



Civil Resolution Tribunal

Date Issued: February 7, 2022

File: SC-2021-006240

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Selly v. Brown*, 2022 BCCRT 143

BETWEEN:

DEREK SELLY

APPLICANT

AND:

JUSTIN GRAHAM BROWN

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This small claims dispute is about a motor vehicle accident that occurred on March 5, 2021, in Langley, BC. The applicant Derek Selly was behind the respondent

Justin Graham Brown at an intersection. Mr. Selly says Mr. Brown reversed his truck into the front of Mr. Selly's car. Mr. Selly claims \$2,467.70 for vehicle repairs.

2. Mr. Brown says Mr. Selly caused the collision by driving into the rear of his truck. So, Mr. Brown says he owes Mr. Selly nothing.
3. Mr. Selly is represented by an articling law student, Jackson Bocksnick. An employee of Mr. Brown's insurer, the Insurance Corporation of BC (ICBC), represents him.

JURISDICTION AND PROCEDURE

4. 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). 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 parties to a dispute that will likely continue after the dispute resolution process has ended.
5. CRTA section 39 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. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find I can fairly hear this dispute based on the submitted evidence and through written submissions.
6. Under CRTA section 42, 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.

7. Where permitted by CRTA section 118, in resolving this dispute the CRT may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.

ISSUE

8. The issue is whether Mr. Brown reversed into Mr. Selly or whether Mr. Selly drove into Mr. Brown.

EVIDENCE AND ANALYSIS

9. In a civil claim like this one, as the applicant Mr. Selly has the burden of proving his claims, on a balance of probabilities (meaning “more likely than not”). I have only referenced below what I find is necessary to give context to my decision.
10. First, the accident scene. Mr. Selly was driving a 2019 Ford Fusion Hybrid car. Mr. Brown was driving a 2012 Dodge Ram 3500 4x4 SLT truck, with a rear trailer hitch. Mr. Selly was behind Mr. Brown in the left turning lane at a red light on the eastbound side of 32nd Avenue at the 200 Street intersection. There were no witnesses and no dash cam footage. None of this is disputed.
11. Mr. Selly says he was stopped a reasonable distance behind Mr. Brown and that Mr. Brown reversed back into him. In particular, Mr. Selly says Mr. Brown was too far forward into the intersection and reversed to accommodate a large truck travelling on 200 Street that was attempting to turn left onto 32nd Avenue in front of Mr. Brown. Mr. Selly says he jumped out of his vehicle and waved his arms, Mr. Brown got out and said, “did I get you?”, and then apologized.
12. Mr. Selly also says he did not have time to respond to Mr. Brown’s reversing and “expected [Mr. Brown] to have a reasonable awareness to stop prior to colliding” with Mr. Selly.

13. In contrast, Mr. Brown says he was stopped at the red light on 32nd Avenue. Mr. Brown denies feeling any impact but says he got out of his truck after Mr. Selly began waving and flashing his high beams at him. Mr. Brown says he told Mr. Selly he could not have reversed because his vehicle was in the drive gear with his foot on the brake.
14. In his later March 17, 2021 statement to ICBC, Mr. Brown gave the same account, adding that he had a feeling Mr. Selly “rolled into” him, and reiterated that Mr. Brown did not “feel anything”. Mr. Brown also added that he did not see anyone behind him because Mr. Selly was so close to Mr. Brown’s truck’s rear. The submitted photos show Mr. Brown’s truck sits higher off the ground than Mr. Selly’s car. Mr. Brown reiterated that his truck was in drive and his foot was on the brake. Mr. Brown also added that his truck is an automatic with hill assist, and so it would not roll back.
15. Mr. Selly argues that the law of momentum logically means that it was Mr. Brown who was moving and Mr. Selly was stopped. Essentially, Mr. Selly says this because Mr. Brown denies feeling any impact and yet if Mr. Brown had been stopped Mr. Selly says he would have felt Mr. Selly hitting him. More on this below.
16. It is undisputed ICBC’s investigation determined the 2 vehicles did make contact during the incident, between Mr. Brown’s trailer hitch and Mr. Selly’s front bumper. I accept there was contact, which is undisputed and is indicated in photos in evidence. However, while ICBC concluded the 2 vehicles made contact, ICBC’s material damage estimator could not determine which vehicle was in motion at the time of impact. So, the issue is who hit who.
17. I turn next to the applicable law.
18. Section 144 of the *Motor Vehicle Act* (MVA) says a person must not drive a motor vehicle on a highway without due care and attention. Section 162 of the MVA says a driver must not cause their vehicle to follow another vehicle more closely than reasonable in the circumstances. Section 193 of the MVA says a driver must not cause their vehicle to move backwards unless it can be safely done. Here, if Mr.

