



Civil Resolution Tribunal

Date Issued: September 16, 2020

File: SC-2020-002541

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Abood v. ICBC*, 2020 BCCRT 1040

BETWEEN:

MAJID ABOOD

APPLICANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA, Redzep
Nukovic, Semiha Nukovic, and Alma Nukovic

RESPONDENTS

AND:

MAJID ABOOD

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. This small claims dispute is about a motor vehicle accident that occurred on November 20, 2019 in a restaurant parking lot in Surrey.
2. The car driven by the applicant and respondent by counterclaim, Majid Abood, collided with the car driven by the respondent Redzep Nukovic (Redzep). I will address the roles of the respondents Semiha Nukovic and Alma Nukovic below.
3. The respondent insurer, Insurance Corporation of British Columbia (ICBC), internally determined that Mr. Abood was 100% responsible for the accident. Mr. Abood says Redzep is 100% responsible for the accident. He claims \$2,000 for fixing his car.
4. ICBC says it is not a proper respondent in Mr. Abood's claim as Mr. Abood's claim should be against the Nukovics only. The respondents say Mr. Abood is 100% responsible for the accident and ask that Mr. Abood's claim be dismissed.
5. ICBC also says Mr. Abood breached his insurance contract by intentionally colliding with Redzep's car and by willfully making a false statement about the accident. ICBC counterclaims \$1,298.04 for fixing Redzep's car.
6. Mr. Abood represents himself. The respondents are represented by NT, an ICBC employee. Without intending any disrespect, as 3 of the respondents have the same last name, I will refer to them by their first names only.

JURISDICTION AND PROCEDURE

7. 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.

8. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. 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.
9. Most of the argument in this dispute amounts to a “he said, he said” scenario, with each party calling into question the credibility of the other. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required in all cases where credibility is in issue. I have considered the CRT’s mandate of proportionality and a speedy resolution of disputes. I am satisfied that I can assess and weigh the evidence and submissions before me without holding an oral hearing.
10. 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 tribunal considers appropriate.
11. In its Dispute Response filed at the outset of this proceeding, ICBC argued it is not a proper party to this claim and that the claim should be against the Nukovics only. I agree. While Mr. Abood named ICBC as a respondent, he made no allegations against it in his Dispute Notice or submissions. This dispute is not one where the applicant alleges ICBC breached its duty to adequately investigate the accident (see, for example, *Harrington v. ICBC*, 2020 BCCRT 1014). Mr. Abood does not seek any remedy from ICBC, such as a refund of his insurance deductible, or changes to his insurance premium costs (see, for example, *Won v. ICBC*, 2019 BCCRT 848). Therefore, I dismiss Mr. Abood’s claim against ICBC.

ISSUES

12. The remaining issues in this dispute are:
 - a. Who is responsible for the November 20, 2019 accident?
 - b. Must Redzep pay to fix Mr. Abood's car and, if so, how much?
 - c. Must Mr. Abood reimburse ICBC for fixing Redzep's car and, if so, how much?

EVIDENCE AND ANALYSIS

13. In a civil claim such as this one the applicant, Mr. Abood, must prove his claim on a balance of probabilities. To succeed in its counterclaim, ICBC must prove its claim to the same standard. I have reviewed all submissions and evidence provided, but I will only refer to that which explains and gives context to my decision.
14. First, I will address the Nukovic respondents. Mr. Abood did not initially include any of the Nukovics in this dispute, filing his dispute against ICBC and "Jane Doe". Mr. Abood amended his Dispute Notice after ICBC identified the 3 Nukovics as the proper respondents. None of the parties identified in this CRT dispute which Nukovic respondent is the driver or the owner of the car involved in the November 20, 2019 accident. However, Redzep reported the accident to ICBC. In ICBC's telephone notes Redzep is identified as the insured. The accident details indicate the insured was driving the car involved in the accident. So, I find Redzep was likely driving the vehicle when it was involved in the accident. Based on the November 26, 2019 repair estimate, I find Redzep is also the car's owner.
15. Mr. Abood has made no allegations specifically against either Semiha or Alma in his Dispute Notice or his submissions. Further, the evidence in this dispute does not suggest that either Semiha or Alma were involved in the accident. For these reasons, I dismiss Mr. Abood's claim against Semiha and Alma Nukovic.

