at an autobody shop who supported his version of events, he did not submit a statement from that estimator or anyone else potentially qualified to comment on which vehicle caused the accident. I find it more

likely that if an estimator had given Mr. Bariteau the opinion he says was given, Mr. Bariteau would have submitted a witness statement to that effect. Parties are told during the CRT facilitation process to submit all relevant evidence, including witness statements. I also note Mr. Bariteau provided no expert opinion that says a physical examination was required as opposed to an expert relying on the submitted photos.

29. Next, even if I had found Mr. Bariteau was not liable for the accident, I would not have allowed his claimed remedies. First, I could not make an order declaring that he is 0% liable, as that is declaratory relief not permitted under the CRTA. Second, he provided no proof of his claimed compensation for vehicle repairs, such as a quote or a receipt, nor did he provide proof of his claimed car rental expense. Further, as noted, Ms. Siska has private collision coverage from another insurer, and it is unknown to what extent, if any, Ms. Siska has already been compensated through that insurance.
30. Given my conclusions above, I dismiss the applicants' claims.
31. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to the recovery of their CRT fees. As the applicants were unsuccessful, I find they are not entitled to reimbursement of paid CRT fees. No dispute-related expenses were claimed. The successful respondents did not pay fees.

ORDER

32. I order the applicants' claims and this dispute dismissed.

Shelley Lopez, Vice Chair