



Civil Resolution Tribunal

Date Issued: February 27, 2023

File: SC-2022-004629

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *MacLeod v. Cornish*, 2023 BCCRT 162

B E T W E E N :

DONALD MACLEOD

APPLICANT

A N D :

WILLIAM CORNISH

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. This dispute is about responsibility for vehicle damage. William Cornish parked next to Donald MacLeod in a grocery store parking lot.ⁱ When Bill opened his truck door, he hit Don's car. This caused no damage, but it did cause an argument. During the argument, Don smacked Bill's truck. This also caused no damage, but Bill retaliated by punching or smacking Don's car, denting it. Don later had the car repaired,

paying a \$300 deductible. Don alleges that Bill agreed to pay to repair the car. In any event, Don says that Bill is responsible for the damage and should therefore be responsible for the deductible. Don asks for an order that Bill pay him \$300.

2. Bill does not dispute denting Don's car, but he denies agreeing to pay for the repairs. Bill also says that Don should pay the deductible because he played a role in escalating the parties' confrontation. Bill asks me to dismiss Don's claim.
3. The parties are each self-represented.

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). 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.
5. 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, both 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.
6. 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.

7. 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.
8. I note that section 172 of the *Insurance (Vehicle) Act* (IVA) prohibits people from bringing legal claims for vehicle damage sustained in an accident. Under the definition of an "accident" in section 170 of the IVA, an accident must arise out of the use or operation of a motor vehicle.
9. Neither party argued that section 172 of the IVA prevented Don from claiming against Bill. For completeness, I have considered whether Bill's act of striking Don's car with his hand while both were standing outside their vehicles arose "out of the use or operation of a motor vehicle".
10. This is a common phrase in legislation and insurance contracts. The courts have interpreted it differently depending on the legal context. *Amos v. Insurance Corp. of British Columbia*, 1995 CanLII 66 (SCC), was a case about entitlement to no-fault disability benefits. In that context, the Supreme Court of Canada used an expansive interpretation. *Citadel General Assurance Co. v. Vytlingam*, 2007 SCC 46, was a case about an insurer's obligation to defend and indemnify a defendant in a civil action. There, the Supreme Court of Canada took a more restrictive approach, concluding that something is "in the use or operation of a motor vehicle" only if there is an unbroken chain of causation between the use and operation of the motor vehicle and the claim.
11. The legal context is different here than in either of those cases. I find that the more restrictive definition from *Citadel* should apply. I say this because section 172 of the IVA restricts a person's right to claim damages for a common law tort. Legislation that restricts a substantive common law right must be read narrowly. See *Louch v. DeCicco*, 2007 BCSC 393, at paragraph 54.
12. Using that definition, I find that Bill was "using and operating" his truck when he first opened his door into Don's car. However, I find that the resulting argument broke

the chain of causation. I find that section 172 of the IVA does not prevent Don from bringing this claim against Bill for vehicle damage.

ISSUES

13. The remaining issues in this dispute are:

- a. Did Bill agree to pay for the damage?
- b. Is Bill liable for the damage to Don's car, even if he did not intend to cause any damage?
- c. Does Don's participation in the argument mean that his damages should be reduced?

EVIDENCE AND ANALYSIS

14. In a civil claim such as this, Don as the applicant must prove his 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.

15. The parties provide very similar accounts of what happened. Unless otherwise mentioned, the following facts are undisputed.

16. On May 4, 2022, Don was in his parked car in a grocery store parking lot. Bill was parked next to Don in a truck. When Bill opened his truck door, it hit the side of Don's car. The parties dispute how hard Bill hit Don's car with his truck door. I find that this detail does not matter because the parties agree that the truck door did not cause any damage.

17. Don opened his car door and told Bill he had hit Don's car. Bill acknowledged this, but essentially said it did not matter because there was no damage. By his own account, Don then became upset, got out of his car, and shouted at Bill that the

impact was so hard it had shaken Don's car. After Bill again pointed out that there was no damage, Don says that he slapped the side of Bill's truck and shouted: "So it's ok to hit a person's car as long as you don't do damage?". I note that Bill's evidence of what Don said is not identical to Don's evidence, but it was to the same overall effect. In any event, Don's slap did not damage Bill's truck.

18. According to Don, Bill became "furious", balled up his fist, and punched a dent into the side of Don's car. Bill does not admit to being "furious" or using a fist but admits that he hit and dented Don's car in retaliation.
19. When he realized he had damaged Don's car, Bill immediately calmed down and apologized. The confrontation ended.

Did Bill agree to pay for the damage?

20. While the parties agree that Bill immediately apologized for denting the car, they disagree about whether he also told Don that he would pay for any damage.
21. I note that the *Apology Act* prevents me from considering an apology as evidence of fault or liability. However, I find that the *Apology Act* only applies to the apology itself, not to a later offer to pay for the damage, which is what Don alleges.
22. There is nothing inherently more believable about either party's evidence about what Bill did or did not say after the apology. However, for the reasons that follow, I find that the parties' later email exchanges are inconsistent with Bill's assertion that he did not agree to pay to repair the car.
23. On May 10, 2022, Don emailed Bill an autobody shop's estimate for repairing the dent. In the email, Don acknowledged that the estimate, which was around \$1,200, was higher than he expected. Bill responded that he had spoken to the autobody's estimator about the cost. Bill said that he had started an ICBC claim because of the high repair cost and suggested that Don do the same. Bill told Don that ICBC would then pay for the repairs.

24. Notably, Bill did not deny responsibility for the repairs in the email. I see no reason why Bill would phone the estimator to discuss the repair cost if he had not already agreed to pay. He would also have no reason to begin an ICBC claim, and ask Don to do the same, except to minimize his contribution to the repair cost. I therefore find it implicit in Bill's email that he had previously agreed to pay the repair cost.
25. I find that my conclusion is consistent with a later email. On June 15, 2022, Don emailed Bill that there would be a \$300 deductible, and that Bill should arrange to pay it. Bill did not initially respond. After repeated follow-up emails, Bill said that he had initially "planned to pay the deductible, but had second thoughts". Again, Bill did not explicitly refer to a prior agreement to pay the deductible. However, I find that the use of the word "planned" in this context suggests an agreement.
26. On balance, I find that the weight of the evidence supports Don's allegation that Bill agreed to pay the repair costs. I find that the parties' emails show that Don had accepted the offer. I therefore find that the parties had reached a settlement agreement, which was a binding contract that Bill could not later back out of because he had "second thoughts".
27. It is undisputed that on June 29, 2022, Don paid the \$300 deductible. I find that Bill must reimburse this amount. Given my conclusion, I find it unnecessary to address the parties' other arguments.
28. The *Court Order Interest Act* (COIA) applies to the CRT. Don waived his right to interest, so I order none.
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. I find that Don is entitled to reimbursement of \$125 in CRT fees. He did not claim any dispute-related expenses.

ORDERS

30. Within 30 days of the date of this order, I order Bill to pay Don a total of \$425, broken down as follows:
- a. \$300 in damages, and
 - b. \$125 in CRT fees.
31. Don is entitled to post-judgment interest, as applicable.
32. 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.

Eric Regehr, Tribunal Member

ⁱ The parties both asked to be referred to by their first names, Don and Bill.