



Civil Resolution Tribunal

Date Issued: January 21, 2021

File: SC-2020-005151

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *ICBC v. Greater Victoria Contracting Services Ltd.*, 2021 BCCRT 75

B E T W E E N :

INSURANCE CORPORATION OF BRITISH COLUMBIA

APPLICANT

A N D :

GREATER VICTORIA CONTRACTING SERVICES LTD. and
DARIAN PARKER GONDOR

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about a debt allegedly owed for vehicle damage.
2. The applicant, Insurance Corporation of British Columbia (ICBC), says that the respondent, Darian Parker Gondor, was operating a snow removal machine owned by the other respondent, Greater Victoria Contracting Services Ltd. (GVCS), when

Mr. Gondor collided with a parked vehicle. ICBC insures the parked vehicle and paid to repair it.

3. ICBC says Mr. Gondor is 100% liable for the vehicle damage, and the snow removal machine he was driving at the time was uninsured. So, ICBC says it is entitled to recover the money it paid to repair the vehicle under section 84 of the *Insurance (Vehicle) Act* (IVR), from either Mr. Gondor alone or both Mr. Gondor and GVCS. ICBC says Mr. Gondor and GVCS have failed to pay, despite a demand for reimbursement. ICBC claims \$1,953.35 for the repair costs.
4. Mr. Gondor is a director of GVCS. Both Mr. Gondor and GVCS dispute that they owe ICBC anything. Mr. Gondor says ICBC has not provided any evidence that he is responsible for the vehicle damage. GVCS says that it did not own the snow removal machine in question, so it cannot be held liable.
5. ICBC is represented by an employee. Mr. Gondor represents both himself and GVCS.

JURISDICTION AND PROCEDURE

6. 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). Section 2 of the CRTA states that 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 the dispute's parties that will likely continue after the CRT process has ended.
7. Section 39 of the CRTA says 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, and I find that there are no significant issues of credibility or other reasons that might require an oral hearing. 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 the interests of justice.

8. Section 42 of the CRTA says 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. 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.

Mr. Gondor and GVCS' participation

10. Neither Mr. Gondor nor GVCS provided any evidence or arguments in this dispute, despite several attempts by CRT staff to contact Mr. Gondor by telephone and email. Mr. Gondor filed separate Dispute Responses for himself and GVCS. CRT staff contacted Mr. Gondor by telephone on November 16, 2020 and he advised he had not received any emails because he is unable to sit at a computer due to an injury. He requested all communication be done through mail instead.
11. So, CRT staff mailed Mr. Gondor ICBC's evidence and submissions with instructions on how to submit his response by mail. He was provided a December 2, 2020 deadline for receipt of his mailed submissions, but none were received. CRT staff made further attempts to follow up with Mr. Gondor by telephone and email, but Mr. Gondor did not respond. Bearing in mind the CRT's mandate that includes speed, efficiency, and flexibility, I am satisfied that Mr. Gondor received ICBC's evidence and submissions and was provided with sufficient opportunity to respond. On balance, I find that Mr. Gondor and GVCS have chosen to proceed with this dispute without providing evidence or arguments.
12. Therefore, I find that all the evidence and submissions the parties wished to provide are before me, and that I may decide this dispute based on them.

ISSUES

13. The issues in this dispute are:

- a. Is Mr. Gondor responsible for damaging the parked vehicle?
- b. Does GVCS own the tractor that Mr. Gondor was allegedly driving?
- c. Does either respondent owe ICBC \$1,953.35 for the vehicle repairs?

EVIDENCE AND ANALYSIS

14. In a civil proceeding like this one, as the applicant, ICBC must prove its claims on a balance of probabilities. I have read all of the evidence and submissions before me but refer only to what I find is necessary to explain my decision.
15. ICBC says that on February 21, 2019, Mr. Gondor was operating an uninsured snow removal machine in a parking lot, when he negligently collided with a parked vehicle and caused it damage. ICBC insures the damaged vehicle and provided evidence showing it cost \$1,953.35 to repair.
16. ICBC filed video surveillance footage of the parking lot, from 2 different angles. Both video angles show a small tractor with a shovel, moving snow from a corner of the parking lot into a large container. After reversing back from the container, the tractor turns, and the back of it collides with the back of a parked pick-up truck. There is no license plate visible to identify the tractor, and the driver does not appear to be identifiable in the videos.
17. ICBC submits that the owner of the damaged truck spoke to Mr. Gondor, who confirmed that GVCS owned the tractor and that it was not required to be licensed. Given that Mr. Gondor did not make any submissions, he did not specifically deny the allegation that he told the truck owner that GVCS owned the tractor. However, I note that GVCS denied owning the tractor in its Dispute Response. ICBC did not provide a statement from the individual who says he spoke with Mr. Gondor, or a copy of its claim file notes documenting the report of this conversation.

18. I find ICBC's evidence about who owns the tractor is based entirely on hearsay evidence. The CRT has discretion to admit information as evidence that it considers relevant, necessary, and appropriate, whether or not the information would be admissible in a court of law, including hearsay evidence. However, I do not place any weight on the hearsay evidence of the damaged truck owner, since ICBC did not explain why it failed to provide a statement directly from that individual.
19. I also note that ICBC does not say the truck owner confirmed Mr. Gondor was driving the tractor at the time of the accident. In his Dispute Response, Mr. Gondor said ICBC had failed to provide any proof to support its claim that he damaged the truck. I agree. I find there is no evidence before me connecting Mr. Gondor to the tractor or the parking lot on the day of the accident. ICBC does not provide any explanation for why it believes Mr. Gondor was driving the tractor.
20. In some cases, it may be appropriate to make an adverse inference against a respondent who has failed to provide evidence or submissions, and to generally assume that the applicant's position is correct. However, I do not find it appropriate to make an adverse inference here. I find the respondents' Dispute Responses contained sufficient denials of responsibility for the truck damage and put ICBC on notice that there was a lack of evidence supporting their claims. Yet, ICBC chose not to obtain or file further evidence in support of its allegations.
21. Bearing in mind that ICBC has the burden of proving its claims, I find that it has failed to prove either that Mr. Gondor was driving the tractor or that GVCS owns the tractor. Therefore, I find I must dismiss ICBC's claims.
22. 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. ICBC was unsuccessful and so I dismiss its claim for reimbursement of its CRT fees. Neither of the respondents paid any fees or claimed any dispute-related expenses, so I make no order.

ORDER

23. I order ICBC's claims, and this dispute, dismissed.

Kristin Gardner, Tribunal Member