Mr. Abood's Claim for Fixing his Car

16. The parties agree that Redzep reversed her car into a parking stall. They also agree Mr. Abood was in the parking lot aisle, waiting for Redzep to finish parking.
17. Mr. Abood says Redzep was taking too long to park while talking on her cell phone. He says he honked his horn to let her know he was waiting. Mr. Abood says he rolled down his window and told Redzep that it was not right to keep him waiting while talking on her cell phone. Mr. Abood says Redzep finished parking but, as Mr. Abood drove past her car, Redzep drove forward out of the parking stall and hit the right front bumper of Mr. Abood's car.
18. In contrast, Redzep says Mr. Abood was honking, flashing his lights and yelling at her to hurry up while she was reversing into the parking stall. Redzep says Mr. Abood deliberately drove his car into her car.
19. ICBC provided "statements" from Mr. Abood and Redzep which are dated telephone notes written by an ICBC employee. The telephone notes are not direct evidence but are hearsay.
20. The CRT has the discretion to admit evidence that would not normally be admissible in court proceedings, including hearsay. In *Medel v. Grewal*, 2019 BCCRT 596, a CRT vice chair accepted similar hearsay evidence on the basis that ICBC, as part of its standard procedures when investigating an accident, receives oral reports from witnesses and records those summaries in its file. Although prior CRT decisions are not binding on me, I agree with and adopt the vice chair's reasoning. I find these statements admissible. I will weigh each statement in my analysis below.
21. On November 20, 2020, Mr. Abood reported the accident to ICBC by telephone. He said Redzep was parked sideways, but busy on her phone. Mr. Abood said he flashed his lights and Redzep told Mr. Abood she was parked. Mr. Abood said that as he tried to drive past Redzep she drove forward and struck Mr. Abood's right front bumper and fender.

22. Mr. Abood provided accident scene photos showing Redzep's car parked a foot or so forward from the back of the parking stall. I disagree with Mr. Abood that this shows Redzep must have driven forward out of the stall to hit Mr. Abood's car. Based on the photo, I find it just as likely that Redzep parked the vehicle poorly. I find the photos do not support Mr. Abood's version of events.
23. On November 21, 2019, Redzep reported the accident to ICBC by telephone. Redzep said Mr. Abood was honking his horn and flashing his lights as Redzep reversed into the parking stall. When Redzep finished parking, Mr. Abood pulled his vehicle up to hers while yelling and swearing, then "rammed" his car into Redzep's car. Redzep said an off duty police officer came forward and witnessed Mr. Abood berating Redzep.
24. On December 25, 2019, Constable S emailed ICBC a copy of his written police statement. Constable S wrote that he was off duty, and in his forward-facing car in the parking lot when he saw Mr. Abood's vehicle in the parking lot aisle. Constable S saw Mr. Abood honk his horn repeatedly, then roll down his window and start to yell and swear at Redzep. Constable S heard Redzep apologize to Mr. Abood as Mr. Abood continued to swear and honk his horn.
25. Constable S wrote that he heard Mr. Abood rev his engine and then suddenly lurch forward and hit Redzep's vehicle. Constable S got out of his car and intervened between the parties. He saw that Mr. Abood was quite agitated and upset.
26. As Constable S's statement is written, he is trained as a police officer, and he was an independent witness to the accident, I find his statement credible and reliable. I accept Constable S's version of events. I do not accept Mr. Abood's version of events where they are inconsistent with Constable S. Specifically, I find Redzep did not drive forward out of the parking stall and hit Mr. Abood's car.
27. On balance, I find Mr. Abood intentionally drove his car into Redzep's car. This is consistent with Constable S' observations and his description of Mr. Abood's aggressive and agitated behavior. Mr. Abood himself acknowledges that he honked

at Redzep and told her that he was upset at having to wait for her to finish parking. I find Mr. Abood is 100% liable for the motor vehicle accident. I dismiss Mr. Abood's claim for car repairs.

28. Even if Redzep were responsible for the accident, I would still dismiss Mr. Abood's claim as he did not prove his damages. Mr. Abood provided no evidence of his repair costs. While I accept his car was damaged, that does not show how much, if anything, Mr. Abood paid to fix his car.

