Civil Resolution Tribunal

Date Issued: April 6, 2023

File: SC-2022-004191

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Eleizegui v. ICBC*, 2023 BCCRT 287

BETWEEN:

THOMAS LAMBERTO ELEIZEGUI

APPLICANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about a motor vehicle accident that occurred on June 30, 2021. The applicant, Thomas Lamberto Eleizegui, and a third party, F, were involved in a minor collision at an automated car wash station. The applicant says the respondent insurer, Insurance Corporation of British Columbia, incorrectly held him 100% responsible for the accident.

2. The applicant denies responsibility for the accident and claims $5,000 in damages for having to go to court to contest a violation ticket, various expenses, and for time spent away from his business development projects, his family and friends. He also asks for an order that the respondent "retract" its decision about fault.

3. The respondent says it reasonably assigned full responsibility for the accident to the applicant. The respondent further says the applicant is not entitled to claim damages for time spent in litigation and that the applicant has generally failed to prove his claims. It asks that I dismiss this dispute.

4. The applicant represents himself. The respondent is represented by an authorized employee.

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 parties to a dispute that will likely continue after the dispute resolution process has ended.

6. Section 39 of the CRTA says that the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. 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 in the interests of justice.

7. Section 42 of the CRTA says that 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 who is responsible for the June 30, 2021 accident, and if not the applicant, is he entitled to the requested remedies?

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant must prove his claims on a balance of probabilities (meaning "more likely than not"). While I have read all of the parties' submitted evidence and arguments, I have only addressed those necessary to explain my decision. The applicant did not provide any reply submissions, despite having the opportunity to do so.

11. The background facts are not in dispute. On June 30, 2021, the applicant was going through an automated car wash when he noticed a prompt advising to "back up", so he put his vehicle into reverse. The applicant says that, due to soap covering his car, he was unable to see F's vehicle behind him. The applicant's rear bumper struck F's front bumper. The applicant says F entered the car wash when it was the applicant's turn and that F should not have been so close to the applicant's vehicle.

12. F's statement to the respondent says that they (F) were stopped at the car wash's pay machine, still waiting in their vehicle getting ready to pay. F said the applicant reversed into F's vehicle instead of going forward into the car wash.

13. After the car wash completed, the applicant says he waited for F to come talk to him, but they never showed up. Later that night, a police officer attended at the applicant's home and gave him a violation ticket for "unsafe backing" (further to section 193 of

the *Motor Vehicle Act* (MVA)) and hit and run. After discussing it with the police officer, the officer undisputedly struck out the citation for hit and run.

14. The applicant appealed the violation ticket in traffic court. Although the applicant says the presiding judge found him not guilty, I disagree. The Offence Act Record of Proceedings shows that the applicant plead not guilty, but the case was ultimately dismissed for want of prosecution, which means the case was essentially not being pursued by the prosecution (here, the officer). Want of prosecution is not the same thing as "not guilty".

15. Even if the judge had found the applicant not guilty, that does mean the applicant did not breach section 193 of the MVA. In traffic court, the officer who issued the violation ticket to the applicant must prove beyond a reasonable doubt that the applicant committed the offence. However, in a civil proceeding, such as this one, the burden of proof is on a balance of probabilities, meaning "more likely than not". So, a judge's finding of not guilty in traffic court is not determinative of the applicant's liability in negligence in a civil case.

16. However, I find nothing turns on this in any event because I find the applicant has not proven any damages, so I dismiss his claims. My reasons follow.

17. As noted above, the applicant claims $5,000 in damages for having to go to court to contest a violation ticket, various expenses, and for time spent away from his business development projects, his family and friends. He also asks for an order that the respondent "retract" its decision about fault.

18. Ordering someone to do something, or to stop doing something, is known as "injunctive relief". This includes an order for ICBC to revise its internal fault assessment. Also, to the extent the applicant is seeking an order he is not responsible for the June 30, 2021 accident, this is known as "declaratory relief". Both injunctive and declaratory relief are outside the CRT's small claims jurisdiction, except where permitted by section 118 of the CRTA. There are no relevant CRTA provisions that would permit me to grant the injunctive and declaratory relief the applicant seeks.

19. However, if the applicant can prove he suffered damages due to ICBC improperly or unreasonably assessing his claim and assigning fault, an award for those damages is within the CRT's small claims jurisdiction, up to the $5,000 monetary limit.

20. The problem for the applicant is that he provided no supporting evidence or submissions about his claimed losses, such as receipts for his alleged expenses, how much time was lost, or the value of that time. As a result, I find the applicant has not proven he is entitled to any compensation. So, as there are no proven damages, I do not need to consider whether ICBC properly or reasonably assessed and assigned fault for the June 30, 2021 accident. I dismiss the applicant's claims.

21. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. The respondent was successful, but neither party paid tribunal fees nor claimed dispute-related expenses.

ORDER

22. The applicant's claims, and this dispute, are dismissed.

Andrea Ritchie, Vice Chair