



Civil Resolution Tribunal

Date Issued: April 22, 2021

File: SC-2020-009116

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Downes v. ICBC*, 2021 BCCRT 412

BETWEEN:

RANDY DOWNES

APPLICANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA and
NICHOLAS HOUSTON

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. This is small claims dispute is about vehicle damage. The applicant, Randy Downes, and the respondent, Nicholas Houston, are next door neighbours. They had both just backed out of their driveways when their vehicles collided.

2. The respondent, Insurance Corporation of British Columbia (ICBC), insures both parties. ICBC internally concluded that the parties were equally at fault.
3. Mr. Downes disagrees. He says that he was stopped in the roadway when Mr. Houston backed into him. He says that the collision was entirely Mr. Houston's fault. Mr. Downes claims reimbursement of a \$150 deductible. The respondents maintain that liability should be split equally between the 2 drivers.
4. Mr. Downes represents himself. Mr. Houston and ICBC are both represented by an ICBC adjuster.

JURISDICTION AND PROCEDURE

5. 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.
6. 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. In some respects, both parties of this dispute call into question the credibility, or truthfulness, of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision *Yas v. Pope*, 2018 BCSC 282, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.
7. 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.

8. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to pay money or to do or stop doing something. The tribunal's order may include any terms or conditions the CRT considers appropriate.
9. I note that Mr. Downes uploaded evidence to the CRT's portal after the deadline to do so had passed. However, ICBC had already provided these 3 pieces of evidence, so nothing turns on this.
10. I will briefly address ICBC's main argument that it is not a proper respondent in this dispute. The CRT has consistently found that an insured may claim against ICBC if they believe that ICBC did not meet its statutory or contractual obligation to reasonably investigate an accident. I agree with this approach. In this dispute, Mr. Downes says that ICBC should have had both vehicles physically inspected. However, Mr. Downes does not argue that ICBC should be liable for the deductible because of any contractual or statutory breach. I find that the substance of Mr. Downes's claim is solely about who was at fault for the collision because he does not claim any remedies against ICBC. So, I dismiss his claims against ICBC.

ISSUES

11. Mr. Downes initially claimed \$1,987.18 in vehicle repair costs but withdrew that claim during facilitation. His remaining claim is for the reimbursement of a \$150 deductible, which I discuss in more detail below.
12. The issues in this dispute are:
 - a. Who was at fault for the accident?
 - b. What remedy, if any, is appropriate?

EVIDENCE AND ANALYSIS

13. In a civil claim such as this, Mr. Downes as the applicant must prove his case on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
14. As mentioned above, Mr. Downes and Mr. Houston are next door neighbours. They both live in the curved part of a cul-de-sac. As a result, their driveways are not parallel and angle towards each other. When facing their houses from the street, Mr. Downes's house is to the left of Mr. Houston's house. There is a tall hedge between Mr. Houston's driveway and Mr. Downes's front yard. The hedge does not go all the way to the sidewalk.
15. The accident occurred on the morning of August 1, 2020. The parties intended to go in opposite directions. So, when they each backed out of their driveways, they turned their vehicles' rears towards each other's driveway. The collision occurred on the roadway between the driveways when Mr. Houston's driver's side door hit Mr. Downes's vehicle's rear left corner. There is no dashcam or other video footage and no independent witness to the accident. The parties dispute exactly how the accident happened.
16. Mr. Downes reported the accident to ICBC on August 3, 2020. He said that he had finished backing up when Mr. Houston hit his car. He said that at the time of the collision, he was either stationary or had just started to move forward. I find that nothing turns on this distinction. In either event, Mr. Downes said that he had stopped reversing a "couple of seconds" before he was hit and was fully established in the roadway.
17. Mr. Houston also reported the accident to ICBC, on August 6, 2020. Mr. Houston said that he had checked his mirrors and rear camera but did not see Mr. Downes until he hit Mr. Downes's vehicle. He was otherwise uncertain about what happened. He did not believe that he had started to straighten out when the vehicles collided, so he assumed that Mr. Downes did because of where the

vehicles made contact. He said that the hedge between their properties did not obstruct his view because it stops far enough from the street that he can see Mr. Downes's driveway.

