
CANADA / JUDGMENT

Seddiq v. Chong

2012 BCSC 2080

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Supreme Court of British Columbia

DECIDED

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2012 BCSC 2080 Seddiq v. Chong

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Seddiq v. Chong,

2012 BCSC 2080

Date: 20120705

Docket: M100721

Registry: Vancouver

Between:

Azad Younis Seddiq

Plaintiff

And

King T. Chong and Su L. Chen

Defendants

Before: The Honourable Madam Justice Ballance

Oral Reasons for Judgment

Counsel for Plaintiff:

Y. Gertsoyg

Counsel for Defendants:

S. Laudadio

Place and Date of Trial:

Vancouver, B.C.

December 14, 2011

Place and Date of Judgment:

Vancouver, B.C.

July 5, 2012

INTRODUCTION

- [1] At issue is the liability for an accident (the "Accident") that occurred at approximately 6:35 p.m. on August 15, 2008, as the defendant, Su Chen, travelling westbound along 3rd Avenue, attempted to negotiate a left turn across Clark Drive in Vancouver, British Columbia.

BACKGROUND

- [2] Few of the essential facts are in dispute.
- [3] The Accident took place at a T-intersection where 3rd Avenue meets Clark Drive from the east. At that intersection, Clark Drive is a north-south roadway with three lanes of traffic flowing in each direction. It is controlled by a pedestrian-activated three-colour traffic light. There is a stop sign for traffic on 3rd Avenue where it meets Clark Drive.
- [4] Ms. Chen had pulled onto 3rd Avenue from a laneway located less than a block to the east of the intersection. She was not familiar with the intersection. At the time of the Accident, she was a new driver with the letter "N" displayed on the back of her vehicle. In violation of her Class 7 driver's licence that permitted only one passenger, she was transporting two friends at the time.
- [5] A chief point of contention is how long Ms. Chen remained stopped at the stop sign on 3rd Avenue before proceeding into the intersection. In the statement that she provided to ICBC on the day of the Accident, she reported that she had stopped at the stop sign for "about half a second". In her direct evidence at trial she testified that she did not stop at the stop sign for "very long", but did not ascribe an actual duration to it.
- [6] Ms. Chen's statement to ICBC had been taken over the telephone. English is not her dominant language, and at trial she testified with the assistance of an interpreter of the Cantonese language. When Ms. Chen gave her oral statement, she relied on a friend to translate it for her. A written version of her translated statement was evidently never reviewed or signed by her. By her own admission, however, her recollection of the details of the Accident was superior when she provided her statement, as compared to the time of trial. Moreover, she ultimately agreed that she believed the contents of her statement to be accurate when her friend read it over to her.

- [7] The length of time of Ms. Chen's stop was explored at length in cross-examination. At first, she claimed that she was not sure that she had stopped for only half a second before proceeding into the intersection. At another stage, she insisted that she had stopped fully and completely at the stop sign. However, at the end of the entire exchange, Ms. Chen confirmed the accuracy of the contents of her statement to ICBC at large and, in so doing, inferentially agreed that she had stopped for only about half a second or so before venturing into the intersection.
- [8] Whether Ms. Chen stopped for precisely half a second or something slightly more than that, I conclude that she stopped only fleetingly and in a manner that was more akin to a brief pause than the kind of complete stop mandated by a stop sign.
- [9] Ms. Chen testified that when she arrived at the stop sign she noticed that the northbound traffic on Clark Drive in the two lanes closest to her were stopped at the intersection. She also saw that the pedestrian-controlled light governing the crossing of Clark Drive displayed an orange hand. The preponderance of the evidence demonstrates that Ms. Chen did not bother to check the colour of the light facing the northbound traffic and made no attempt to determine whether the path of the third northbound lane in which the plaintiff was travelling was clear, before she moved into the intersection.
- [10] Ms. Chen gave no evidence about whether she had taken account of the movement of the southbound vehicles as she approached Clark Drive or paused at the stop sign. I find that she did not look over to ascertain their status, despite the fact that she intended to move into the path of the most eastern of those southbound lanes.
- [11] There was controversy about whether the orange hand exhibited on the pedestrian light was flashing or solid when Ms. Chen paused at the stop sign and proceeded into the intersection.
- [12] In her statement to ICBC Ms. Chen reported that the hand was displayed but did not particularize whether or not it was still flashing. Defence counsel made much of the omission of that detail suggesting that the absence of it indicated that the hand must have been solid. I will return to this point later in my Reasons.
- [13] What Ms. Chen did testify to was her understanding that the orange hand, be it flashing or solid, indicated that pedestrians were not to enter the intersection. She further agreed that they were not to do so because there was a danger of being hit by an oncoming vehicle. Despite her appreciation of that risk, Ms. Chen reasoned that because the northbound vehicles "could not go", she was free to make her left turn. She did so even though she did not know how long the "don't walk" hand had been displayed.
- [14] The plaintiff, Azad Seddiq, was driving northbound on Clark Drive in the innermost left western lane on his approach to the intersection. He regularly took that route to work. Mr. Seddiq was moving at a pace of approximately 50 kilometres per hour. When he was a distance of about three blocks before the intersection, Mr. Seddiq observed that the light facing him at 3rd Avenue was red, and so he began to slow down to a speed of between 40

