

CANADA / JUDGMENT

Grewal v. Bruni

2023 BCSC 1866

COURT

Supreme Court of British Columbia

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2023 BCSC 1866 Grewal v. Bruni

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Grewal v. Bruni,

2023 BCSC 1866

Date: 20231024

Docket: M196279

Registry: Vancouver

Between:

Sarah Sandeep Grewal

Plaintiff

And

Cristina Lauren Bruni and Ka Wei Huang

Defendants

And

Ka Wei Huang

Third Party

- and -

Docket: M198667

Registry: Vancouver

Between:

Soo Bhin Choi

Plaintiff

And

Ka Wei Huang and Cristina Lauren Bruni

Defendants

And

Ka Wei Huang

Third Party

Before: The Honourable Justice MacNaughton

Reasons for Judgment

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Place and Date of Trial:

Vancouver, B.C.

September 11-13, 2023

Place and Date of Judgment:

Vancouver, B.C.

October 24, 2023

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Introduction

- [1] This liability-only trial is with respect to a September 1, 2017 two-vehicle collision at the intersection of Kingsway and Gladstone St. (the "Collision" and the "Intersection"). The defendant Cristina Bruni was the owner and driver of a 2002 Mercedes ML500 (the "Bruni vehicle"). The defendant Ka Huang was the owner and driver of a 2020 Mitsubishi Lancer (the "Huang vehicle"). Both drivers had "N" restricted licences.
- [2] The Collision occurred between 7:00 p.m. and 7:30 p.m. in dry road conditions. It was light, although evening was approaching.
- [3] At the Intersection, Kingsway runs diagonally generally to the east and west, and Gladstone St. runs generally to the north and south. Ms. Bruni was driving eastbound on Kingsway turning left onto northbound Gladstone St. Mr. Huang was driving westbound on Kingsway proceeding straight through the Intersection. Kingsway has three through lanes in either direction. Parking is permitted in the northernmost and southernmost lanes and cars were parked on both sides of Kingsway.
- [4] On the date of the Collision, there were no dedicated left turn lanes on Kingsway at the Intersection. I understand that this has since changed.
- [5] The plaintiff Sarah Grewal was the front right seat passenger in the Bruni vehicle, and the plaintiff Soo Bin Choi was the front right seat passenger in the Huang vehicle. They bring these actions for personal injuries they suffered in the Collision.
- [6] Both drivers say the other is entirely or partly liable.
- [7] Three actions were commenced as a result of the Collision. By consent order, the issues of liability and damages were severed. Liability was to be determined in a trial of all three actions. One of the actions resolved, and only the two brought by Ms. Grewal and Ms. Choi proceeded.

The Evidence

- [8] The only witnesses who testified were both defendant drivers and both passengers.

- [9] Ms. Grewal and Ms. Choi were unable to give any meaningful evidence about the circumstances or mechanics of the Collision. As neither was driving, they were not paying attention to driving conditions at the Intersection. Ms. Choi was emotionally shaken after the Collision. She vaguely recalled seeing the Bruni vehicle waiting to turn left but not where it was positioned in the Intersection. She recalls seeing it just before the impact. Neither witness was able to describe speeds or times leading up to the Collision.
- [10] After the Collision, the Bruni vehicle spun around a full 360 degrees and came to rest facing eastbound, against the curb at the northeast corner of the Intersection. At the last minute, and in an effort to avoid the Collision, Mr. Huang swerved his vehicle to the right, and after hitting the Bruni vehicle, the Huang vehicle continued to travel to the right. It was involved in a secondary impact when it struck an electrical box, beyond the curb, at the northwest corner of the Intersection.
- [11] Certain facts are not in dispute as between Ms. Bruni and Mr. Huang. Both are familiar with the area and with the Intersection.

