Civil Resolution Tribunal

Date Issued: September 10, 2020

File: SC-2020-004156

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Harrington v. ICBC*, 2020 BCCRT 1014

BETWEEN:

JAMES HARRINGTON

APPLICANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA and SCOTT FRANCIS HALL

RESPONDENTS

REASONS FOR DECISION

Tribunal Member: Andrea Ritchie, Vice Chair

INTRODUCTION

1. This is a small claims dispute about a motor vehicle accident that occurred on April 19, 2020 in a parking lot. The applicant, James Harrington, says he opened the

driver side door to exit his parked vehicle, and the door was struck by a vehicle driven by the respondent, Scott Francis Hall.

2. The respondent insurer, Insurance Corporation of British Columbia (ICBC), insures both Mr. Harrington and Mr. Hall. ICBC internally concluded that Mr. Harrington was 100% at fault for the accident. Mr. Harrington disagrees and says Mr. Hall should be held at least 50% at fault. He claims $3,500 in increased insurance premiums over the next 10 years, and the return of his $300 deductible.

3. Mr. Harrington is self-represented. The respondents are represented by an ICBC employee.

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 tribunal 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. 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. I also note that 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.

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. In resolving this dispute the CRT may make one or more of the following orders, where permitted by section 118 of the CRTA:

    a. Order a party to do or stop doing something;

    b. Order a party to pay money;

    c. 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 Mr. Hall only. I disagree. Mr. Harrington alleges ICBC poorly handled its investigation of the accident, which is a claim against ICBC as his insurer. 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 responsible for the accident? If not Mr. Harrington, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, as the applicant, Mr. Harrington bears the burden of proof on a balance of probabilities. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.

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

11. As noted above, Mr. Harrington says that ICBC poorly handled its assessment of fault for the April 19, 2020 accident.

12. To succeed against ICBC, Mr. Harrington 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 Mr. Harrington (see: *Singh v. McHatten*, 2012 BCCA 286 referring to *Innes v. Bui*, 2010 BCCA 322).

13. ICBC owes Mr. Harrington 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 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).

14. Apart from his vague assertion that ICBC poorly handled his claim, Mr. Harrington does not make any specific allegations against ICBC, but rather argues the *Motor Vehicle Act* (MVA) provision (section 203) relied on by ICBC is unreasonable. ICBC submits it has acted fairly and with the utmost good faith in all its dealings with Mr. Harrington.

15. In the circumstances, I find Mr. Harrington has not shown ICBC acted unreasonably in investigating the accident or assigning fault to Mr. Harrington. I find there is no evidence ICBC breached its statutory obligations or its contract of insurance. I dismiss Mr. Harrington's claims against ICBC.

Who is responsible for the accident?

16. On April 19, 2020, Mr. Harrington parked his vehicle in an empty parking stall. To his left was another empty stall. Mr. Harrington says he opened his door to exit his vehicle as Mr. Hall pulled into the empty stall too fast and too close to his vehicle, striking his open car door. In a statement provided to ICBC on April 21, 2020, Mr. Harrington said if his door was over the parking stall line, it was "barely" over. Mr. Harrington does not allege Mr. Hall crossed the parking stall line into Mr. Harrington's stall.

17. In contrast, Mr. Hall says as he pulled his vehicle into the empty parking stall, Mr. Harrington recklessly opened his door into the stall without looking. Mr. Hall says he was proceeding into the stall at a "normal parking speed", and at no time did he cross the line into Mr. Harrington's stall.

18. ICBC based its fault decision on section 203 of the MVA which, as noted above, Mr. Harrington says is unreasonable. Section 203 sets out a person's duties when they open a car door into moving traffic. Section 203(1) says that a person must not open the door of a vehicle on the side available to moving traffic unless and until it is reasonably safe to do so. Section 203(2) says a door must not be left open on the side available to moving traffic for longer than is necessary to load or unload passengers.

19. Mr. Harrington says that as his vehicle was stationary, and because the accident occurred in a parking lot, section 203 is unreasonable to apply. He says because of the flow of traffic around the parking lot, it would be impossible to open his door into the "flow of traffic", because the vehicle was parked perpendicular to traffic. I infer Mr. Harrington is saying that because his vehicle was in a stall, not in an aisle, he did not open his door into "moving traffic" as mentioned in section 203. I disagree.

20. First, I note that section 203 refers to "moving traffic" and not the "flow of traffic", specifically. Further to section 119(1) of the MVA, the definition of "traffic" includes a vehicle "using a highway to travel". Section 1 of the MVA defines a "highway" as

including “every private place or passageway to which the public, for the purpose of the parking or servicing of vehicles, has access or is invited”. Contrary to Mr. Harrington’s submission, I find the parking lot, including the individual parking stalls, meets the definition of a “highway”. Further, I find Mr. Hall’s vehicle was “moving traffic”, as it pulled into the empty stall adjacent to Mr. Harrington’s parked vehicle. I find that section 203 applies to the April 19, 2020 accident.

21. Here, there is no allegation Mr. Harrington’s vehicle door was open for an unnecessary length of time. I find there was no breach of section 203(2) of the MVA. However, I find that Mr. Harrington did breach section 203(1).

22. I say this because Mr. Harrington did not provide any evidence or submissions about what steps he took to ascertain he could open his door safely before doing so, such as checking for vehicles attempting to park. In contrast, Mr. Hall says Mr. Harrington opened his door without checking for Mr. Hall’s incoming vehicle.

23. Also, as noted above, Mr. Harrington says Mr. Hall came into the parking stall too quickly, which Mr. Hall denies. I find there is an evidentiary tie about whether Mr. Hall was traveling too quickly for the circumstances. As the burden rests with Mr. Harrington to prove his case, I find he has not proven, on balance, that Mr. Hall was speeding. Therefore, I find Mr. Hall proceeded into the parking stall at a “normal” pace, as he alleges. Additionally, the evidence is that Mr. Hall always remained in his parking stall, while Mr. Harrington admits his car door may have crossed the line into Mr. Hall’s space. Based on all the above, I find Mr. Harrington breached section 203(1) of the MVA by opening his door when it was unsafe to do so, causing the April 19, 2020 accident.

24. Mr. Harrington also argues section 203 unreasonably implies drivers of a moving vehicle are not required to pay attention to possible hazards that may suddenly appear. However, I find section 203 specifically places duties on drivers of stationary vehicles to avoid collisions with moving vehicles, while other sections of the MVA (such as section 144) outline the duties of drivers of moving vehicles in observing potential hazards.

25. While Mr. Hall had an obligation to be aware of his surroundings and to react reasonably to hazards, I find that he had no time to avoid hitting Mr. Harrington's door as it opened directly in front of his moving vehicle. Therefore, I find there is no basis to support any liability on behalf of Mr. Hall.

26. I find Mr. Harrington 100% responsible for the April 19, 2020 accident.

27. Given this, I do not need to discuss Mr. Harrington's claim for damages in any detail, except to say that Mr. Harrington did not provide any evidence in support of his claim for increased insurance premiums. Also, Mr. Harrington has not proven that his insurance premiums would be anything different if he were found only 50% liable, instead of 100%. So, I would have dismissed Mr. Harrington's claim for increased insurance premiums in any event.

28. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. Although Mr. Hall and ICBC were successful, they did not pay any tribunal fees nor claim any dispute-related expenses. Therefore, I make no order.

ORDER

29. I order Mr. Harrington's claims, and this dispute, dismissed.

Andrea Ritchie, Vice Chair