and 45 kilometres per hour. He testified that when he was approximately seven metres in advance of the stop line at the intersection, his traffic light changed from red to flashing green, which prompted him to accelerate somewhat with the intention of continuing through. More or less contemporaneously, he noticed that the southbound traffic on Clark Drive was progressing into the intersection. But he also saw that the traffic in the far and middle northbound lanes adjacent to him remained stopped. Those neighbouring stopped vehicles blocked Mr. Seddiq's view of the relevant area on 3rd Avenue and, in particular, of Ms. Chen's presence in the intersection.

- [15] Neither driver saw the other until it was too late. Ms. Chen says that she saw Mr. Seddiq's vehicle at the last minute and that it was coming at her "at a pretty fast speed". According to Mr. Seddiq, he first saw Ms. Chen's vehicle when he was in the intersection, and it was situated well into his path of travel. He slammed on his brakes, but did not have an opportunity to swerve or take any other evasive action. The left front bumper of Mr. Seddiq's vehicle collided with the rear quarter panel on the driver's side of Ms. Chen's car.
- [16] David Coburn, an employee of the City of Vancouver involved in traffic management with the Engineering Services Department, wrote a letter describing the signal sequence and timing of the lights in effect at the intersection. By agreement of the parties, Mr. Coburn's letter was admitted into evidence for the truth of its contents. Of interest is that while the light for traffic on Clark Drive is red, the pedestrian signal moves through 4 distinct phases. First, the signal displays the "don't walk" hand for 2.5 seconds. Next, the white walk symbol shows for six seconds, followed by a flashing "don't walk" hand for ten seconds, and ending with a solid "don't walk" hand for another five seconds. Thereafter, the light turns flashing green and the solid "don't walk" signal is maintained. Consequently, the solid "don't walk" signal is activated a full five seconds before the light changes to green.
- [17] The only independent witness to the Accident who testified was Allison Hall, who was driving southbound along Clark Drive. The way Ms. Hall recalled it, both she and the car ahead of her came to a stop at 3rd Avenue in anticipation of the traffic light changing to amber. Her evidence is that the light changed from green to amber and not from red to green, just as Mr. Seddiq entered the intersection. Ms. Hall described Mr. Seddiq as being at a point of no return as Ms. Chen's vehicle proceeded through, and believes that he had no opportunity to avoid her. She emphasized that the overall dangerousness of Ms. Chen's manoeuvre left a lasting impression in her memory.
- [18] Ms. Hall's evidence concerning the colour of the Clark Drive traffic light is at odds with the testimony of Mr. Seddiq. Mr. Seddiq was a credible and reliable witness. His testimony that he was approximately seven metres from the beginning of the intersection when he saw the light turn green, and that the southbound traffic had started through the intersection just before the accident, was not assailed on cross-examination. I accept his evidence as accurate and, of logical necessity it follows, that I find that Ms. Hall was honestly mistaken on the particular point of the colour of the light immediately before the Accident, and at the time of the Accident. Accepting as I do Mr. Seddiq's evidence about his proximity to the

intersection when the light turned green, taken in conjunction with Mr. Coburn's evidence that the pedestrian light would have displayed a solid "don't walk" hand for five seconds before Mr. Seddiq's light turned green, satisfies me that it is simply not plausible that the "don't walk" hand was still flashing when Ms. Chen arrived at the stop sign. I find it was not.

