



Civil Resolution Tribunal

Date Issued: December 1, 2023

File: SC-2022-004667

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hamilton v. Handley*, 2023 BCCRT 1043

BETWEEN:

SAMUEL CURTIS HAMILTON and MARY WU

APPLICANTS

AND:

ROGER HANDLEY

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Alison Wake

INTRODUCTION

1. The applicant, Samuel Curtis Hamilton, was driving a vehicle owned by the applicant, Mary Wu, when he was involved in a motor vehicle accident with the respondent, Roger Handley. The Insurance Corporation of British Columbia (ICBC) held Mr. Hamilton and Mr. Wu each 50% responsible for the accident. The applicants say Mr.

Handley was 100% responsible, and claim \$4,111.15 from Mr. Handley for vehicle repair expenses.

2. Mr. Handley says that ICBC correctly determined responsibility for the accident, but that in any event, the applicants cannot claim against Mr. Handley for vehicle damage. Mr. Handley also argues that the applicants' vehicle was not insured at the time of the accident.
3. Mr. Hamilton represents both applicants. An ICBC employee represents Mr. Handley.
4. For the following reasons, I dismiss the applicants' 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.
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. After the parties had submitted their evidence and written arguments, Mr. Handley requested to submit additional evidence to contradict the applicants' assertion that Mr. Hamilton did not report the accident to ICBC. Given my conclusions below, I find nothing turns on whether Mr. Hamilton reported the accident. So, I decline to admit this late evidence.

ISSUES

8. The issues in this dispute are:
 - a. Can the applicants claim against Mr. Handley for vehicle damage?
 - b. If so, who is responsible for the accident?

BACKGROUND AND ANALYSIS

9. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities (meaning “more likely than not”). While I have read all the parties’ submitted evidence and arguments, I have only referred to those necessary to explain my decision.
10. The accident occurred when Mr. Hamilton and Mr. Handley were each reversing their vehicles out of their respective driveways. Their vehicles collided and both were damaged. While the parties disagree about the precise date of the accident, they agree it occurred sometime in July 2021. I find nothing turns on the exact date, given my conclusions below.
11. 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), and the accompanying *Basic Vehicle Damage Coverage Regulation* (BVDCR). These apply to accidents on and after May 1, 2021, including the accident in this dispute.
12. Part 11 includes section 172, which imposes a general ban on drivers bringing actions for vehicle damage against other vehicle owners and drivers involved in an accident. Specifically, section 172(1) says a person has no right of action and must not commence or maintain proceedings for vehicle damage sustained in an accident that occurred on a highway and involved at least 2 vehicles. Section 172(2) contains certain exceptions, which I find do not apply here.

13. The applicants say that section 172 does not apply, because the accident occurred on a private road in their gated community, which they argue is not a highway. Section 1 of the IVA says that “highway” has the prescribed meaning, but there is no prescribed definition of “highway” in the BVDCR.
14. Mr. Handley relies on the definition of “highway” in the *Motor Vehicle Act*, which includes “every private place or passageway to which the public, for the purpose of the parking or servicing of vehicles, has access or is invited”. The applicants do not dispute the application of this definition, but say that their road does not meet it.
15. Mr. Handley argues that although there is a “private property” sign on the gates to the community, members of the public could be invited into the community if they were visiting a residence there. However, Mr. Handley has not provided any evidence that members of the public are permitted to park on the private road, and there is no suggestion that the private road is used for the servicing of vehicles. So, I find Mr. Handley has not proven that the private road where the accident occurred is a “highway”.
16. However, this does not end the matter. Section 173 of the IVA imposes a similar prohibition on legal proceedings against another vehicle owner or operator for accidents that occur off-highway. So, I find that regardless of whether the private road is considered a “highway”, the IVA prevents the applicants from bringing a claim against Mr. Handley for their vehicle damage.
17. As I find the applicants’ claims are statute-barred under the IVA, it follows that I must dismiss the applicant’s claims. As a result, I do not need to address the parties’ arguments about who is responsible for the accident, or whether the applicants’ vehicle was insured.
18. 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 applicants were unsuccessful in this dispute, so I find they are not entitled to reimbursement of their CRT fees or dispute-related expenses.

19. I note that I would not have awarded the applicants' claimed \$1,680.97 in dispute-related expenses in any event, as it appears this is the amount that ICBC charged them for the damage to Mr. Handley's vehicle. There is no evidence that the applicants have paid this amount to ICBC. Even if they had, I find this is a claim for damages rather than expenses directly related to the CRT process, as required by CRT Rule 9.5. So, I would have dismissed the applicants' claim for dispute-related expenses even if they were successful.
20. Mr. Handley did not pay any CRT fees or claim dispute-related expenses, so I make no order for them.

ORDERS

21. I dismiss the applicants' claims, and this dispute.

Alison Wake, Tribunal Member