



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Cytrynbaum v. Laine*, 2022 BCCRT 109

B E T W E E N :

MICHAEL CYTRYNBAUM and CANAM AUTO RENTALS INC.

APPLICANTS

A N D :

LARRY WILBERT LAINE and INSURANCE CORPORATION OF
BRITISH COLUMBIA

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This small claims dispute is about a motor vehicle accident that occurred on April 29, 2019 in Vancouver, BC. The applicant, Michael Cytrynbaum, was turning left at the time of the accident from the westbound leftmost lane of Nelson Street onto Pacific

Boulevard. The respondent, Larry Wilbert Laine, was driving straight eastbound on Nelson Street.

2. Mr. Cytrynbaum owns and operates the other applicant, Canam Auto Rentals Inc. (Canam). Canam owns Mr. Cytrynbaum's car. The respondent, the Insurance Corporation of British Columbia (ICBC) insured both Canam and Mr. Laine. ICBC found Mr. Cytrynbaum 100% responsible for the accident.
3. The applicants say Mr. Laine was entirely responsible for the accident. They also say ICBC failed to reasonably investigate the accident. They claim \$500 as reimbursement for the insurance deductible paid by Canam.
4. The respondents disagree. They say Mr. Cytrynbaum failed to yield as the left turning driver and is entirely at fault. ICBC also says it reasonably investigated the accident.
5. A lawyer, Gaynor Yung, represents the applicants. An ICBC employee represents the respondents.
6. For the reasons that follow, I find that Canam has partially proven its claims against Mr. Laine. I dismiss the applicants' remaining claims, including all claims against ICBC.

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. Some of the evidence in this dispute amounts to a “he 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.
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 respondents submit that the applicants should have added Hertz Canada (N.S.) Company (Hertz) as a party to this dispute. The evidence indicates that Mr. Laine was driving a rental car owned by Hertz at the time of the accident. ICBC says that, given this, Hertz could be found vicariously liable for any damages awarded against Mr. Laine. ICBC did not add Hertz as a third party.
12. The applicants did not amend the Dispute Notice to add Hertz or address ICBC’s submission. They made no specific claims against Hertz. I find the applicants’ claims against the respondents can be determined without Hertz’s involvement. I make no

findings about whether Hertz would be vicariously liable for any damages awarded against Mr. Laine.

ISSUES

13. The issues in this dispute are as follows:
 - a. Who is responsible for the accident?
 - b. Did ICBC reasonably investigate the accident?

BACKGROUND, EVIDENCE AND ANALYSIS

14. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities. This means more likely than not. 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.
15. I begin with the undisputed background. As referenced above, Mr. Laine was driving eastbound on Nelson Street in a silver Volvo XC90 SUV. Mr. Cytrynbaum was driving westbound on Nelson Street in a black Toyota Tacoma truck. Both drivers stopped at red lights at the intersection of Nelson Street and Pacific Boulevard. The intersection lacked dedicated advance turn arrows.
16. The parties diverge about what happened after the light turned green for both drivers. Mr. Laine's version of events is documented in June 2021 emails to ICBC. He says as follows. After the light turned green, he waited about 2 seconds before driving straight forward. After reaching about the middle of the intersection, Mr. Cytrynbaum entered the intersection, turning left and crossing Mr. Laine's path. Mr. Laine then hit the brakes but ended up hitting the back passenger-side corner of Mr. Cytrynbaum's truck.

17. In contrast, Mr. Cytrynbaum says the following. He signalled to turn left and entered the intersection first. He waited 10 to 15 seconds for Mr. Laine to proceed but Mr. Laine remained stopped. Mr. Cytrynbaum then turned left. After nearly completing his turn, Mr. Laine struck Mr. Cytrynbaum's truck.

