



Civil Resolution Tribunal

Date Issued: February 8, 2021

File: SC-2020-001623

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lutz v. ICBC*, 2021 BCCRT 146

BETWEEN:

SHERRIE LUTZ and EARL BYRON LUTZ

APPLICANTS

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA and KANDUS THORP

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This small claims dispute is about a motor vehicle accident that happened on June 19, 2019 in Kelowna, BC.
2. The applicant, Earl Byron Lutz, and the respondent, Kandus Thorp, were driving their respective vehicles southbound on Gordon Drive. Mr. Lutz was driving a 2007

International 5-ton commercial vehicle (5-ton), co-owned by the applicant, Sherrie Lutz. Mr. Lutz says that as he was attempting to make a wide left turn at an intersection, Mrs. Thorp attempted to overtake him on his left side and “dragged” the right passenger side of her Toyota SUV along the 5-ton’s front driver’s side tire. No one was injured in the accident.

3. Mrs. Thorp says she had been travelling behind Mr. Lutz’s 5-ton but moved into a dedicated left turn lane when it was free. She says Mr. Lutz caused the accident by changing into her lane and colliding with the side of her SUV.
4. The respondent insurer, Insurance Corporation of British Columbia (ICBC) insures the applicants’ 5-ton. Mrs. Thorp’s SUV was insured in the United States by the insurer “Nationwide”, who is not a party to this dispute.
5. ICBC internally determined that Mr. Lutz was 100% at fault for the accident.
6. The applicants say ICBC was wrong and seek a finding that Mrs. Thorp was 100% responsible for the accident. The applicants also claim \$5,000 for alleged insurance premium increases resulting from the accident.
7. The applicants are represented by Mrs. Lutz, the primary applicant. ICBC is represented by an adjuster. Mrs. Thorp is represented by a Nationwide adjuster.

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). 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.

9. Section 39 of the CRTA says that the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. As I discuss below, there is no independent evidence about the accident and the parties give conflicting versions of what happened. While the parties did not request an oral hearing, I considered whether it was necessary here. I decided it was not necessary for the following reasons.
10. First, in *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. The credibility of interested witnesses (here the 2 drivers), particularly where there is conflict, cannot be determined solely by the test of whose personal demeanor in a CRT proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. Second, the CRT's mandate includes proportional and speedy dispute resolution and I find it would not be proportional to hold an oral hearing considering the relatively minor nature of this claim and it was not requested. In the circumstances, I decided it is fair and appropriate to decide this dispute through written submissions.
11. 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.
12. 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.
13. As a preliminary matter, Mrs. Thorp asks that I anonymize the parties' names because she is concerned that a final decision or order will be harmful to her privacy or security interests. However, Mrs. Thorp has not explained what those privacy or security concerns are. The CRT's decisions generally identify the parties because these are considered open proceedings. This is done to provide transparency and integrity in the justice system. The CRT only anonymizes decisions in certain limited

situations, such as disputes that involve a vulnerable party. The CRT may also anonymize decisions in disputes that include sensitive information, such as medical issues. Other than these circumstances, the CRT generally discloses the parties' names as part of the open process. I find Mrs. Thorp has not established that there is a sufficient basis to remove the parties' names from this decision and I decline to anonymize the names.

ISSUES

14. The issues in this dispute are:

- a. Did ICBC breach its statutory or contractual obligations to the applicants?
- b. Who is responsible for the accident?
- c. What, if any, is the appropriate remedy?

EVIDENCE AND ANALYSIS

15. In a civil proceeding like this one the applicants must prove their claims on a balance of probabilities. I have read the parties' submissions, but only comment on the argument and evidence that I find relevant to provide context for my decision.

16. On June 19, 2019, Mr. Lutz and Mrs. Thorp were driving south on Gordon Drive towards the intersection at Clement Avenue. Mrs. Thorp was the following driver. Gordon Drive has 1 lane in each direction and a dedicated left turn lane at Clement Avenue with an advance green light. Both drivers say they attempted to turn left onto Clement Avenue from the left turning lane and collided, which caused damage to the passenger side of Mrs. Thorp's vehicle. There are no independent witnesses or dash cam footage about what happened just prior to the collision.

17. Mr. Lutz says Mrs. Thorp overtook his 5-ton on his left side at a "high rate of speed" by crossing over the solid center yellow line, through Gordon Drive's north bound lane, to enter the dedicated left turning lane. He says he was just into his left turn

when Mrs. Thorp's SUV collided into or more precisely, dragged along the 5-ton's wheel by attempting this alleged maneuver. Mrs. Thorp denies crossing the middle yellow line to overtake the 5-ton. Mrs. Thorp says the dedicated left turn lane was open as she approached the intersection and she moved into it by following the "lane configuration". She alleges that Mr. Lutz's 5-ton turned into her SUV when she was in the dedicated left turn lane.

