



# Civil Resolution Tribunal

Date Issued: April 8, 2022

File: SC-2021-006085

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Norberg v. ICBC*, 2022 BCCRT 405

**B E T W E E N :**

TODD NORBERG and KAREN NORBERG

**APPLICANTS**

**A N D :**

INSURANCE CORPORATION OF BRITISH COLUMBIA, LOAN  
HUYNH and SODARA YIN

**RESPONDENTS**

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## **REASONS FOR DECISION**

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Tribunal Member:

Eric Regehr

### **INTRODUCTION**

1. The applicants, Mr. Todd Norberg and Mrs. Karen Norberg, say that the respondent, Mr. Sodara Yin, damaged their garage door by backing his boat into it. They say it no longer functions properly. They claim \$2,500, which they say is the cost of a replacement door.

2. The respondent Insurance Corporation of British Columbia (ICBC) says that it insures Mr. Yin and the other respondent, Ms. Loan Huynh. None of the parties explains Ms. Huynh's connection to this dispute. Presumably, she is an owner of the vehicle Mr. Yin was driving.
3. The respondents argue that Mr. Yin did not hit the garage door. If he did, the respondents say that the impact did not cause the door to stop functioning properly. Finally, they argue that even if Mr. Yin did cause this damage, the Norbergs would be overcompensated if they received the full cost of a new garage door. ICBC also argues that it is not a proper respondent in this dispute. The respondents ask me to dismiss the Norbergs' claims.
4. Mrs. Norberg represents the Norbergs. An ICBC employee represents the respondents.

## **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, the 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 CRT's order may include any terms or conditions the CRT considers appropriate.
9. The Norbergs referred in their submissions to settlement discussions from the CRT's facilitation process. CRT rule 1.11 prohibits parties from disclosing settlement discussions during the CRT's decision process. The respondents did not object, but given the rule I have disregarded the Norbergs' references to settlement discussions.

## **ISSUES**

10. The issues in this dispute are:
  - a. Did Mr. Yin back his boat into the Norbergs' garage door?
  - b. If so, did Mr. Yin cause the garage door to stop functioning properly?
  - c. If so, what are the Norbergs' damages?

## **EVIDENCE AND ANALYSIS**

11. In a civil claim such as this, the Norbergs as the applicants must prove their case on a balance of probabilities, which means "more likely than not". While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.

12. I will first 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, while the Norbergs say that ICBC's process was too slow, I find that their only substantive claim is against Mr. Yin for allegedly damaging their garage door. I find that ICBC is not a proper respondent to this claim because it is only involved as Mr. Yin's third party liability insurer. See *Kristen v. ICBC*, 2018 BCPC 106. For this reason, I dismiss the Norbergs' claims against ICBC.
13. With that in mind, I turn to the undisputed background. The Norbergs and Mr. Yin are neighbours. In the morning of July 21, 2020, Mr. Yin was towing his boat when he turned around by backing up the Norbergs' driveway and pulling out to go the other way. Mr. Yin's boat is a modest sized motorboat with an outboard motor. The Norbergs' garage is at the end of their driveway. The Norbergs' acquaintance, MM, helped guide Mr. Yin as he reversed. Nobody witnessed Mr. Yin hit the garage door. Again, none of this is disputed.
14. According to his signed statement dated September 10, 2020, Mr. Norberg was elsewhere on his property when Mr. Yin turned around. Mr. Norberg says that right after Mr. Yin left, MM told him that Mr. Yin had hit and dented the garage door. Mr. Norberg says he spoke to Mr. Yin later that day, and Mr. Yin said he did not believe he had hit the garage door. He says that after Mr. Yin left, he tried the garage door, and it was not working properly. The Norbergs say that the garage door had no dents and was working fine before July 21, 2020. There is no evidence to the contrary, so I accept that this is true.
15. The parties all rely on security footage of the incident from a camera mounted above the garage. Neither party provided the video itself. Instead, they both provided a link to the same YouTube video. Typically, the CRT will not accept links to websites because website content can change, so there is generally no way for the CRT member to know whether they are viewing the same content that the

parties viewed. Here, I have relied on the YouTube video because I find that it is clearly the same video that both parties intended for me to see. I say this because according to the YouTube page, the video was uploaded in May 2021, long before the parties both provided the link as evidence in this dispute. More importantly, both parties provided detailed submissions based on specific moments in the video, and I find it obvious from those submissions that they are referring to the same video that I have viewed on YouTube.