18. It is undisputed that an independent witness, JC, saw the entire accident. JC provided a March 12, 2021 statement to an insurance adjuster and an August 23, 2021 statement at a law office. JC's evidence contained some inconsistencies with the undisputed facts. For example, JC said Mr. Cytrynbaum's black truck was white and Mr. Laine's silver SUV was black. As noted in *Rattu (Litigation Guardian of) v Biln*, 2021 BCSC 208 at paragraph 29, witnesses such as JC try to describe events that happened suddenly, and over what is often just a few seconds. Witnesses do not wait for an accident to happen, ready to capture and recall every relevant detail years later. There is, therefore, a great deal of room for error and reconstruction. Here, JC correctly identified the drivers, types of vehicles involved, and correct intersection. They "saw the entire accident" and "visibility was very clear". I also find JC's 2 statements were consistent with each other. Ultimately, I find the inconsistencies are insufficient to show that JC's evidence was unreliable or not credible.

19. Across the 2 statements, JC made the following observations, which I find to be accurate. Mr. Cytrynbaum was initially stopped at the intersection. He first entered the intersection, "travelling at a normal turning speed". Mr. Laine entered the intersection second. Mr. Cytrynbaum had "almost completed the turn when he was hit" and "[m]ost of his vehicle was in the crosswalk at the time." Mr. Laine then "sped off", squealing his tires and leaving a mark on the road. Mr. Cytrynbaum spoke to JC, advising that he thought Mr. Laine was on the phone at the time. Mr. Cytrynbaum also said he saw Mr. Laine, but thought Mr. Laine would slow down. Mr. Laine returned after circling the block. The drivers exchanged information.

20. JC did not describe seeing Mr. Cytrynbaum wait for Mr. Laine to proceed, or seeing Mr. Laine stopped prior to the accident. So, on balance I find it likely that Mr. Laine only waited about 2 seconds after the light turned green before proceeding straight, rather than a longer period of time.
21. The photos show the undisputed point of impact. Mr. Laine sustained damage to the right passenger side of the SUV, around the headlight and bumper. Mr. Cytrynbaum sustained damage to the rear passenger side of the truck behind the rear wheel.
22. The next day, ICBC sent Canam and Mr. Cytrynbaum an April 30, 2019 decision letter. It said Canam, the owner of the vehicle Mr. Cytrynbaum was driving, was entirely at fault and would be required to pay \$500 as an insurance deductible.

Issue #1. Who is responsible for the accident?

23. Section 144 of the *Motor Vehicle Act* (MVA) says that drivers must drive with due care and attention and with reasonable consideration for others, which reflects drivers' common law duty to drive with reasonable care. Section 174 says that a motorist turning left must yield the right of way to oncoming traffic that is either in the intersection or so close that it is an immediate hazard. Section 174 goes on to state that if the left turning driver signals and complies with this obligation, then the left turning driver has the right of way and other drivers must yield.
24. As noted in *Sangha v Read*, 2019 BCSC 1761 at paragraph 22 citing *Kabir v. Simpson*, 2016 BCSC 1594, a line of case authority holds that the colour of the light plays a role in determining whether the left-turning driver or through driver is the dominant or servient driver. The dominant driver has the right of way and the servient driver must yield. These cases hold that if the light is red, the through driver must stop. If the light is green the through driver is the dominant driver. If the light is yellow, then the dominant driver is determined by relying on the principles discussed in *Nerval v. Khehra*, 2012 BCCA 436. This includes considering whether the through driver was an immediate hazard.

