



# Civil Resolution Tribunal

Date Issued: November 17, 2023

File: SC-2023-004366

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Bartella v. ICBC*, 2023 BCCRT 987

BETWEEN:

FRANCESCO BARTELLA and ROSALYNN BARTELLA

**APPLICANTS**

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Megan Stewart

## INTRODUCTION

1. This small claims dispute is about a motor vehicle accident that took place on November 9, 2022 in Kamloops, British Columbia between the applicant, Rosalynn Bartella, and a third party, D. The other applicant, Francesco Bartella, is the

registered owner of the vehicle Rosalynn Bartella was driving, though for convenience, I also refer to it as Rosalynn Bartella's vehicle. D is not a party to this dispute. The respondent insurer, Insurance Corporation of British Columbia (ICBC), insures both vehicles involved in the accident.

2. The applicants dispute ICBC's determination that Rosalynn Bartella was 50% responsible for the accident. They claim compensation for the \$150 deductible they say they paid to repair their vehicle.
3. ICBC says it acted reasonably in investigating and assessing liability for the accident, and that it correctly determined liability. It asks me to dismiss this dispute.
4. Francesco Bartella represents the applicants. ICBC 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.
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. 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 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.

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.
9. In the Dispute Response, ICBC says the applicants' claim appears to be in respect of a liability determination only, because none of their claimed damages can be proven. So, ICBC suggests the applicants' claim should have been filed under CRTA section 133(1)(d). That section gives the CRT jurisdiction over a claim about ICBC's determination of an applicant's degree of responsibility for an accident. Further, ICBC says the applicants' claim does not fall under the CRT's small claims jurisdiction because their request for a liability determination is for "injunctive relief," meaning an order that a person do or stop doing something. With limited exceptions that do not apply here, injunctive orders are outside the CRT's small claims jurisdiction.
10. I find the applicants essentially argue ICBC breached the parties' contract of insurance, as discussed below. So, I find the request for reimbursement of the deductible is a claim for damages arising from the alleged breach of contract. Whether the applicants can prove their claim for damages is a separate issue from whether the CRT has jurisdiction over that claim. For these reasons, I find the applicants' claim properly falls under the CRT's small claims jurisdiction over debt and damages.

## **ISSUE**

11. The issue in this dispute is who is responsible for the November 9, 2022 accident, and if not Rosalynn Bartella, what is the appropriate remedy?

## **EVIDENCE AND ANALYSIS**

12. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities (meaning more likely than not). I have read all the parties' submissions and evidence but refer only to the evidence and argument I find necessary to explain my decision.

13. On the afternoon of November 9, 2022, Rosalynn Bartella got into her vehicle, which was parked nose into an angled parking stall in a parking lot. She began reversing out of the stall. Around the same time, D began reversing their vehicle out of an angled parking stall directly across the driving aisle from Rosalynn Bartella's stall. D's rear right bumper then connected with Rosalynn Bartella's driver's side door in the aisle. Francesco Bartella reported the accident via ICBC's online customer portal on November 10, 2022. D did not report the accident. None of this is disputed.
14. As of May 1, 2021, BC's vehicle insurance scheme changed. Part of the changes included creating the "Basic Vehicle Damage Coverage" section (Part 11) of the *Insurance (Vehicle) Act* (IVA). This applies to accidents on and after May 1, 2021, including the accident in this dispute. Section 172 of Part 11 of the IVA imposes a general ban on drivers bringing actions for vehicle damage against other vehicle owners and drivers involved in an accident. However, this ban does not preclude the applicants from bringing an action against ICBC, as their insurer.
15. Under section 174 of Part 11 of the IVA, ICBC must indemnify an insured for their vehicle's damage or loss sustained in an accident, subject to a reduction for the vehicle operator's degree of responsibility, if any. In other words, if Rosalynn Bartella is not responsible for the accident, the IVA requires ICBC to pay for her vehicle repairs, including the deductible. Because the IVA requires ICBC to indemnify an insured for vehicle damage based on the vehicle operator's degree of fault, I find the IVA requires ICBC to correctly determine responsibility. Section 174 of the IVA also forms part of ICBC's compulsory insurance contract under section 1.1 of the *Insurance (Vehicle) Regulation*. So, I find ICBC is also contractually obliged to correctly determine fault for an accident.
16. Here, the applicants dispute ICBC's fault determination. They say in apportioning liability equally between the drivers, ICBC did not take account of photos they provided of the damage to their driver's side door. So, I find the applicants argue that ICBC breached the parties' insurance contract by failing to correctly assess

responsibility for the accident based on the photos of the damage to their vehicle, and seek \$150 in damages for their deductible.

17. ICBC took statements over the phone from both Rosalynn Bartella and D on November 28, 2022, which it submitted in evidence. The ICBC notes of these statements are in the first person and include confirmation that the statements are true and correct. So, I accept that the ICBC adjuster read each driver's statement back to them and confirmed its accuracy.
18. In her statement, Rosalynn Bartella said when she got into her vehicle and began reversing, she did not see any other reverse lights on. She said once she had completely backed out of the stall and was stopped in the driving aisle to change gears, she noticed another driver reversing out of their stall on the other side of the aisle. Rosalynn Bartella said that as the aisle was tight, the other driver only reversed a few feet before its rear bumper collided with her driver's side door, and she did not have time to honk before the impact. She also said D got out of their vehicle and said the accident was their fault.
19. In their statement, D said they got into their vehicle, put on their seatbelt, checked their mirrors for hazards, and confirmed there were none. D said they then reversed their car and hit Rosalynn Bartella's vehicle with their rear side bumper. D indicated they did not know where the other vehicle came from, or if it came from a parking stall. However, they also said they did not take down Rosalynn Bartella's information as they did not see any point in doing so since they "had backed into her".
20. It is undisputed that there were no independent witnesses to the accident or dash camera footage, nor did the drivers take photos of the scene before moving their vehicles out of the way to exchange insurance information.
21. In the Dispute Response, ICBC says it found Rosalynn Bartella 50% responsible for the accident under both sections 169 and 193 of the *Motor Vehicle Act* (MVA). However, in submissions, it appears to abandon its argument that she was liable under MVA section 169, which is about only moving a stopped vehicle safely, and

focuses solely on section 193. That section says a driver must not reverse a vehicle unless the movement can be made safely. I agree with ICBC that section 193 is determinative of liability for the accident.