16. I note here that the Norbergs provided a second YouTube link in their evidence, which they say shows the garage door's poor function after Mr. Yin hit it. I have not viewed that YouTube video, because it is unclear whether they ever provided the link to the respondents. The respondents do not mention the video, so I find that I cannot conclude that both parties have seen the same video. In any event, the respondents do not dispute that the garage door is not functioning properly, so nothing turns on this video anyway.
17. Turning to the footage I reviewed, the garage door itself is out of frame because the security camera is mounted directly above the garage door facing down the driveway to the road. The video shows Mr. Yin slowly backing up the driveway towards the camera. As the boat gets farther down the driveway, MM enters the frame and walks beside the driver's side of the truck. As MM walks, they motion to Mr. Yin to keep backing up. When the back half of the boat is out of the frame, Mr. Yin comes to a stop just as MM motions for him to stop backing up. MM then walks out of frame towards the back of the boat while Mr. Yin begins driving forward again.
18. I agree with the respondents that there is no sudden stop or obvious jerk to suggest that Mr. Yin stopped because he felt an impact. I also agree with the respondents that MM does not appear to react to any sound or impact. Rather, MM casually motions Mr. Yin to stop.
19. MM provided 2 statements to ICBC. The first is a signed statement dated September 9, 2020. In that statement, MM says there was a noise as Mr. Yin

backed up, but they were not sure what it was at the time. MM said that after Mr. Yin was gone, MM noticed a dent and realized it must have been the boat. MM said they immediately told Mr. Norberg about it.

20. According to ICBC's internal records, an adjuster spoke to MM on June 25, 2021. I find that the only significant difference between this statement and the signed statement is that in the later statement, MM said that Mr. Norberg approached him to ask about the dent, not the other way around. In the later statement, MM said that they assumed it was Mr. Yin who dented the garage door. MM also said in this conversation that he was the Norbergs' employee, although there is no other evidence of this.
21. I agree with the Norbergs that the incident would not have been significant to MM at the time, so his earlier statement is likely to be more accurate than his verbal report to ICBC nearly a year after the incident. Also, despite any potential lack of neutrality based on MM's relationship with the Norbergs, I find that MM's evidence is credible because he admitted that he essentially guided Mr. Yin back into the garage door. I find that this admission was against his interest because it could suggest he was partially at fault. I therefore accept MM's initial statement as reliable and credible evidence of what happened.
22. The Norbergs also provided photos of their driveway and measurements of the boat, which they say prove that the boat would have impacted the garage door given where it stopped in the video. I place no weight on this evidence because I find it lacks the necessary precision to determine that Mr. Yin hit the garage door as opposed to stopping just before it.
23. With that, I acknowledge that the available evidence is not conclusive. However, on balance I find that it is more likely than not that Mr. Yin hit the garage door as he backed up. I say this for several reasons.
24. First, MM's 2 statements are consistent that he heard something as Mr. Yin backed up. I find that it is understandable that MM did not immediately attribute the noise to

an impact with the garage because Mr. Yin was driving very slowly and the dents in the garage door are relatively small. As a matter of common sense, I find that the noise would not have been so loud that an impact would have been obvious.

25. Second, for the same reasons, I find it unsurprising that the truck and the boat did would visibly jolt or bump to show an impact.
26. Third, according to MM's first statement and Mr. Norberg's statement, MM noticed right away that there were dents in the garage door.
27. Fourth, Mr. Norberg says that he approached Mr. Yin the day of the incident. While it is true that Mr. Norberg did not directly accuse Mr. Yin at this time, only telling him that he thought Mr. Yin might have hit his garage door, I accept Mr. Norberg's evidence that he was just being "neighbourly" and wanting to keep things civil. I find it unlikely that Mr. Norberg would approach a neighbour and (politely) accuse him of damaging his garage door unless the dents were new.
28. Finally, and most importantly, there is no evidence at all from Mr. Yin other than a simple denial that he hit the garage door in his Dispute Response. The respondents provided no evidence about what happened from Mr. Yin's perspective. Mr. Yin's statement could have included details about what he could see in his mirrors as he backed up, the extent to which he relied on MM, whether he felt any impact, and whether he heard any noise. When a party fails to provide relevant evidence with no explanation, the CRT may draw an adverse inference. An adverse inference is when the CRT assumes that the party did not provide relevant evidence because it would have been unhelpful to their case. I find that an adverse inference is appropriate here.
29. Taking that altogether, I find that Mr. Yin hit the garage door. With that, I find that the Norbergs must prove Mr. Yin was negligent, which requires them to prove:
  - a. Mr. Yin owed the Norbergs a duty of care,
  - b. Mr. Yin breached the applicable standard of care, causing damage, and