Mr. Huang's and Ms. Bruni's Evidence

- [12] Mr. Huang had been at a restaurant on Kingsway, two blocks east of the Intersection. He left the parking lot and turned right into the middle lane of Kingsway, travelling westbound. When he did so, there was a car ahead of him in the middle lane, and the traffic light at the Intersection was green. He did not see it turn green but agreed that it remained green while he drove the two blocks to the Intersection. There is no issue in this case that the light at the Intersection was green and that it had been for some time before the Collision.
- [13] Mr. Huang said that the vehicle in front of him was approximately three-four car lengths ahead, and it remained ahead of him as they approached the Intersection.
- [14] Mr. Huang first saw the Bruni vehicle when he was about one block east of the Intersection. He saw that it was completely stopped. He saw that the front of it was beyond the crosswalk and angled towards the lane to his left. Ms. Bruni said that she encroached into the westbound lane to the left of Mr. Huang but did not obstruct the middle westbound lane in which he was travelling. She said that she was signalling her intention to make a left turn. Mr. Huang could not recall seeing a left turn signal but does not dispute that he knew that the Bruni vehicle intended to turn left.
- [15] Ms. Bruni described a red vehicle travelling in front of Mr. Huang's vehicle. She waited for it to pass through the Intersection and then turned left onto Gladstone St.
- [16] Both drivers gave unequivocal evidence during their examinations for discovery, and both resiled from parts of their discovery evidence during their trial evidence.
- [17] Mr. Huang, for example, repeatedly said at his discovery that the speed at which he was travelling westbound on the Kingsway was 35kph. At trial, he said it was 40kph.

- [18] Mr. Huang also agreed at his discovery that, just before the impact with Ms. Bruni, he took his attention away from the Bruni vehicle, which he saw poised to make a left turn in front of him, and that had he not done so he could have avoided the Collision. At discovery, he estimated that he had taken his eyes off the Bruni vehicle when he was 20-30 meters away. Ms. Bruni suddenly appeared in front of his path of travel, approximately halfway into his lane. He agreed that, had he not taken his attention away from Ms. Bruni, there were things he could have done to avoid the Collision. He said that the only hazard he was focussed on was the Bruni vehicle.
- [19] At trial, Mr. Huang said he took his eyes off the Bruni vehicle when it was 20 meters away. At trial, he also agreed on cross-examination he had a duty and the ability to look at multiple competing hazards, if they existed. He said there were other potential hazards including the parked cars to his right, the possibility of pedestrians crossing Kingsway in front of him, and the green light (presumably suggesting that it was a stale green light).
- [20] When Mr. Huang was cross-examined about this apparent change in his evidence, he confirmed what he admitted at his examination for discovery and acknowledged that, while there were other possible hazards, he was only focussed on the Bruni vehicle.
- [21] Ms. Bruni gave unequivocal evidence at her examination for discovery that as she was waiting to turn northbound onto Gladstone St., the red vehicle travelling ahead of Mr. Huang in the same lane passed through the Intersection and that she waited for approximately 10 seconds before turning in front of Mr. Huang's vehicle. At trial, she testified that she turned immediately after the red vehicle passed.
- [22] Ms. Bruni also agreed at her examination for discovery that she waited for approximately 30 seconds at the Intersection. At trial she reduced that to 20 seconds. She said she was confused by the discovery questions and felt pressured.
- [23] Ms. Bruni admits that she made her left turn assuming that Mr. Huang was travelling at the "correct" speed and testified that he must have been speeding because, had he not been, she could have completed her turn safely. Mr. Huang denied that he was speeding, and there was no evidence to suggest that he was.

Findings on Credibility and Reliability

- [24] I do not conclude that either witness was intentionally trying to mislead me. Rather, I find that between their respective examinations for discovery and trial, they both reconsidered their discovery evidence and realized that they gave evidence which was not particularly helpful to the outcome as it related to them and engaged in revisionist history.
- [25] Ms. Bruni's evidence was not reliable as it related to her estimates of time and distance. It is undeniable that she was not able to complete a safe left turn. Mr. Huang's vehicle was there to be seen, and when she commenced her turn, it was an immediate hazard to Ms. Bruni, the servient driver.

