



# Civil Resolution Tribunal

Date Issued: January 9, 2023

File: SC-2022-002478

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Youngberg v. Colmorgen*, 2023 BCCRT 20

BETWEEN:

ISABELLA ROSE YOUNGBERG

**APPLICANT**

AND:

CADEN COLMORGEN

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

David Jiang

## INTRODUCTION

1. This dispute is about vehicle damage. The applicant, Isabella Rose Youngberg, says the respondent, Caden Colmorgen, damaged her vehicle by punching it 3 times. Ms. Youngberg claims \$3,201.59 as the estimated cost of repairs. She has not yet repaired her vehicle.

2. Mr. Colmorgen disagrees. He says he hit the vehicle only once and agreed to pay only \$1,400 as compensation. Inconsistent with this, Mr. Colmorgen's representative also submits there is no proof that Mr. Colmorgen caused any damage.
3. Ms. Youngberg represents herself. A family member represents Mr. Colmorgen.
4. For the reasons that follow, I find Ms. Youngberg has proven her claims.

## **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. 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.

## **ISSUES**

9. The issues in this dispute are as follows:
  - a. Did Mr. Colmorgen negligently damage Ms. Youngberg's vehicle?
  - b. If so, what is the appropriate remedy?

## **BACKGROUND, EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, Ms. Youngberg as the applicant must prove her claims on a balance of probabilities. This means more likely than not. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.
11. The following facts are undisputed. On May 22, 2021, Ms. Youngberg took her gray Hyundai Santa Fe vehicle to go camping. Mr. Colmorgen drove a separate vehicle, a Honda CRV, to the campsite. Mr. Colmorgen's significant other, MW, accompanied him.
12. Ms. Youngberg submits her vehicle was undamaged before the camping trip. I agree for the following reasons. Ms. Youngberg provided a photo of her vehicle dated April 9, 2021. She says she purchased it on that date. The photo shows her vehicle without any visible damage on its passenger side. As discussed below, this is the damaged area in dispute. I find it unlikely that her vehicle sustained damage in that area shortly

before the camping trip. Further, Mr. Colmorgen inconsistently admitted to hitting the car while denying that he caused any damage. So, I find Ms. Youngberg is more reliable and credible on this issue.

13. I turn now to what happened at the campsite. Ms. Youngberg provides the following version of events. She says MW was her friend and invited her camping. Mr. Colmorgen and his friend, CI, also went. They all arrived at the campsite on May 22, 2021. Both Ms. Youngberg and Mr. Colmorgen consumed alcohol. In the evening Mr. Colmorgen and MW had a disagreement and “went off alone to talk”. MW returned and told Ms. Youngberg that Mr. Colmorgen had hit Ms. Youngberg’s vehicle. Ms. Youngberg checked her vehicle and saw damage apparent to both the front passenger side and rear passenger side doors. Mr. Colmorgen apologized at the time and said he punched Ms. Youngberg’s vehicle, thinking it was his own. Mr. Colmorgen and MW assured Ms. Youngberg they would pay to repair the damage.
14. Mr. Colmorgen disagrees with certain aspects of Ms. Youngberg’s description of events. In the Dispute Response filed at the outset of this proceeding, he said he only hit the vehicle once and that he only agreed to pay \$1,400. Inconsistent with these statements, in later submissions his representative questions whether he caused any damage at all and denies liability for any amount.
15. On balance, I find Ms. Youngberg’s version of events is likely accurate as it is largely corroborated by Mr. Colmorgen’s statements and other evidence. Mr. Colmorgen admitted he hit Ms. Youngberg’s car. He also admitted he agreed to pay some compensation. I find this shows he likely caused the damage at issue. I also find it likely that Mr. Colmorgen hit the vehicle more than once. This is because Ms. Youngberg says she saw multiple dents on the evening of May 22, 2021. Photos in evidence show multiple dents on her vehicle as described in her submissions, on the passenger side and relatively close to each other. I find the exact number of hits does not matter. This is because I am satisfied that Mr. Colmorgen caused all the damage, as I have found the vehicle was previously undamaged.

16. I also find that the parties likely agreed that Mr. Colmorgen would pay for the damage, and they did not agree to limit the amount to \$1,400. I make this finding based in part on text messages between MW and Ms. Youngberg, which I turn to now.
17. From May 2021 onwards, Ms. Youngberg and MW exchanged text messages. These messages were both about the extent of the damage and MW's attempts to negotiate payment. I infer that MW offered to pay because she was in a relationship with Mr. Colmorgen. At no point did MW deny Mr. Colmorgen's liability. MW ultimately refused to pay any amount. The text messages also show that MW thought that repairs would cost \$1,400. They do not show any agreement between the parties for Mr. Colmorgen to pay this amount to settle the claim. I find this is likely where the figure of \$1,400 came from.
18. Ms. Youngberg also texted Mr. Colmorgen in March 2022. He never responded.

***Issue #1. Did Mr. Colmorgen negligently damage Ms. Youngberg's vehicle?***

19. Although she did not specifically say so, I find Ms. Youngberg's claims are for negligence. In order to prove negligence, Ms. Youngberg must show that Mr. Colmorgen owed her a duty of care, he breached the standard of care, and the breach caused or contributed to reasonably foreseeable damage. See *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 at paragraph 3.
20. I find that Mr. Colmorgen owed Ms. Youngberg a duty of care to take reasonable measures to avoid damaging her property. As Mr. Colmorgen had decided, for whatever reason, to hit his own vehicle, I find he was under an obligation to ensure he was, in fact, hitting his own vehicle and not someone else's. I find he breached the standard of care by punching or otherwise hitting Mr. Youngberg's vehicle multiple times. I find the breach caused reasonably foreseeable damage. This is because hitting a car would result in entirely foreseeable dents, requiring repairs.
21. Given my findings, I find it unnecessary to decide whether Mr. Colmorgen breached a verbal agreement to pay for the damage to settle Ms. Youngberg's claims.

**Issue #2. What is the appropriate remedy?**

22. In negligence claims such as this one, damages are awarded to the innocent party to put them in the original position they would have been in if the negligence had not occurred. See, for example, *Blackwater v. Plint*, 2005 SCC 58 at paragraph 78. So, damages for wrongful damage to personal property will generally equal the cost of repairing or replacing the damaged property.
23. Ms. Youngberg claims \$3,201.59 as the estimated cost of repairs. This is supported by 1) an October 15, 2021 estimate from CSN Frank's for the same amount, and 2) a September 6, 2022 estimate from Sandy's Collision for \$3,340.26. Mr. Colmorgen says the repair cost is unreasonably high. I disagree as this submission is unsupported by any evidence, such as another estimate. On its face, I also find the estimated repair cost is not obviously unreasonable. So, I order Mr. Colmorgen to pay \$3,201.59 in damages.
24. The *Court Order Interest Act* applies to the CRT. The evidence before me indicates that Ms. Youngberg has not yet repaired her vehicle. I find she has not yet suffered any pecuniary loss from the car damage. So, under section 2(a) of the *Court Order Interest Act*, I must decline ordering any pre-judgment interest.
25. 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 Ms. Youngberg is entitled to reimbursement of \$175 in CRT fees. The parties did not claim any specific dispute-related expenses.

**ORDERS**

26. Within 30 days of the date of this order, I order Mr. Colmorgen to pay Ms. Youngberg a total of \$3,376.59, broken down as follows:
- a. \$3,201.59 as damages for negligence, and

b. \$175 in CRT fees.

27. Ms. Youngberg is entitled to post-judgment interest, as applicable.

28. 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. 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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David Jiang, Tribunal Member