



Civil Resolution Tribunal

Date Issued: April 6, 2021

File: SC-2020-007151

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Meeds v. ICBC*, 2021 BCCRT 365

B E T W E E N :

JASON MEEDS

APPLICANT

A N D :

**INSURANCE CORPORATION OF BRITISH COLUMBIA,
SKOGIES ENTERPRISES VERNON LTD., and JUNE FERGUSON**

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This small claims dispute is about motor vehicle damage from an alleged collision. The applicant, Jason Meeds, says that the respondent, June Ferguson, was driving a vehicle in front of his in an automatic car wash owned by the respondent, Skogies Enterprises Vernon Ltd. (Skogies). Mr. Meeds says that Ms. Ferguson applied her

brakes and the car wash malfunctioned, and that his vehicle was pushed into hers, causing damage. The respondent Insurance Corporation of British Columbia (ICBC) insures Ms. Ferguson's vehicle only. Mr. Meeds claims \$2,046.15 for vehicle repairs.

2. ICBC and Ms. Ferguson say the car wash malfunctioned while Ms. Ferguson was in it, and that Skogies is solely responsible for any vehicle damage. Skogies did not submit a Dispute Response and did not formally participate in this dispute. However, in a statement in evidence, Skogies indicated that the damage was caused entirely by Ms. Ferguson braking in the car wash.
3. ICBC represents itself and Ms. Ferguson. Mr. Meeds is self-represented.

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). 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.
5. 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. Although the parties' submissions each call into question the credibility of the other party in some respects, I find I can properly assess and weigh the written evidence and submissions before me, and that an oral hearing is not necessary in the interests of justice. In the decision *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always needed where credibility is in issue. Keeping in mind that the CRT's mandate includes proportional and speedy dispute resolution, I find I can fairly hear this dispute through written submissions.

6. 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.
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, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

ISSUE

8. Whether any of the respondents are liable for Mr. Meeds' vehicle damage and owe \$2,046.15, or another amount, for repairs.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, Mr. Meeds must prove his claims on a balance of probabilities. I have read and weighed all the submitted evidence, but I refer only to the evidence I find relevant to provide context for my decision.
10. As noted, Skogies did not submit a Dispute Response or formally participate in this dispute, so it could be in default under the CRT's rules. However, ICBC contacted Skogies' owner, CS, about the incident, and submitted witness statements it recorded from CS, as well as photos from CS. I find Skogies explained its position about the incident in these statements, including why it thought Ms. Ferguson was entirely at fault for the accident. In the circumstances, and in light of the CRT's mandate to be flexible, I have exercised my discretion not to assume liability against Skogies. So, I find Skogies is not in default.
11. I note that ICBC's only connection to this CRT dispute is that it insured Ms. Ferguson's vehicle. Mr. Meeds alleges that either Ms. Ferguson or Skogies, or both, are responsible for his vehicle damage, not ICBC. ICBC did not insure Mr. Meeds' vehicle, and there are no allegations that ICBC failed in a duty to properly investigate

the collision or properly make an internal fault assignment. I find ICBC is not liable for Mr. Meeds' vehicle damage, so I dismiss the claims against ICBC.

12. The car wash incident occurred on April 22, 2020. The parties do not deny that Mr. Meeds' vehicle contacted something while inside the Skogies automatic car wash. The respondents do not allege that Mr. Meeds was in any way at fault for the alleged vehicle contact. As explained below, Ms. Ferguson and Skogies blame each other for the vehicle contact.
13. The car wash is an automatic type. The wheels on one side of a vehicle are positioned in a track of 2 low metal railings, which keep the vehicle steering straight. Small wheels and bars are drawn along the floor within the track, moving the vehicle forward by pushing on the vehicle wheels. The vehicle is moved past cleaning equipment such as brushes and blow dryers. Multiple vehicles may be drawn along the track inside that car wash at the same time, one after another. It is undisputed that Ms. Ferguson's vehicle was positioned immediately in front of Mr. Meeds' vehicle as both were pulled along the car wash track.
14. It is also undisputed that vehicles should be left in neutral while using the car wash. Further, the parties do not deny that applying a vehicle's brakes while on the car wash tracks is prohibited, or that this could cause vehicles behind to be pushed into the rear of the braking vehicle. The parties also do not deny that the car wash had a sign at the entrance that said, "Enter At Your Own Risk."
15. Mr. Meeds says that Ms. Ferguson applied her brakes in the car wash, under the dryers. Ms. Ferguson denies that she applied her brakes, and says that the incident occurred earlier in the car wash, near some brushes. Mr. Meeds admits that his soapy windshield made it difficult to see, so I find that the alleged incident likely occurred near an earlier brush section, and not at the dryers. Mr. Meeds does not say whether Ms. Ferguson's brake lights came on, or how else he knew she had applied her brakes. Ms. Ferguson says her husband, K, was in her vehicle's front passenger seat. In K's statement to ICBC, he said that Ms. Ferguson did not brake, although he did not explain how he knew that.