[26] I conclude that both Mr. Huang's and Ms. Bruni's discovery evidence was more accurate and reliable as it was closer in time to the Collision and was not tainted to the same extent by a desire to paint the other driver as primarily at fault. I therefore accept their discovery evidence as the best description of what occurred.

Legal Framework

[27] As a starting point for the analysis, all drivers have a common law duty to take reasonable care for the safety of others using the roadway. This starting point is supplemented by the statutory duties and obligations imposed in the Motor Vehicle Act, R.S.B.C. 1996, c. 318 [MVA]; *Perez-Alarcon v. Lee*, 2013 BCSC 408 at para. 118.

[28] In this case, the applicable sections of the MVA are ss. 144(1) and 174 which provide:

144(1) A person must not drive a motor vehicle on a highway

that is excessive relative to the road, traffic, visibility or weather conditions:

- (a) without due care and attention,
- (b) without reasonable consideration for other persons using the highway, or
- (c) at a speed that is excessive relative to the road, traffic, visibility or weather conditions.

174 When a vehicle is in an intersection and its driver intends to turn left, the driver must yield the right of way to traffic approaching from the opposite direction that is in the intersection or so close as to constitute an immediate hazard, but having yielded and given a signal as required by sections 171 and 172, the driver may turn the vehicle to the left, and traffic approaching the intersection from the opposite direction must yield the right of way to the vehicle making the left turn.

[29] Section 174 of the MVA does not end the consideration and application of other laws governing both drivers involved in left-turning collisions, especially if their joint conduct caused or contributed to the Collision. A through driver in a collision involving a left turner still has an obligation to avoid causing or contributing to that collision both under the global s. 144 duty and at common law.

[30] The relationship between the common law duties on motorists and those imposed by the MVA was discussed by the Court of Appeal in *Salaam v. Abramovic*, 2010 BCCA 212:

Common Law Duty of Care

[18] While the statutory provisions provide guidelines for assessing fault in motor vehicle accident cases, they do not, alone, provide a complete legal framework.

- [19] In *Carich v. Cook* (1992), 1992 CanLII 995 (BC CA), 90 D.L.R. (4th) 322 at 326, 9 B.C.A.C. 112, this Court considered liability for an accident that occurred when a vehicle turning left on a four-lane road was in collision with a vehicle proceeding in the opposite direction, in the outside lane. While the Court was considering what is now s. 174 of the [MVA] rather than s. 175, it is my view that the opinion expressed by Lambert J.A. has some relevance to this case:

The question as a driver turns left is whether there is any vehicle in any approaching lanes that constitutes an immediate hazard. If there is, the turn should not be made. If there is not, then the turn can be made and of course, care should be taken throughout the turn and as each new lane is entered to make sure that the situation as it was assessed when the turn started has not changed in the meantime. But that care is more a matter of the ordinary duty of a reasonably careful driver and not a duty, in my view, imposed specifically by s. 176 [now s. 174] which, in my view, states the situation when the turn is commenced. Once the turn is commenced both of the drivers in that situation, the one who is doing a left turn and the ones that are approaching straight ahead in a situation where a vehicle could turn in front of them, all must keep a proper look-out.

- [20] To the extent that there is a need to refer to a section of the [MVA] for this proposition, one can turn to s. 144, which requires drivers to drive with "due care and attention" and to have "reasonable consideration for other persons using the highway".
- [21] In the end, a court must determine whether, and to what extent, each of the players in an accident met their common law duties of care to other users of the road. In making that determination, a court will be informed by the rules of the road, but those rules do not eliminate the need to consider the reasonableness of the actions of the parties. This is both because the rules of the road cannot comprehensively cover all possible scenarios, and because users of the road are expected to exercise reasonable care, even when others have failed to respect their right of way. While s. 175 of the [MVA] and other rules of the road are important in determining whether the standard of care was met, they are not the exclusive measures of that standard.
- [31] A driver who has the right of way according to the rules of the road is entitled to assume that other drivers will abide by the rules of the road, but they cannot do so without regard to their own safety or the safety of others: *Enright v. Marwick*, 2004 BCCA 259 at para. 22.
- [32] The Court of Appeal addressed what is necessary for a servient driver to establish that a dominant driver was also at fault in *Chavez-Salinas v. Tower*, 2022 BCCA 43:
- [19] What is required of a servient driver to establish a dominant driver's contributory negligence is set out in *Pacheco (Guardian ad litem of) v. Robinson* (1993), 1993 CanLII 383 (BC CA), 75 B.C.L.R. (2d) 273 (C.A.):