ICBC's Counterclaim for Fixing Redzep's Car

29. It is undisputed that ICBC insured Mr. Abood for third party liability coverage at the time of the motor vehicle accident. In this case it means ICBC would pay for any damage to either Redzep or her car, if caused by Mr. Abood's driving. However, section 55(7.1) of the *Insurance (Vehicle) Regulations* (Regulations) says an insured breaches their insurance contract if they intentionally commit an act of violence with the vehicle. Section 55(1.1) of the Regulations says ICBC is not liable to an insured who breaches their insurance contract in such a way. In other words, if Mr. Abood committed an intentional act of violence which caused the accident, ICBC is not responsible for paying for the resulting damage under Mr. Abood's insurance policy.
30. As noted above, I find Mr. Abood deliberately drove his car into Redzep's car. Redzep described it as "ramming" her car. Using a vehicle to "ram" another car is an intentional act of violence with a vehicle (see *Horvath v. ICBC*, 1995 CanLII 3099 (BC SC)). So, I find ICBC is not liable to pay for any damages resulting from the November 20, 2019 accident.
31. As I find ICBC not liable for the damage, I need not consider whether Mr. Abood breached his insurance contract by willfully providing a false statement, which would have forfeit Mr. Abood's insurance coverage under section 75 of the *Insurance (Vehicle) Act* (IVA).

32. Section 76 of the IVA allows ICBC to pay money to a claimant in an accident claim on behalf of an insured, even if the insured breaches their insurance contract or ICBC is otherwise not liable to pay the claim.
33. Section 77(2) of the IVA allows ICBC to recover the amount it paid on a claim from an insured, if the insured breached their insurance contract or ICBC is otherwise not liable for the claim payment. ICBC must send a demand letter to the insured by registered mail, or deliver it personally, before enforcing its right to reimbursement.
34. ICBC submitted in evidence a January 13, 2020 letter addressed to Mr. Abood, demanding payment of \$1,298.04. The letter says it is sent by “certified mail” and includes a tracking number. As certified mail includes a tracking number, and requires a signature, I find it is essentially registered mail, which also includes a tracking number and requires a signature. So, I find ICBC has met the demand requirement of section 77(2) of the IVA.
35. ICBC says it paid \$1,298.04 to fix Redzep’s car. ICBC submitted a November 26, 2019 repair estimate for \$1,291.74. There is no explanation for the \$7 difference between the repair estimate and the amount claimed by ICBC. The estimate says ICBC would have to pay only \$791.74, as Redzep was responsible for paying her insurance deductible of \$500. I find the \$500 deductible is not an amount paid by ICBC on the claim and so ICBC is not entitled to recover the cost of Redzep’s insurance deductible. None of the Nukovics are a party to the counterclaim and have not claimed reimbursement of their \$500 deductible, so Mr. Abood is not responsible for paying the insurance deductible. On balance, I find Mr. Abood must pay ICBC \$719.47 in repair costs.
36. The *Court Order Interest Act* applies to the CRT. ICBC is entitled to pre-judgment interest on the \$719.47 from January 13, 2020, the date of its demand letter, to the date of this decision. This equals \$7.23.
37. 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. As ICBC was somewhat successful in its counterclaim I find it entitled to reimbursement of \$75 in CRT fees. As he was unsuccessful, I find Mr. Abood is not entitled to reimbursement of his CRT fees. Neither party claimed reimbursement of dispute related expenses.

ORDERS

38. Within 14 days of the date of this order, I order Mr. Abood to pay ICBC a total of \$801.70, broken down as follows:

- a. \$719.47 in debt,
- b. \$7.23 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$75 in CRT fees.

39. ICBC is entitled to post-judgment interest, as applicable.

40. Mr. Abood's claims are dismissed.

41. Under section 48 of the CRTA, the CRT will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the CRT's final decision. The Province of British Columbia has enacted a provision under the *COVID-19 Related Measures Act* which says that statutory decision makers, like the CRT, may waive, extend or suspend mandatory time periods. This provision is expected to be in effect until 90 days after the state of emergency declared on March 18, 2020 ends, but the Province may shorten or extend the 90-day timeline at any time. A party should contact the CRT as soon as possible if they want to ask the CRT to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

42. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Sherelle Goodwin, Tribunal Member