18. After the accident, Nationwide repaired Mrs. Thorp's SUV under her insurance policy and contacted ICBC to claim recovery of its repair costs against the applicants.
19. Since Mr. Lutz was the driver who had changed lanes when the vehicles' collided, it internally found Mr. Lutz 100% at fault under section 151 of the *Motor Vehicle Act* (MVA). Section 151 requires drivers to yield to others travelling on the road when changing lanes.
20. Under section 74.1 of the *Insurance (Vehicle) Regulation*, ICBC has the authority to admit liability, in whole or in part, on behalf of the insured, participate in any non-judicial process to resolve the claim, and compromise or settle the action. ICBC admitted 100% liability for the accident on behalf of the applicants, settled the action, and paid Nationwide for the repair costs.
21. As noted above, the applicants disagree with ICBC's internal fault decision, which they say is inconsistent with the facts of what actually occurred. I turn next to their claim against ICBC.

Did ICBC breach its statutory or contractual obligations to the applicants?

22. ICBC owes the applicant 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 paras. 33, 55 and 93). ICBC must bring "reasonable diligence, fairness, an appropriate level of skill, thoroughness, and objectivity to the investigation and the assessment of the collected information" (*McDonald v. Insurance Corporation of British Columbia*, 2012 BCSC 283).

23. To succeed in their claim against ICBC, the applicants must prove on a balance of probabilities that ICBC breached its statutory obligations or its contract of insurance, or both.
24. I find the extent of ICBC's obligation to investigate an accident varies with the severity of the accident. Based on the adjuster notes in the ICBC claim file, I find ICBC considered both drivers' statements and the vehicle photographs. I find it also gathered and considered other relevant information about the accident scene. I find the thoroughness of ICBC's investigation was proportional to the low overall value of this claim and that it was reasonable in the circumstances.
25. As for ICBC's assessment, the applicants allege that ICBC misunderstood and failed to consider how a commercial vehicle operates in reaching its determination on fault, which I find is not proven. There was no objective or independent evidence that Mrs. Thorp was speeding or that she had illegally moved into the left turn lane prior to the accident. Mr. Lutz admitted to changing lanes at the point of collision and Mrs. Thorp was to his left, in the left turning lane. Given the information before it, I find ICBC's assignment of 100% responsibility against Mr. Lutz is reasonable and consistent with the MVA.
26. I find the applicants have not established that ICBC breached its statutory or contractual obligations and I dismiss their claims against ICBC.
27. As ICBC's internal liability determination is not binding on me, I turn next to my own assessment of fault and the applicants' claim against Mrs. Thorp.

Who is responsible for the accident?

28. The applicants brought this claim against Mrs. Thorp for damages in negligence. To succeed, the applicants must prove on a balance of probabilities that Mrs. Thorp was at fault for the accident and that they suffered the claimed damages as a result of her negligence.

29. As there are no independent witness statements or dash cam footage, the primary evidence before me on the accident's cause is the 2 drivers' statements, which as I mentioned, conflict.
30. The applicants provided photographs with measurements of their 5-ton and the road, plus other circumstantial evidence. They argue that the circumstantial evidence proves their version of events is correct. Primarily they say due to the 5-ton's size and slow speed, it would have been impossible for Mrs. Thorp to have changed into the left lane by following the lane configuration and she must have crossed the yellow center line.
31. I have reviewed the photographs and measurements and considered the applicants' arguments. I agree the 5-ton is a long and large enough vehicle that it might have blocked Mrs. Thorp's view and the left turn lane entry. However, I find this would depend on the vehicles' relative positions on the road just prior to Mrs. Thorp moving into the left lane. The vehicles' relative positions at that point are not established. There is no objective evidence that Mrs. Thorp had in fact crossed the yellow center line or made the alleged illegal maneuver. The evidence also does not prove the vehicles' respective speed at the point of collision. So, while Mr. Lutz's version of events is possible, I find it is not proven to be more likely than not, which is the applicable test.
32. I also find that reconstructing this accident based on circumstantial evidence is otherwise outside an ordinary person's expertise and would require expert opinion (see *Berger v. Guliker*, 2015 BCCA 283). There is no such expert opinion evidence here.
33. Without independent evidence, I find the applicants have not proven their version of events is correct. I find it equally possible that Mrs. Thorp was able to change into the dedicated left lane by following the proper lane configuration without crossing the yellow middle line. Further, I find it possible, on the photographs and statements, that Mrs. Thorp's SUV was established in the left lane at the time Mr. Lutz attempted to

change lanes and that it was Mr. Lutz who caused the collision by changing lanes into her SUV.

34. So, I find I am left with an evidentiary tie. The applicants have the burden to break the tie, and I find they have not done so here. I find the applicants have not proven on a balance of probabilities that Mrs. Thorp caused or contributed to the accident. I dismiss the applicants' claims against Mrs. Thorp.

What, if anything, is the appropriate remedy?

35. I note that the applicants say they are primarily seeking a reversal of ICBC's fault finding so their insurance premiums are not increased going forward. While the CRT has authority to make findings of liability, I find the CRT does not have authority under CRTA section 118 to order ICBC to reverse its internal fault determination. In any event, I find the applicants have not proven that they are entitled to a different fault finding for the accident or to any damages. I dismiss their claims.
36. 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. As the applicants were unsuccessful, I find they are not entitled to have their CRT fees and dispute-related expenses reimbursed. The respondents paid no CRT fees and claimed no dispute-related expenses.

ORDER

37. I dismiss the applicants' claims and this dispute.

Trisha Apland, Tribunal Member