



Civil Resolution Tribunal

Date Issued: April 28, 2021

File: SC-2020-008681

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Liu v. City of Chilliwack*, 2021 BCCRT 445

BETWEEN:

JINGSONG LIU

APPLICANT

AND:

CITY OF CHILLIWACK

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This small claims dispute is about a single vehicle accident that occurred on November 4, 2020 in Chilliwack, British Columbia.
2. The applicant, Jingsong Liu, says the respondent, City of Chilliwack (City), was aware of an oil spill on its road and failed to reasonably respond to the hazard. Ms. Liu says

that due to the City's negligence, she drove through the unmarked oil on the road and lost control of her vehicle while making a left turn, damaging her vehicle. Ms. Liu claims \$1,500, which includes \$750 for her vehicle's deductible, \$500 for loss of work, \$68.37 for loss of use of her vehicle, and \$181.63 for towing expenses.

3. The City says once it was notified of the oil spill, it responded in a reasonable manner. The City denies that it was negligent and says it is not responsible for Ms. Liu's claimed damages.
4. Ms. Liu is self-represented. The City is represented by an employee.

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. 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.
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 do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

ISSUE

9. The issue in this dispute is whether the City was negligent in responding to the oil spill, and if so, whether Ms. Liu is entitled to any damages.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant Ms. Liu must prove her claims on a balance of probabilities. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.
11. It is undisputed that at approximately 8:00 p.m. on November 4, 2020, the police called the City's after-hours line to report oil on the road at the intersection of Hocking Avenue and McIntosh Drive. The City's after-hours centre forwarded the oil spill information to the City's risk management department at about 8:05 p.m. I find the evidence shows the City dispatched an employee from his home to clean up the oil spill, and he arrived on site at approximately 9:10 p.m.
12. It is undisputed that shortly after 9:00 p.m., before the City employee arrived, Ms. Liu was driving southbound on McIntosh Drive and turned left at an intersection to proceed westbound on Hocking Avenue. It is also undisputed that Ms. Liu lost control of her vehicle during her turn and she hit a curb, damaging her vehicle.
13. There is very little information before me about the accident's circumstances. Ms. Liu says her tires went through the oil on the road, which caused her vehicle to lose traction and slide into the curb on Hocking Avenue, popping her front passenger side tire. There is no supporting evidence to prove the oil caused her vehicle to lose traction. I note the photographs in evidence show the roads and sidewalks were wet

at the time of the accident, which I infer was from rain. Ms. Liu did not explain how fast she was traveling, how much oil was on the road, or where on the road the oil was located. The City generally disagrees with Ms. Liu's description of the accident but did not provide further submissions about what specifically it disputes. Nevertheless, given my findings below that the City was not negligent, I find I do not need to address whether the oil spill caused Ms. Liu's accident.

14. To show the City was negligent, Ms. Liu must prove each of the following on a balance of probabilities: (a) the City owed Ms. Liu a duty of care, (b) the City breached the standard of care, (c) Ms. Liu sustained a loss, and (d) the City's breach caused Ms. Liu's loss (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 at paragraph 3).
15. I note that public authorities, including municipalities like the City, do not owe a duty of care for properly exercised policy decisions. While not explicitly before me, I infer it was the City's policy to rely on a complaints-based system to identify road hazards and to respond to after-hours reports by dispatching an "on call" employee to investigate and repair the hazard. This policy is not at issue here.
16. At issue is how the City's policy was implemented on November 4, 2020. Decisions involving the implementation of policies are called operational decisions, and these decisions can attract liability in negligence if they are not performed with reasonable care. In this case, I find the City owed Ms. Liu a duty of care to reasonably respond to the hazard report about oil on the road.
17. The next question is whether the City breached the required standard of care in how it responded to the reported oil spill. Ms. Liu says the City's actions fell below the applicable standard of care because it took more than 70 minutes for someone to arrive at the oil spill site to clean it up. She says that the City should have immediately gone to the scene to close the road or place warning signs alerting the public of the hazard, even if the clean-up crew took additional time to arrive.
18. Ms. Liu provided no evidence other than her own opinion that 70 minutes was an unreasonable response time. The City argues that it responded to the hazard in a

reasonable time, particularly given it was after hours, and its crew member arrived from home as quickly as possible. I find the evidence shows the City dispatched a crew member promptly after receiving the hazard report, and there is no evidence of any avoidable delay between when the employee was dispatched and when he arrived at the scene. Ms. Liu also did not provide any evidence or submissions about what a reasonable response time would be.

19. I acknowledge that the timing is unfortunate, as Ms. Liu happened to drive through the oil just before the City's crew member arrived. However, this does not mean the City's response time was unreasonable. Strict liability does not apply, and Ms. Liu bears the burden of proving the City breached the standard of care. I find more than just Ms. Liu's opinion that a 70-minute response time was too long is required to prove that the City breached the standard of care.
20. As for Ms. Liu's argument that the City should have gone directly to the scene, it is unclear whether Ms. Liu is suggesting that more than one employee should have been dispatched, or whether it is her position that the dispatched employee should have gone first to the scene to erect warnings before going to retrieve the cleaning equipment. Either way, I find the employee would likely have to retrieve warning signs or other equipment to close the road before going to the scene. I find Ms. Liu has not established that someone could have arrived more quickly with warning equipment than they did with the clean-up truck.
21. Overall, I find the City responded in a reasonable and timely manner to the reported oil spill on the road. Given the time of day, I find that approximately 70 minutes from when the spill was reported to when an employee arrived on scene was not unreasonable. I find Ms. Liu has not established that the City breached the applicable standard of care, so she has not proven the City was negligent. I dismiss Ms. Liu'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. Ms. Liu was unsuccessful, so I dismiss her claim for CRT

fees and dispute-related expenses. The City did not pay any fees or claim any dispute-related expenses, so I make no order.

ORDER

23. I dismiss Ms. Liu's claims and this dispute.

Kristin Gardner, Tribunal Member