- [18] when a driver in a servient position disregards his statutory duty to yield the right of way and a collision results, then to fix any blame on the dominant driver, the servient driver must establish that after the dominant driver became aware, or by the exercise of reasonable care should have become aware, of the servient driver's own disregard of the law, the dominant driver had a sufficient opportunity to avoid the accident of which a reasonably careful and skilful driver would have availed himself. In such circumstance any doubt should be resolved in favour of the dominant driver

See also Nerval at para. 37.

- [20] To do so, the servient driver must assess how far the dominant vehicle is from the intersection and how fast it is travelling: *Burgess v. Fisher*, 2009 BCSC 1766 at para. 21.
- [21] Furthermore, "a driver will not be held to have breached the standard of care simply because [they] failed to take extraordinary steps to avoid an accident or to show exceptional proficiency in the operation of a motor vehicle": *Salaam v. Abramovic*, 2010 BCCA 212 at para. 25.

[Emphasis added.]

Analysis

Did Mr. Huang Contribute to the Collision Occurring?

- [33] I conclude that, regardless of who is considered to be the dominant or servient driver, both Mr. Huang and Ms. Bruni bear responsibility for the Collision. All motorists have a general duty to others on the road to keep a proper look-out and to take reasonable precautions in response to apparent, potential hazards, and to avoid accidents through the exercise of reasonable care. They both failed to fulfil their respective duties as drivers and failed in their duties to their passengers. Both of them should have chosen to do things that could have, and would have, prevented the Collision. Through the exercise of reasonable care on the part of both drivers, the Collision could have been avoided.
- [34] Ms. Bruni failed in her duty because, as a left turner, turning in front of Mr. Huang, who was travelling straight through and had the right of way, she made the turn when it was not safe for her to do so. She could not be certain that she could complete the turn safely. She needed to be open to the possibility that Mr. Huang was travelling faster than she thought.
- [35] Ms. Bruni's evidence is that she thought it was safe to turn because Mr. Huang was at least seven car lengths away when she started her turn and he must have been driving at an excessive speed. There is no evidence to support a finding that Mr. Huang was driving at an excessive speed, and it is not possible for Ms. Bruni to accurately assess the speed of an oncoming vehicle absent objective measures. I find this conclusion was reached after the Collision as a result of reconstructive reasoning. If she had thought he was speeding when she saw him approaching from the east, she should not have attempted the turn. The fact is, the Collision occurred because Ms. Bruni turned when she did not have enough time to do so

safely or because she mistakenly assessed how close Mr. Huang was or his approaching speed.