- c. The damage was a reasonably foreseeable consequence of the negligent act.
30. I find that Mr. Yin owed the Norbergs a duty of care while on their property and that his actions fell below the standard of a reasonably competent driver. Especially given the lack of evidence from Mr. Yin, I cannot conclude that he reasonably relied solely on MM's guidance. In any event, the respondents do not dispute these 2 points. Rather, they argue that the Norbergs have not proven that the impact from Mr. Yin caused the dents that are affecting the garage door.
31. Two garage door contractors looked at the door and provided quotes to replace it: Mark Frketich from Valley All-Door Distributing and Steve Bahia from Doorcare Enterprises Ltd. I note that the parties rely on their evidence as expert evidence. Neither contractor's qualifications are in evidence, but given their profession, I find that they are likely qualified to give expert evidence in garage door repair. Given my discretion under CRT rule 1.2(2), I accept their emails and quotes as expert evidence about what caused the garage door's current issues and what must be done to fix it.
32. An ICBC adjuster asked both contractors whether Mr. Yin's boat motor caused the dents in question. I agree with the respondents that neither contractor could say for sure. Rather, they both said that an impact left dents in the garage door, which in turn caused the garage door's current problems by warping the dented panels. However, I find that it is unrealistic and unreasonable to expect the contractors to conclusively state what hit the garage door just from looking at the dents. Given the Norbergs' undisputed evidence that the door operated fine before Mr. Yin hit it and did not operate properly when they tried it later that day, I find it Mr. Yin likely caused the garage door to stop functioning properly. I find that it was reasonably foreseeable that backing into the garage door could damage it to the point where it no longer worked properly. I therefore find that Mr. Yip is liable for the damage.
33. The contractors both said that because of the garage door's age, replacement parts are not available. They both therefore gave the Norbergs quotes to replace it. Mark Frketich quoted \$2,285.00 and Steve Bahia quoted \$2,257.50.



34. Steve Bahia's undisputed evidence is that the garage door was around 25 years old and had another 10 to 15 years of service life left. The respondents argue that the Norbergs should not receive the full value of a new garage door. While they do not use this term, the respondents' argument raises the legal doctrine called "betterment", which means that people are only entitled to the value of a damaged item, not its replacement value. This is because the measure of damages for negligence is the amount of money it would take to put the Norbergs in the position they would have been in if the negligent act had never happened. Here, if Mr. Yip had not hit the garage door, the Norbergs would have a functioning 25-year old garage door, not a brand new one. This would put them in a better position than before July 20, 2020. On a judgment basis, I find that \$1,000 will reasonably compensate the Norbergs for the garage door damage.
35. Because no one adequately explained Ms. Huynh's connection to the claim, I dismiss the claim against her. I order Mr. Yin to pay the Norbergs \$1,000.
36. The *Court Order Interest Act* (COIA) applies to the CRT. However, because the Norbergs have not yet paid to replace the door, I find they are not entitled to prejudgment interest.
37. 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 Norbergs were partially successful, so I find they are entitled to reimbursement of half of their \$125 in CRT fees, which is \$62.50. The Norbergs did not claim any dispute-related expenses. The respondents did not claim any dispute-related expenses or pay any CRT fees.

## **ORDERS**

38. Within 30 days of the date of this order, I order Mr. Yin to pay the Norbergs a total of \$1,062.50, broken down as follows:
- a. \$1,000 in damages, and

b. \$62.50 for CRT fees.

39. I dismiss the Norbergs' claims against Ms. Huynh and ICBC.

40. The Norbergs are entitled to post-judgment interest, as applicable.

41. 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.

42. 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.

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Eric Regehr, Tribunal Member