18. Mr. Downes swore a statutory declaration on September 9, 2020, and sent it to ICBC on September 15, 2020. He said that he had reviewed Mr. Houston's statement and disagreed with several aspects of it. He said that there were other vehicles and a boat in Mr. Houston's driveway at the time. He says that these vehicles and the hedge together blocked Mr. Houston's view of Mr. Downes's driveway. He also said that Mr. Houston would not have been able to see what where Mr. Downes had stopped on the road.
19. ICBC determined that there was no evidence to support the sequence or timing of events. ICBC therefore concluded that the parties were equally at fault because they were both backing out of their driveway. ICBC relied on sections 169 and 194 of the *Motor Vehicle Act* (MVA). Section 169 says that a person must not start a parked vehicle unless it is reasonably safe to do so. Section 194 says that a person must not reverse a vehicle unless it is safe to do so.
20. I agree with Mr. Downes that the location of the vehicle damage proves that he had likely exited his driveway before Mr. Houston. Based on the driveways' angles and the direction each driver intended to go, I find that if the parties had been exiting their driveways at the same time, the right side or rear of Mr. Downes's vehicle would have struck the left or rear side of Mr. Houston's vehicle. Because the left side of Mr. Houston's vehicle hit the left rear corner of Mr. Downes's vehicle, I find that Mr. Downes had backed out of his driveway first. I therefore find that Mr. Downes was in the roadway when Mr. Houston hit him. Mr. Houston does not specifically dispute this point.
21. However, I do not agree that the vehicle damage necessarily proves that Mr. Downes was stopped when Mr. Houston ran into him, as Mr. Downes alleges. Just because Mr. Downes left his driveway first does not necessarily mean that he was

not at fault. I find that the relevant question is whether Mr. Downes was still reversing when the collision happened.

22. On that point, I find that Mr. Downes's evidence is more reliable than Mr. Houston's. Reliability is about whether a person's evidence is accurate, regardless of their intentions. Mr. Houston provided little detail in his submissions about how the collision happened, so the only evidence from Mr. Houston is the statement he gave ICBC 5 days after the collision. In that statement, as mentioned above, he candidly admitted that he did not see Mr. Downes before the collision. So, I find that his evidence about what Mr. Downes did before the collision was speculative. In contrast, I find that Mr. Downes's evidence about his actions is clear, detailed, and consistent with the vehicle damage. So, while I find no reason to doubt Mr. Houston's credibility, I accept Mr. Downes's evidence that he was fully stopped for around 2 seconds before Mr. Houston hit him.
23. Section 193 of the MVA imposes a "high standard of care" on reversing drivers like Mr. Houston. Drivers must make sure that it is safe to reverse and must be "as aware as reasonably possible" of what is behind them while they reverse. See *Carson v. Henyecz*, 2012 BCSC 314. I find that Mr. Downes's car was there to be seen as Mr. Houston was reversing into the roadway. I find that Mr. Houston should have seen Mr. Downes's stopped car at some point before hitting it. I therefore find that Mr. Houston breached the standard of care for reversing drivers. I find that Mr. Houston was negligent.
24. I turn then to whether Mr. Downes bears any blame for the collision. While the general burden of proof is on Mr. Downes as the applicant, Mr. Houston must prove that Mr. Downes was contributorily negligent. See *Shapiro v. Dailey*, 2012 BCCA 128.
25. I find that there is no basis in the evidence that Mr. Downes breached the standard of care. I make this finding primarily because I have found that he was stopped for a couple of seconds before he was hit. I infer from this that the roadway was clear

when he was reversing. With that, it is unclear what he should have done differently. I find that Mr. Downes was not contributorily negligent.

26. For these reasons, I find that Mr. Houston was fully at fault for the collision.

27. According to an agreed statement of facts, Mr. Downes has not repaired his vehicle yet. There is an estimate in evidence, which included a \$150 deductible. Given that Mr. Downes has not repaired the vehicle, I infer that he has not paid the deductible. So, I find that there is nothing for Mr. Houston to reimburse.

28. I considered whether this means that Mr. Downes is, in effect, asking for a declaration about who was at fault for the collision. The CRT has jurisdiction over damages claims but cannot order declaratory relief, which includes orders about who is at fault for an accident. For example, see *Choi v. Osborne*, 2020 BCCRT 987, at paragraph 46. However, I find that Mr. Downes's claim is different because his claim is for damages. I find that whether Mr. Downes has proven a loss is part of his damages claim's merits. In other words, I find that just because Mr. Downes did not prove a loss, this does not change the nature of his claim.

29. I therefore dismiss Mr. Downes's claim for reimbursement of the \$150 deductible.

30. 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. Even though I agreed with Mr. Downes's arguments about liability, he was ultimately unsuccessful. So, I dismiss his claim for CRT fees. Neither respondent claimed any dispute-related expenses or paid any CRT fees.

ORDER

31. I dismiss Mr. Downes's claims, and this dispute.

Eric Regehr, Tribunal Member