22. Section 193 imposes a high standard of care on a driver while reversing because backing up a vehicle poses greater risks than driving forward and a driver's visibility is reduced when driving in reverse (see *Araujo v. Vincent*, 2012 BCSC 1836 and *Carson v. Henyecz*, 2012 BCSC 314). A driver must take the time necessary to look behind and around their vehicle both before and while they are reversing, until the entire process is complete (see *Carson* at paragraph 99).
23. ICBC says that as both drivers admitted to reversing their vehicles prior to the accident, they each bore responsibility for proving they met the high standard of care imposed by section 193.
24. As noted above, the applicants say that in assessing fault, ICBC did not factor in photos showing damage to the driver's side door of their vehicle. I infer the applicants mean that had ICBC taken the photos into account, based on the location of the points of impact it would have concluded that Rosalynn Bartella had already finished reversing out of the stall without incident when D's vehicle struck hers, and so would not have found her liable at all.
25. ICBC says it considered the vehicle damage photos. However, it says the points of impact in the photos only confirm that contact was made, not how it happened or the timing of events leading up to the impact. In addition, ICBC says the parking lot's angled parking stalls configuration and where the vehicles were parked in relation to one another can explain the location of the points of impact on the applicants' vehicle. So, ICBC says the vehicle damage photos do not assist in establishing liability.
26. I agree with ICBC, and find the photos submitted by the applicants are insufficient to prove Rosalynn Bartella had completely reversed out of the parking stall at the time D's vehicle struck hers. In the absence of other evidence of the accident, I find ICBC reasonably relied on the drivers' statements to determine liability.

27. However, based on the drivers' statements, I find ICBC incorrectly assessed fault. While both drivers said they checked for hazards before reversing out of their respective stalls, I find it more likely than not Rosalynn Bartella had completed the manoeuvre at the time of the accident, and had paused in the aisle to change gears as she alleges. This is because D explicitly said they did not get Rosalynn Bartella's information as they "had backed into her" and saw no point in getting her information. I find it unlikely that D would have said this nearly 20 days after the accident unless they were sure it was true. I infer that by not getting Rosalynn Bartella's insurance information, D did not intend to report the accident or make a claim because they believed they were at fault. In short, I find D's statement to ICBC contains an admission of liability. In these circumstances, I find Rosalynn Bartella's vehicle was there to be seen in the aisle and D simply failed to observe it.
28. In submissions, Rosalynn Bartella says when the drivers exited their vehicles to exchange information and D said the accident was their fault, D also apologized. ICBC says the *Apology Act* prevents me from considering D's alleged admission of liability because it came in the context of an apology. Even if D apologized at the time of the accident, I find their admission of liability in their statement to ICBC was not made in the context of an apology. So, I find I can consider it in making this decision.
29. Overall, I find there was no basis for ICBC to conclude Rosalynn Bartella breached MVA section 193 by reversing unsafely. Instead, I find D reversed unsafely and backed into Rosalynn Bartella's vehicle while it was stopped in the driving aisle. I find D was 100% responsible for the accident. Since ICBC failed to apportion liability between the drivers correctly, I find it breached its contract of insurance with the applicants.
30. I turn to the question of damages. The applicants provided no evidence to support their claim that they paid a \$150 deductible. ICBC argues that this means the applicants have not proven their claim. In *Jordan v. ICBC*, 2023 BCCRT 985, a tribunal member found that ICBC, as the applicant's insurer, had evidence about their deductible amount within its power and control, and failed to provide that evidence

during the CRT proceedings. The tribunal member noted that while an applicant bears the burden to prove all aspects of their claim, including damages, that does not mean a respondent should withhold relevant evidence it has about damages when an applicant has failed to provide it, especially where the respondent is a sophisticated litigant like ICBC and the applicant is a lay litigant. The tribunal member drew an adverse inference against ICBC for failing to provide relevant evidence without sufficient explanation. Prior CRT decisions do not bind me, but I find the reasoning in *Jordan* persuasive, and I apply it here. I find that if ICBC had evidence the applicants did not pay their deductible, it would likely have provided it. Since it did not provide such evidence, I find it is appropriate to draw an adverse inference against ICBC. I accept the applicants' assertion that they paid a \$150 deductible, and I find ICBC must reimburse them that amount.

31. The *Court Order Interest Act* (COIA) applies to the CRT. As there is no evidence before me of when the applicants paid the \$150 deductible, I find they are entitled to pre-judgment interest on the \$150 from December 31, 2022, the day they submitted their application for dispute resolution to the CRT, to the date of this decision. This equals \$6.17.
32. 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. As the applicants were successful, I find they are entitled to reimbursement of \$125 in CRT fees. The applicants did not claim any dispute-related expenses.

## **ORDERS**

33. Within 21 days of the date of this order, I order ICBC to pay the applicants a total of \$281.17, broken down as follows:
  - a. \$150 in damages,
  - b. \$6.17 in pre-judgment interest under the COIA, and



c. \$125 in CRT fees.

34. The applicants are entitled to post-judgment interest, as applicable.

35. 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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Megan Stewart, Tribunal Member