



Civil Resolution Tribunal

Date Issued: July 16, 2021

File: SC-2020-009953

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Leeuwen v. Collette*, 2021 BCCRT 779

BETWEEN:

GAIL VAN LEEUWEN

APPLICANT

AND:

JARED RYAN COLLETTE and ALL-PRO SERVICES LTD.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This small claims dispute is about liability for a motor vehicle accident that occurred on July 22, 2020 in Vancouver BC. The applicant, Gail Van Leeuwen, alleges that the other driver, the respondent Jared Ryan Collette, was entirely at fault for the accident.

The other respondent, All-Pro Services Ltd., owns Mr. Collette's vehicle. Ms. Leeuwen seeks reimbursement of a \$300 deductible.

2. The respondents disagree and say Ms. Leeuwen was entirely at fault for the accident.
3. Ms. Leeuwen represents herself. An employee of the Insurance Corporation of British Columbia (ICBC) represents the respondents.
4. For the reasons that follow, I dismiss Ms. Leeuwen's claims and this dispute.

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. Some of the evidence in this dispute amounts to a "she said, he said" scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal 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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.
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.
9. I note that Ms. Leeuwen amended the Dispute Notice to remove ICBC as a named respondent. She does not allege that ICBC mishandled her insurance claim or is responsible for the claimed deductible.

ISSUE

10. The issue in this dispute is who is responsible for the collision and what remedy, if any, is appropriate.

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicant Ms. Leeuwen must prove her claims on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and arguments that I find relevant to provide context for my decision.
12. On the afternoon of July 22, 2020, Ms. Leeuwen was travelling north in her black SUV on Wesbrook Mall in Vancouver, BC. The road had 1 northbound lane of travel and a parking lane beside it. Shortly after clearing a 4-way stop, Ms. Leeuwen stopped her SUV to parallel park it. The parties disagree over whether Mr. Collette rear-ended Ms. Leeuwen or whether she backed into him.
13. At the time, Mr. Collette was driving a van behind Ms. Leeuwen. Their vehicles collided. Photos show the point of impact was Ms. Leeuwen's left rear bumper and Mr. Collette's right front bumper.
14. Ms. Leeuwen says she was reversing and halfway through her parallel parking maneuver when she felt a jolt from Mr. Collette's van hitting her SUV. She alleges

that Mr. Collette caused the collision by following her through the 4-way stop and running into her. She does not say she saw him do this. However, she says she checked her mirrors and signaled before attempting to park.

15. Mr. Collette disagrees. He says Ms. Leeuwen stopped her SUV to begin her parking maneuver, and he stopped as well. He says Ms. Leeuwen then reversed quickly and before he could react, she hit his van.
16. For the following reasons, I find it more likely than not that Mr. Collette's version of events is accurate. A witness, MG, provided a statement by telephone to ICBC on July 23, 2020. MG's evidence corroborates Mr. Collette's submissions. MG said they were seated outside at a coffee shop. MG said they saw Ms. Leeuwen's vehicle, a black SUV, suddenly stop after finding a parking spot. MG said the SUV began reversing into the spot. MG said Mr. Collette's vehicle, a white van, had stopped behind the SUV, but wasn't able to start reversing quick enough to avoid the collision. MG noted that ICBC's representative read the statement back to them and they believed it to be true and correct.
17. I place significant weight on MG's evidence as they were a disinterested observer. Ms. Leeuwen said she found it "hard to believe" that MG had a clear view of the accident. She says this is because the street was busy, MG was on the phone, and the coffee shop was 20 to 30 feet away. I do not find this persuasive. MG did not describe any difficulty seeing the accident or being distracted. MG wrote they were "on the phone" at the time. I infer this means MG was on a call, and I do not find this interfered with MG's ability to observe or remember events.
18. Ms. Leeuwen also says it is more likely that Mr. Collette ran into her because of the location of the vehicle damage. She says if she had reversed into Mr. Collette, the damage should have been in the center of her bumper. I am not persuaded this would necessarily be the case. Mr. Collette did not say, for example, that Ms. Leeuwen reversed straight back without turning. In any event, I prefer MG's neutral evidence and it contradicts Ms. Leeuwen's version of events.

19. Section 193 of the *Motor Vehicle Act* (MVA) says drivers must not cause their vehicle to move backwards unless the movement can be made in safety. Case law states that a reversing driver is subject to a high standard of care. See, for example, *Chaube v. Neja*, 2017 BCSC 1415 at paragraph 27. Section 169 of the MVA says that drivers must not move a stopped vehicle unless it is reasonably safe to do so.
20. I have found that Ms. Leeuwen stopped and then reversed her SUV into Mr. Collette's stopped van located directly behind her. There is no indication that the van would have been difficult to see. Given this, I find it more likely than not that Ms. Leeuwen breached the applicable standard of care applicable in the circumstances. This is because I find she failed to check if her movement could be made safely. I find that Ms. Leeuwen was negligent and entirely responsible for the accident.
21. Given my findings, I dismiss Ms. Leeuwen'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. I see no reason in this case not to follow that general rule. I dismiss Ms. Leeuwen's claim for reimbursement of CRT fees. The respondents paid no CRT fees and claimed no dispute-related expenses, so I order none.

ORDER

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

David Jiang, Tribunal Member