25. It is undisputed that both drivers faced a green light at the time of the accident. Based on the authorities of *Sangha* and Kabir, I find that Mr. Laine was the dominant driver and Mr. Cytrynbaum as the left turning driver had an obligation to yield.
26. Mr. Cytrynbaum says that he could safely turn because Mr. Laine did not move for 10 to 15 seconds. I find this unproven for the following reasons. I find Mr. Cytrynbaum has the burden to prove his submission as he was the servient driver. I have already found, based on JC's evidence, that Mr. Cytrynbaum did not wait for this period of time. JC also said they believed Mr. Cytrynbaum could have seen Mr. Laine's vehicle while turning, and that Mr. Cytrynbaum said he saw Mr. Laine coming and thought he was going to slow down. I find JC's evidence shows that Mr. Cytrynbaum continued to turn despite seeing Mr. Laine move forward. I find his overall conduct breached the standard of care.
27. In summary, I have found that Mr. Laine was the dominant driver and Mr. Cytrynbaum breached his obligation to yield. However, I must consider whether Mr. Laine was also negligent. This is because all drivers are expected to exercise reasonable care, even when others have failed to respect their right of way. See *Coffey v. Sabbaghan*, 2020 BCCA 335 at paragraph 28, citing *Salaam v. Abramovic*, 2010 BCCA 212, and *Nerval* at paragraph 37.
28. As noted earlier, JC said that Mr. Cytrynbaum entered the intersection first and Mr. Laine hit him after he had almost completed his turn. JC also reported that Mr. Laine was "looking downwards" at the time of the accident and "not paying attention to what was happening in front of him". Mr. Laine says he used his brakes, but JC said Mr. Laine did not attempt to slow down or avoid Mr. Cytrynbaum's vehicle. I prefer JC's evidence over Mr. Laine's account, because I have found JC to be impartial. So, I find Mr. Laine negligently breached MVA section 144. I find that Mr. Laine failed to keep a proper lookout and could have stopped his vehicle in time if he was paying attention.

29. As I have found both drivers are negligent, I must apportion liability by fault or blameworthiness. Some of the factors to consider are referred to in *Chambers v. Goertz*, 2009 BCCA 358 at paragraph 56. One is that the party with the right of way may be considered less blameworthy.
30. I find Mr. Cytrynbaum is 60% at fault for the accident as he failed to yield. I find Mr. Laine 40% at fault as he had the right of way, but did not pay sufficient attention to the road. So, I find Canam is entitled to 40% of the claimed deductible, which equals \$200. This is because Canam owns and insures Mr. Cytrynbaum's vehicle, so it was obliged to pay the deductible. I order Mr. Laine to pay this amount to Canam. I dismiss Mr. Cytrynbaum's claims against Mr. Laine for the deductible.

Issue #2. Did ICBC reasonably investigate the accident?

31. ICBC must act properly and reasonably in assigning fault. See *Singh v. McHatten*, 2012 BCCA 286, referring to *Innes v. Bui*, 2010 BCCA 322. As part of this obligation, ICBC must reasonably investigate a claim. In doing so, ICBC is not expected to investigate with the "skill and forensic proficiency of a detective". Rather, ICBC must bring "reasonable diligence, fairness, an appropriate level of skill, diligence and objectivity". See *McDonald v. Insurance Corporation of British Columbia*, 2012 BCSC 283.
32. The applicants say ICBC should have spoken to JC earlier. Instead, it contacted JC starting in February 2021. However, ICBC's April 2019 notes show that Mr. Cytrynbaum advised ICBC that JC did not see the collision. While this was ultimately not true, I find ICBC reasonably relied on Mr. Cytrynbaum's information to refrain from contacting JC for a period of time.
33. The applicants also say that ICBC failed to analyze the location of the impact and the surrounding facts. I find these allegations to be vague and unsubstantiated. Aside from ICBC's delay in contacting JC, there is no indication that ICBC failed or refused to obtain evidence.
34. Given the above, I dismiss the applicants' claims against ICBC.

35. The *Court Order Interest Act* applies to the CRT. The evidence does not show when Canam paid the insurance deductible. So, I find Canam entitled to pre-judgment interest on the \$200 damages award from April 29, 2021, the date of the Dispute Notice, to the date of this decision. This equals \$0.68.
36. 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 find Canam is entitled to partial reimbursement of \$62.50 in CRT fees. The parties did not claim for any specific dispute-related expenses, so I order none.

ORDERS

37. Within 14 days of the date of this order, I order Mr. Laine to pay Canam a total of \$263.18, broken down as follows:
- a. \$200 as partial reimbursement for Canam's deductible,
 - b. \$0.68 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$62.50 for CRT fees.
38. Canam is entitled to post-judgment interest, as applicable.
39. I dismiss the applicants' remaining claims, including all claims against ICBC.
40. Under section 48 of the CRTA, the CRT will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the CRT's final decision.

41. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

David Jiang, Tribunal Member