



Civil Resolution Tribunal

Date Issued: December 20, 2021

File: SC-2021-004035

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Nguyen v. ICBC*, 2021 BCCRT 1327

B E T W E E N :

THI THUY TRANG NGUYEN, TIEN CUONG BUI, and VIETSUB
VIETNAMESE CUISINE LTD.

APPLICANTS

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA and
TING SIEW

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This small claims dispute is about insurance coverage for vehicle repairs following an alleged motor vehicle accident.

2. The applicant company, Vietsub Vietnamese Cuisine Ltd., is the registered owner of a 2018 Lexus vehicle. The applicants, Thi Thuy Trang Nguyen and Tien Cuong Bui, are the vehicle's principal operator and registered driver, respectively. The applicants say that while their vehicle was parked, it was hit by a vehicle driven by the respondent, Ting Siew. The applicants request that their policy deductible be waived and claim \$575.
3. Mr. Siew denies that his vehicle contacted the applicants' vehicle and says his vehicle damage was pre-existing.
4. The respondent, Insurance Corporation of British Columbia (ICBC), insures both vehicles involved in the alleged accident. ICBC concluded that the vehicles' damage did not support the applicants' claim that there was contact between the 2 vehicles. ICBC says it offered to cover the applicants' vehicle damage as a hit and run claim, which has an applicable \$500 deductible. The respondents say there is no evidence the applicants have repaired their vehicle or suffered the claimed monetary loss.
5. ICBC also says it is not a proper party to this dispute.
6. Ms. Nguyen represents the applicants. The respondents are represented by an ICBC employee.

JURISDICTION AND PROCEDURE

7. 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.
8. 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. 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.

9. 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.
10. 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.
11. The applicants provided some evidence in this dispute, but CRT staff advised that the applicants did not provide any initial submissions, despite 3 email requests and a voicemail reminder. CRT staff also attempted to obtain the applicants' final reply submissions with 2 email reminders, but the applicants did not respond and did not provide any submissions in this dispute.
12. I will briefly address ICBC's submission that it is not a proper respondent. ICBC says because the applicants claim Mr. Siew damaged their vehicle, Mr. Siew is the only proper respondent. However, in the Dispute Notice, the applicants' claim description says ICBC's final decision was unfair and not reasonable. I find that can be construed as an allegation that ICBC acted unreasonably in investigating the accident and assessing the applicants' claim. On that basis, I find ICBC is a properly named party.

ISSUE

13. The issue in this dispute is whether Mr. Siew's vehicle caused the damage to the applicants' vehicle, and if so, what damages are the applicants entitled to, if any?

EVIDENCE AND ANALYSIS

14. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities. As noted, there are no submissions from the applicants. The only evidence the applicants provided were photos of the vehicle damage to both vehicles. I have considered all the parties' evidence and submissions, but I refer only to what is necessary to explain my decision.
15. I start with the circumstances of the alleged accident. The ICBC claim file notes in evidence show Ms. Nguyen reported that on April 16, 2021, her vehicle was parked on the roadside of Victoria Drive in Vancouver, BC. Ms. Nguyen reported that Mr. Bui was waiting in the vehicle while she went grocery shopping, and that he felt an impact as Mr. Siew was pulling into a parking spot in front of their vehicle. Ms. Nguyen stated that Mr. Siew's passenger side rear quarter panel hit the driver's side front bumper of the applicants' vehicle.
16. In contrast, Mr. Siew reported that he parked about 60 feet in front of the applicants' vehicle, and he did not hit their vehicle while parking. Mr. Siew reported that the damage on his vehicle was pre-existing and was caused by him hitting his garage.
17. So, what is ICBC's duty to the applicants? As noted, the applicants say the outcome of ICBC's investigation was unfair and unreasonable.
18. ICBC owes the applicant a duty of good faith, which requires ICBC to act fairly, both in how it investigates and assesses the claim and as to its decision about whether to pay the claim (see *Bhasin v. Hrynew*, 2014 SCC 71 at paras. 33, 55 and 93). As noted in the Continuing Legal Education Society of BC's '*BC Motor Vehicle Accident Claims Practice Manual*', an insurer is not expected to investigate a claim with the skill and forensic proficiency of a detective. An insurer must bring "reasonable diligence, fairness, an appropriate level of skill, thoroughness, and objectivity to the investigation and the assessment of the collected information (see *McDonald v. Insurance Corporation of British Columbia*, 2012 BCSC 283).