- [36] Mr. Huang also failed in his duty. He did not take sufficient precautions when proceeding through the Intersection. He had the right of way, and he was entitled to assume that Ms. Bruni would abide by the rules of the road and allow him to pass before she made her turn. However, this did not relieve him of his general duty to keep a proper look-out and to take reasonable precautions in response to apparent, potential hazards. Mr. Huang had to be alert to the possibility that Ms. Bruni might make the turn when it was not safe to do so.
- [37] In *Pirie v. Skantz*, 2016 BCCA 70, the Court of Appeal discussed the circumstances in which a through driver may be found liable for an accident with a left turner:
- [14] As a practical matter, a driver like the respondent, who is in a dominant position, will not typically be found to be liable for an accident: *Salaam v. Abramovic*, 2010 BCCA 212 at para. 25. Having said that, where a through driver: (3) should have become aware of the left-turning driver's own disregard of the law in circumstances that afforded him a sufficient opportunity to avoid the accident through the exercise of reasonable care, the through driver may be found wholly or primarily at fault for the accident: *Pacheco (Guardian ad litem) v. Robinson* (1993), 1993 CanLII 383 (BC CA), 75 B.C.L.R. (2d) 273 (B.C.C.A.); *Walker v. Brownlee*, (1952), 1952 CanLII 328 (SCC), 2 D.L.R. 450 (S.C.C.).
- [38] The third scenario set out in *Pirie* is applicable in this case. Mr. Huang was aware of the hazard Ms. Bruni presented in the Intersection and could have avoided the Collision through the exercise of reasonable care. According to his very clear discovery evidence, he took his eyes off the Bruni vehicle and did not see it start to move. If he had not done so, he could have avoided the collision.
- [39] In this regard, this Collision occurred in very similar circumstances to the collision in *Purvica v. Martin*, 2022 BCSC 181 [Purvica]. In *Purvica*, the defendant Mr. Martin was a left-turning driver in a black pick-up truck at an intersection. Mr. Martin was behind a left-turning, white SUV. Mr. Purvics was driving a vehicle travelling straight through the intersection. His wife, Ms. Purvica was in the front passenger seat. The light was green. The white SUV turned left ahead of Mr. Martin. As it began its left turn, Mr. Martin eased into the intersection. The SUV took a smooth wide turn and then slowed and stopped at a crosswalk. Mr. Martin braked. As he did so he saw Mr. Purvics' vehicle approaching. The SUV completed the turn. Mr. Martin thought Mr. Purvics had seen him and believed he saw him braking. Mr. Martin had to cross two oncoming lanes to turn left. He thought he could make it, but quickly realized he could not. He reversed but did not clear Mr. Purvics' through lane.
- [40] In apportioning 40% liability to Mr. Purvics, Justice MacDonald found that once Mr. Martin's truck crossed the centre line of the road, it was a perceivable hazard. Based on the evidence, MacDonald J. found that Mr. Purvics likely had enough time to see the pickup and take steps to avoid it. She wrote at para. 89:

- [89] Mr. Purvics had a limited time period to react to the Accident, just under three seconds. He did not react, except to turn his wheels slightly to the right, because he was momentarily distracted by the white SUV and did not assess the entire intersection for further risks. Had Mr. Purvics used reasonable care, he may well have been able to avoid the Accident.
- [41] The Bruni vehicle, located where it was in the Intersection, was an apparent and potential hazard. Mr. Huang first saw the Bruni vehicle when he was about 100 metres away from the intersection. It had already encroached into the westbound lanes on Kingsway, was angled to make a turn, and he knew she intended to turn left in front of him.
- [42] Mr. Huang was in the best position to tell me whether he perceived the Bruni vehicle as a hazard and whether he could have avoided the Collision had he not taken his eyes off it. At his discovery, Mr. Huang unequivocally agreed that as he approached the intersection, the Bruni vehicle was a potential hazard. Although he waffled somewhat in his evidence at trial with respect to other possible hazards, he acknowledged that they were not actual hazards at the time of the Collision. I find that there were no competing hazards; there were no pedestrians or car pulling out from parking spots. He did not change his evidence that he believed he could have avoided the Collision.
- [43] Despite being aware of the hazard, and the possibility that the driver of the Bruni vehicle might not see him and turn in front of him, Mr. Huang took his eyes off the Bruni vehicle about 20-30 meters before the Intersection, or as he agreed, two or three seconds away from the stop line of the Intersection. He did not see the Bruni vehicle move as he did not return his eyes to it until it was already in his lane.
- [44] That was a dangerous thing to do. At his discovery Mr. Huang admits that doing so could, and in this case did, end up in disaster. He should have been alert to the possibility that the Bruni vehicle would move suddenly into his path of travel. As he said, had he not taken his attention away from the Bruni vehicle, he could have avoided the accident. He said that if he had the two or three seconds to stop, he would have been able to do so. He also admits that if he had seen the Bruni vehicle start to move, he would have had enough time to stop. His clear admissions at discovery support a finding that he is liable, in part, for the Collision.
- [45] In that respect, this case is distinguishable from *Chavez-Salinas v. Tower*, 2022 BCCA 43. There, the Court of Appeal overturned the trial judge's conclusion that the appellant through driver, who got into a collision with a left-turning vehicle, could have taken reasonable steps to lessen or avoid the accident. The Court determined that the trial judge had speculated about the through driver's ability to avoid the accident. In this case, there is no need to speculate in light of Mr. Huang's admissions that:
- (i) he averted his eyes from a known hazard (the Bruni vehicle);
 - (ii) this conduct was dangerous;
 - (iii) he should not have taken his eyes off of the Bruni vehicle as he approached the intersection;