16. I accept that ICBC accurately recorded the witness statement evidence of CS, Skogies' owner, as no transcription errors are alleged. CS did not address whether the car wash malfunctioned, but did say that Ms. Ferguson braked in the car wash. However, CS said he was not at the car wash when the incident happened. He said his statement was based on surveillance video he provided an internet link to, and unspecified conversations with unidentified employees. However, CS admits that the incident occurred out of view of the surveillance camera, as do the other parties, and it is undisputed that the video footage only shows Ms. Ferguson's vehicle and the final section of the car wash. So, I find nothing turns on the linked video surveillance evidence, and I place no weight on CS's unverified hearsay evidence about how the incident unfolded and what the parties allegedly did during it.
17. I note that submitting internet links as evidence, rather than the evidence itself, generally calls into question the reliability of the linked evidence. There is often no way of knowing whether the linked video has changed at any point in time, and whether all parties and the Tribunal Member have seen the same video. In the circumstances of this case, and given my above finding that nothing turns on the linked video, I did not rely on it in coming to my decision.
18. Mr. Meeds says that the car wash track pushed his vehicle into Ms. Ferguson's stopped vehicle multiple times, causing damage. He says that the car wash stopped after a few moments, but not soon enough to prevent the alleged collision, and he had to drive out manually. Mr. Meeds says the car wash malfunctioned by failing to detect Ms. Ferguson's vehicle was not clear of the exit, and continued to push his vehicle forward for a time. I am not persuaded by this argument, given my finding above that the incident did not happen at the car wash exit.
19. In contrast, Ms. Ferguson told ICBC that part way through the car wash "everything stopped." Ms. Ferguson said K was prevented from getting out to investigate because a brush was blocking the front passenger door. Shortly after, she said there were three "bangs" from the back of her vehicle like something was running into it, after

which the car wash carried her vehicle to the exit. Ms. Ferguson said the only thing she could think of was that the hits freed her from a “roller” she was stuck on.

20. K’s ICBC statement said that a large car wash roller wrapped around Ms. Ferguson’s trailer hitch, which temporarily stopped the vehicle for a few seconds. K says he then heard Mr. Meeds’ vehicle hit the roller 3 times, but he says there was no contact directly between the two vehicles. Ms. Ferguson said that K found roller material on her trailer hitch when he checked it after exiting the car wash, although K does not specifically confirm or deny this in his ICBC statement. K’s evidence does not explain how he knew Mr. Meeds hit a roller between the vehicles rather than Ms. Ferguson’s vehicle directly, and whether K saw this from his position in the front passenger seat.
21. As noted, Mr. Meeds bears the burden of showing that his vehicle damage was caused by Ms. Ferguson braking in the car wash, or by a car wash malfunction. On the evidence before me, I find that Mr. Meeds has not met his burden of proving that Ms. Ferguson applied her brakes in the car wash, or otherwise stopped her vehicle’s forward progress, causing the alleged collision. I say this primarily because Ms. Ferguson denies braking, and Mr. Meeds admits his vision was obscured, and does not say that he saw brake lights.
22. Having weighed the evidence, I find it likely that Ms. Ferguson’s forward progress was impeded by interference from a car wash brush. However, I find that the evidence fails to show that it was reasonably foreseeable to Ms. Ferguson that her vehicle would become entangled by a car wash brush.
23. I also find there is insufficient evidence about the features of Ms. Ferguson’s vehicle and whether any presented an unreasonable entanglement risk. Given this, I find that Mr. Meeds has failed to prove that there was a reasonably foreseeable risk of car wash entanglement with Ms. Ferguson’s vehicle that Skogies should have recognized, or that Skogies failed to stop the car wash reasonably quickly during the incident. I also find that a car wash malfunction is not proved, despite the brief entanglement. Further, I find that Mr. Meeds should not have expected there would

be no possibility of an incident in the car wash, and that he accepted such risks by entering after undisputedly viewing the “Enter At Your Own Risk” sign.

24. Given the above, I find that neither Ms. Ferguson nor Skogies failed to meet the applicable standard of care owed to Mr. Meeds in the circumstances (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 at paragraph 3). So, I find that neither of them was negligent. I find Mr. Meeds has not met his burden of proving that Ms. Ferguson or Skogies was liable for his vehicle damage, so I dismiss the claims against them.

CRT FEES, EXPENSES, AND INTEREST

25. 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 find the respondents were successful here, but paid no CRT fees and claimed no expenses. So, I order no reimbursements.

ORDER

26. I dismiss Mr. Meeds’ claims, and this dispute.

Chad McCarthy, Tribunal Member