



Civil Resolution Tribunal

Date Issued: June 2, 2021

File: SC-2020-009693

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *St Quintin v. Chen*, 2021 BCCRT 599

BETWEEN:

OLIVER ST QUINTIN

APPLICANT

AND:

PING CHEN and INSURANCE CORPORATION OF BRITISH
COLUMBIA

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. This small claims dispute is about a motor vehicle accident that occurred on October 8, 2020, in Richmond. The applicant, Oliver St Quintin, and the respondent, Ping Chen, were both driving southbound on Minoru Boulevard when their vehicles

collided. Mr. St Quintin says that Ms. Chen changed lanes into his vehicle. Ms. Chen says Mr. St Quintin changed lanes into her.

2. The respondent Insurance Corporation of British Columbia (ICBC) insures both parties. ICBC was unable to determine whose fault the accident was, so it assigned fault equally between the parties.
3. Mr. St Quintin disputes ICBC's fault determination and says that the accident was entirely Ms. Chen's fault. Mr. St Quintin asks for an order that the respondents reimburse him \$150, which is his deductible to repair his vehicle.
4. Mr. St Quintin is self-represented. The respondents are both represented by an ICBC 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. 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 will briefly address ICBC's liability. 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, based on the BC Court of Appeal case *Innes v. Bui*, 2010 BCCA 322. I agree with this approach. However, Mr. St Quintin does not argue that ICBC should be liable for the deductible because of any contractual or statutory breach. While Mr. St Quintin mentions ICBC's investigation in the Dispute Notice, I find that in substance Mr. St Quintin's claim is solely about who was at fault for the collision. I find that the proper respondent for this claim is Ms. Chen. See *Kristen v. ICBC*, 2018 BCPC 106. So, I dismiss Mr. St Quintin's claims against ICBC.

ISSUES

10. The issues in this dispute are:
 - a. Who is at fault for the accident?
 - b. What remedy, if any, is appropriate?

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, Mr. St Quintin 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.

12. The accident occurred on Minoru Boulevard near Mah Bing Street. At this part of Minoru Boulevard, there are 2 lanes in each direction. The parties were both driving southbound, with Mr. St Quintin in the left lane and Ms. Chen in the right lane. The accident happened when the right front door of Mr. St Quintin's vehicle hit the left front fender and door of Ms. Chen's vehicle. There are no independent witnesses or video footage of the accident. None of this is disputed. The dispute is about who caused the accident by changing lanes.
13. Mr. St Quintin says that before the accident, Ms. Chen was "in clear view" ahead of him in the right lane. He says that he was in her blind spot and that she changed lanes into his vehicle. He says that his vehicle was travelling faster than Ms. Chen's, with him going roughly 55 km/h and her going roughly 45 km/h. He says that the accident happened before Mah Bing Street and they both pulled onto Mah Bing Street to exchange information.
14. Ms. Chen did not provide a statement in this dispute or give her version of events in her submissions. I infer that she relies on her statements to ICBC, which are in evidence. In those statements, she said that Mr. St Quintin was driving 70 km/h and she was driving 50 km/h. She says that he "side swiped" her vehicle while changing lanes.
15. I find that the vehicle damage is consistent with both parties' version of events. No party argued otherwise. Mr. St Quintin makes several arguments about why he says that Ms. Chen's evidence is unreliable and not credible, which I will address in turn.
16. First, Mr. St Quintin says that Ms. Chen made her statement to ICBC 6 days after the accident while his was the same day. It appears that Ms. Chen made 2 statements to ICBC. ICBC says that the first was on the day of the accident and the second was on October 14, 2020, although the evidence is not clear. I find that I do not need to decide when Ms. Chen made her first statement. While I accept Mr. St Quintin's general point that memories fade over time, I do not consider a 6-day delay long enough to make a significant difference to the reliability of her evidence.

17. Second, Mr. St Quintin argues that Ms. Chen was mistaken when she said that the accident occurred just past Mah Bing Street. He says the photos he took after the accident show that they pulled over on Mah Bing Street, so the accident must have occurred before Mah Bing Street. I find that the photos are not conclusive on this point. More importantly, Mr. St Quintin's evidence is inconsistent with his ICBC statement. In that statement, he said that they pulled into the "first right hand turn" after the accident, which was the "road going into the Richmond library". Based on the maps in evidence, I find that the road to the library is the road after Mah Bing Street. So, I find that Mr. St Quintin's inconsistent evidence about where they pulled over impacts the reliability of his own evidence, not Ms. Chen's.
18. Mr. St Quintin also questions Ms. Chen's credibility. He argues that it is suspicious that she said her speed was 50 km/h and his speed was 70 km/h, because there was no way for her to be so "extraordinarily precise". I find that this is an unreasonable interpretation of her statement. There is no suggestion that she knew the precise speed of either vehicle. I find that the speeds she gave were estimates.
19. Mr. St Quintin also relies on the fact that Ms. Chen had an accessible parking pass in her car but did not appear to have difficulty walking after the accident. He says that this is "possible" evidence of "deceit", although he acknowledges that she may have inadvertently left up another driver's pass. I place no weight on this argument because it is speculative and irrelevant to who changed lanes.
20. Mr. St Quintin also says that after the accident, Ms. Chen "accosted" 2 people nearby and asked them to give false statements about the accident even though they did not see it. He says that they refused and left. This interaction was not in English, so Mr. St Quintin's arguments are based on his "impression" about what Ms. Chen said. Again, this argument is speculative, and I give it no weight.
21. I therefore find that Ms. St Quintin has not made any persuasive arguments about the reliability or credibility of Ms. Chen's evidence. Mr. St Quintin makes several other arguments, addressed below.