19. ICBC says its material damage department, including an estimator, a material damage manager, and a material damage operations manager, reviewed the damage to both vehicles, and that each employee concluded the applicants' vehicle damage was not caused by a collision with Mr. Siew's vehicle.
20. Specifically, ICBC's claim file notes in evidence show the material damage manager concluded the applicants' vehicle damage was consistent with vehicle-to-vehicle damage, with black plastic or rubber transfer on the left side of its front bumper. However, Mr. Siew's vehicle did not have any "components" that would have left that type of transfer on the applicants' vehicle. Further, the notes say Mr. Siew's vehicle damage showed a significant amount of white non-automotive transfer that was consistent with a single vehicle accident.
21. ICBC's file notes show its material damage operations manager, Patrick Welford, reviewed all statements and photos on file and agreed with the detailed findings of the material damage manager noted above, that the vehicle damage was inconsistent with contact between the parties' 2 vehicles. ICBC provided information about Mr. Welford's qualifications to provide expert opinion evidence, including that he has worked as a red seal technician in the auto body industry for 13 years and has done approximately 200 vehicle damage matchups in person and by photos.
22. I am satisfied on the evidence before me that Mr. Welford has the necessary education and experience to provide expert opinion on the vehicle damage in this dispute. I accept Mr. Welford's evidence that the damage to Mr. Siew's vehicle is inconsistent with vehicle-to-vehicle contact, and that his vehicle did not cause the applicants' vehicle damage.
23. Notably, I have no contrary estimator or expert evidence before me from the applicants. While the ICBC file notes show the applicants disputed the authenticity of the photos Mr. Siew provided of his vehicle damage, I find there is no evidence before me to support that allegation.

24. Further, Mr. Bui did not provide his own account of the alleged accident, either through submissions or a statement in evidence. While parties are under no obligation to provide submissions or evidence, a party's failure to respond to evidence harmful to their position can lead to the CRT making an adverse inference. This is because it is generally reasonable to assume that if a party disputed the authenticity or reliability of certain evidence, they would say so. I find it is appropriate to draw an adverse inference against the applicants for failing to provide a statement or submissions from Mr. Bui about his observations of the alleged accident. Therefore, I find Mr. Siew's vehicle did not make contact with the applicants' vehicle, as alleged.
25. For the reasons above, I dismiss the applicants' claims against Mr. Siew.
26. On the evidence before me, I also find the applicants have not shown that ICBC's investigation was unreasonable or that it acted unfairly in assessing the evidence and concluding that Mr. Siew did not cause the applicants' vehicle damage. I find ICBC reasonably relied on its employees' assessment of the vehicle damage to conclude that Mr. Siew was not responsible. Therefore, I also dismiss the applicants' claims against ICBC.
27. Given my findings, it is unnecessary for me to deal with the applicants' requested remedies in any detail. However, I find that the CRT does not have jurisdiction to order the applicants' policy deductible be waived. Ordering someone to do something is known as "injunctive relief". Injunctive relief is outside the CRT's small claims jurisdiction, except where section 118 of the CRTA permits it. I find there are no CRTA provisions here that would permit me to grant the injunctive relief the applicants seek.
28. Further, I find the applicants have not provided any evidence that they had their vehicle repaired or paid a deductible. I find there is no evidence to support the applicants' claim for \$575 in damages. So, I would have dismissed the applicants' claims in any event for a failure to prove damages.
29. 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. The applicants were unsuccessful and so I dismiss their claim for CRT fees. The respondents did not pay any fees or claim any dispute-related expenses.

ORDER

30. I dismiss the applicants' claims and this dispute.

Kristin Gardner, Tribunal Member