- (iv) if he had seen the Bruni vehicle start to turn, he would have had time to stop; and
- (v) the reason he did not see the Bruni vehicle start to turn - and only saw it when it was already in his lane - is because he took his eyes off the Bruni vehicle.
- [46] By taking his eyes off the Bruni vehicle, Mr. Huang's conduct fell below the standard of care that he owed to other drivers, and he failed to keep a proper look-out and drive with due care and attention, contrary to s. 144(1) of the MVA.
- [47] Both Mr. Bruni and Ms. Huang contributed to the Collision occurring.

What is the Appropriate Apportionment of Liability?

- [48] Where multiple parties are found at fault as contributing to the Collision, the court must apportion liability in accordance with s. 1 of the Negligence Act, R.S.B.C. 1996, c. 333.
- [49] Despite what Ms. Bruni may have done, and regardless of any dominant/servient driver analysis, or whether Mr. Huang was indeed an "immediate hazard" to Ms. Bruni, I have found that Mr. Huang did not meet the basic obligations owed as a driver and engaged in his own breach. As the Supreme Court of Canada said in *Swartz Bros. Limited v. Wills*, [1935] S.C.R. 628 at 634, 1935 CanLII 20, "Where there is nothing to obstruct the vision and there is a duty to look, it is negligence not to see what is clearly visible".
- [50] Because both parties failed to exercise reasonable caution, I must apportion liability based on the degree to which each party is at fault. This includes considering an assessment of the degree of risk created by each of the parties, "the effect and potential effect of occurrences within the risk" and any "increment in the risk" brought about by their conduct; fault should then be apportioned on the basis of the nature and extent of the departure from both drivers' respective standards of care: *Cempel v. Harrison Hot Springs Hotel Ltd.* (1997), 43 B.C.L.R. (3d) 219 (C.A.), 1997 CanLII 2374 at para. 24. See also *Pereira v. Jory*, 2020 BCCA 318 at para. 32 [Pereira].
- [51] In *Purvica*, MacDonald J. apportioned liability 60 percent to the left-turning servient driver and 40 percent to the straight-through dominant driver.
- [52] In my view, in this case, Mr. Huang, as the through driver is less blameworthy than Ms. Bruni. On the other hand, I accept that Ms. Bruni honestly, but in error, believed that it was safe to make a left turn when she did. She did not engage in "reckless indifference or disregard for the safety of person or property" which would put her conduct at the more extreme end of the apportionment spectrum: *Pereira* at para. 33, citing *Alberta Wheat Pool v. Northwest Pile Driving Ltd.*, 2000 BCCA 505 at para. 46. Presumably, she let the car ahead of the Huang vehicle pass because she believed that she could not make a left turn safely in front of it. Nonetheless, even though she was a known hazard to Mr. Huang, as the servient driver she was primarily responsible for avoiding the collision. Mr. Huang, who was aware that the Bruni vehicle was a known hazard, took his attention off it in the crucial moments before the Collision.

[53] I conclude that the same apportionment of fault determined in Purvica is fair and appropriate in this case. The cases are almost indistinguishable, and the apportionment should be the same. As a result, I find Ms. Bruni 60 percent liable and Mr. Huang 40 percent liable for the Collision.

"MacNaughton J."

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