22. Mr. St Quintin created a diagram reconstructing how he says the accident happened, which is based on academic articles and his own calculations and measurements. The respondents dispute the admissibility of this evidence because Mr. St Quintin is not an expert in accident reconstruction. Mr. St Quintin admits that he is not an expert but says that he has training and experience in the subject. He provided evidence about a course he took about accident reconstruction as part of his career as an engineer.
23. As I understand Mr. St Quintin's arguments, he does not consider this evidence to be expert evidence. Mr. St Quintin relies on *Truax v. Hryb*, 2017 BCSC 1052. In that case, the court said that there is no need for expert evidence "when common sense prevails". The court also confirmed that expert evidence is necessary when evidence is "specialized, scientific or complex". I find that accident reconstruction evidence is expert evidence because it is outside of the knowledge or expertise of an ordinary person (see *Bergen v. Guliker*, 2015 BCCA 283). In particular, Mr. St Quintin relied on academic articles about reaction times and a person's field of vision, which I find are areas of specialized expertise.
24. Under the CRT Rule 8.3(7), an expert's role is to assist the CRT and not to advocate for either side. This means that the expert must be neutral. Mr. St Quintin is not neutral. While CRT Rule 1.2(2) allows me to waive the application of a rule, I find that it would be inappropriate in this dispute to admit Mr. St Quintin's accident reconstruction as expert evidence because he is a party. I therefore do not admit Mr. St Quintin's accident reconstruction as expert evidence, and I have given it no weight.
25. Mr. St Quintin also argues that Ms. Chen is likely a worse driver than him and therefore more likely to be at fault. Mr. St Quintin points to his own safety training and long track record of safe driving. In contrast, he says that Ms. Chen parked on the wrong side of the road while they exchanged information, suggesting that she does not understand the rules of the road. He also points to photos of Ms. Chen's car that show damage unrelated to the accident. Ms. Chen did not provide any

evidence about any previous accidents. Mr. St Quintin relies on CRT Rule 8.1(1), which requires parties to provide evidence even if it would not help their case. I infer that Mr. St Quintin asks me to draw an adverse inference against Ms. Chen for failing to provide relevant evidence about her accident history.

26. I find that I do not need to decide this issue because even if Ms. Chen has been in previous at-fault accidents, it would not matter to the outcome of this dispute. A person's driving record, good or bad, is irrelevant when deciding who is responsible for an accident. See *Rezai v. Uddin*, 2017 BCSC 1746.

27. Mr. St Quintin also argues that it is more likely that Ms. Chen hit him because she was ahead of him and driving slower than him. He argues that this made her directly visible to him as he approached her. In contrast, he was in her blind spot. He says as a matter of common sense it is more likely that she would have failed to see him than the other way around. However, Mr. St Quintin's own evidence is inconsistent on this point. In his ICBC statement, he said that Ms. Chen's vehicle was "slightly behind" him, contrary to his evidence in this dispute. In light of this inconsistency, I find that Mr. St Quintin has not proven that he was behind Ms. Chen, which is the fact that this argument rests on.

28. Finally, Mr. St Quintin argues that he had no reason to change lanes. He lives on Minoru Boulevard past the intersection with Granville Avenue, where the right lane turns into a turn-only lane. So, to get home, he would need to be in the left lane at Granville Avenue. According to a map Mr. St Quintin created, the accident occurred more than 300 meters from Granville Avenue. There is no evidence about the traffic ahead of the parties at the time of the accident and I note that there are non-navigational reasons that people change lanes, such as to get around slow drivers. That said, I accept that this is some evidence that Mr. St Quintin did not change lanes as Ms. Chen alleges.

29. On balance, however, I find that the inconsistencies in Mr. St Quintin's evidence about how the accident happened undermine the overall reliability of his evidence. I find that the fact that Mr. St Quintin would need to eventually be in the left lane is

not enough to overcome these reliability issues. For these reasons, I find that Mr. St Quintin has not proven that Ms. Chen changed lanes into his vehicle. It follows that I dismiss his claim.

30. Because of my conclusion, I find that I do not need to address Mr. St Quintin's damages claim. That said, there is no evidence before me that Mr. St Quintin has repaired his vehicle and paid the \$150 deductible he claims. So, even if he had proven that the accident was Ms. Chen's fault, I would have dismissed his claim because he did not prove his damages.

31. 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. Mr. St Quintin was unsuccessful, so I dismiss his claim for CRT fees and dispute-related expenses. The respondents did not claim any dispute-related expenses or pay any CRT fees.

ORDER

32. I dismiss Mr. St Quintin's claims, and this dispute.

Eric Regehr, Tribunal Member