Brown reversed and hit Mr. Selly, Mr. Brown breached MVA sections 144 and 193. However, if Mr. Selly drove into Mr. Brown, Mr. Selly breached sections 144 and 162.

19. I accept that Mr. Selly's vehicle was equipped with an automatic braking system, designed to stop frontal collisions when the vehicle is in motion. He reported this to ICBC and it is set out in his vehicle's manual submitted in evidence. Mr. Selly says he attempted to retrieve the data but none was available as he says his vehicle was not in motion at the time of the collision and so the system was not activated. ICBC submits that Mr. Selly failed to provide a copy of the report generated from the system's attempt to read the data. I note Mr. Bocksnick submitted a copy of his email to ICBC saying the data could not be retrieved but did not submit any statement from the vehicle dealership and did not provide an explanation for why not. In any event, for the purpose of this decision, I will assume no data could be retrieved. More on this below.
20. I find accident reconstruction is technical and outside ordinary knowledge (see *Bergen v. Guliker*, 2015 BCCA 283). Here, contrary to Mr. Selly's submission I find nothing obvious from the submitted evidence, including photographs, that allows me to conclude one of the parties hit the other. There is no expert evidence before me on that critical point. I do not agree with Mr. Selly that the law of momentum is so obvious such that I must be able to conclude that Mr. Brown would have felt the impact in his truck if Mr. Selly had driven into his trailer hitch. I also do not agree that the situation here, comparing relative speeds and vehicle weight to determine the likely car in motion, is a matter of "simple algebra" that does not require expert evidence. I also note Mr. Selly did not specify the applicable rate of vehicle speed.
21. In any event, I find it relevant that whichever party was in motion and caused the accident would likely have been driving at no faster than 5 km/hour, given they were both undisputedly stopped before the collision and Mr. Selly was already right behind Mr. Brown. Mr. Brown raised this 5 km/hour rate in his submissions and Mr.

Selly did not say Mr. Brown was travelling faster. I find this slow speed does not make it obvious that Mr. Brown would have felt any impact in his larger truck.

22. I also find the automatic braking system evidence unhelpful to Mr. Selly. The submitted manual says the system becomes active at speeds above 5 km/hour. The manual further says if the vehicle is “rapidly approaching another stationary vehicle”, the system will activate. Yet, it is undisputed neither driver was “rapidly approaching” the other. So, I find the fact the car’s braking system did not activate does not prove Mr. Selly could not have driven into Mr. Brown.
23. So, I find I am left with an evidentiary tie about who hit who, meaning I am unable to prefer one party’s version of events over the other’s. It is impossible here to know with sufficient certainty how the accident happened. Since Mr. Selly has the burden of proof as the applicant, I find it unproven Mr. Brown was responsible for the accident.
24. It follows that I dismiss Mr. Selly’s claim, and so I do not need to address his claimed damages.
25. Under section 49 of the CRTA and the CRT’s rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. Mr. Selly was unsuccessful and Mr. Brown did not pay fees or claim dispute-related expenses. So, I make no order for fees or expenses.

ORDER

26. I dismiss Mr. Selly’s claims and this dispute.

Shelley Lopez, Vice Chair