- [19] The probabilities of the situation raised by the evidence indicate that the "don't walk" signal was no longer flashing by the time that Ms. Chen briefly hesitated at the stop sign and entered the intersection. I find as well that she proceeded into the intersection in the final phase of the red light sequence such that by the time she was moving into Mr. Seddiq's path, the light facing him had already turned green.

POSITION OF THE PARTIES

- [20] Mr. Seddiq asserts that in the dominant/servient driver paradigm, he occupied the dominant position and had the right of way and argues his conduct was without fault.
- [21] He contends that Ms. Chen failed to bring her vehicle to a complete stop at the stop sign and, despite a solid "don't walk" signal that informed her that pedestrians were not to cross Clark Drive, intruded into the intersection without ascertaining whether Mr. Seddiq's lane was clear, or taking even the most basic precautions. He argues that Ms. Chen was in the intersection unlawfully, and that he had no reasonable opportunity to avoid the collision.
- [22] Ms. Chen claims that she came to a complete stop at the stop sign as required and, noticing that the vehicles in the two northbound lanes closest to her on Clark Drive were stopped and that the "don't walk" hand was flashing rather than solid, she entered the intersection when it was safe for her to do so. Her submission is wholly undermined by my factual findings to the opposite effect, namely that she did not stop properly and that the "don't walk" symbol was solid at that point in time.
- [23] Ms. Chen asserts that Mr. Seddiq contributed to the Accident by entering the intersection without first ascertaining why the northbound traffic to his right remained stopped, despite the green light, and by failing to ensure that he could bring his vehicle to a stop should it become necessary to do so, in compliance with s. 131(5)(a) of the Motor Vehicle Act, R.S.B.C. 1996, c. 318 (the "MVA").
- [24] While on the one hand the defendants contend that Mr. Seddiq bears the primary responsibility of the Accident, on the other, they argue that liability ought to be assessed equally between he and Ms. Chen. In contrast, Mr. Seddiq submits that liability should be borne entirely by Ms. Chen.

DISCUSSION

- [25] It is common ground that ss. 131(5)(a), 175 and 186 of the MVA are engaged in the analysis of liability in this case.
- [26] Ms. Chen was subject to ss. 175 and 186, which read as follows:

Entering through highway

175 (1) If a vehicle that is about to enter a through highway has stopped in compliance with section 186,

- (a) the driver of the vehicle must yield the right of way to traffic that has entered the intersection on the through highway or is approaching so closely on it that it constitutes an immediate hazard, and
 - (b) having yielded, the driver may proceed with caution.
- (2) If a vehicle is entering a through highway in compliance with subsection (1), traffic approaching the intersection on the highway must yield the right of way to the entering vehicle while it is proceeding into or across the highway.

Stopping at Intersections

186 Except when a peace officer directs otherwise, if there is a stop sign at an intersection, a driver of a vehicle must stop

- (a) at the marked stop line, if any,
- (b) before entering the marked crosswalk on the near side of the intersection, or
- (c) when there is neither a marked crosswalk nor a stop line, before entering the intersection, at the point nearest the intersecting highway from which the driver has a view of approaching traffic on the intersecting highway.

[27] For his part, Mr. Seddiq was required to adhere to s. 131(5)(a), which stipulates:

- (a) the driver of a vehicle approaching the intersection or signal and facing the signal must cause it to approach the intersection or signal in such a manner that he or she is able to cause the vehicle to stop before reaching the signal or any crosswalk in the vicinity of the signal if a stop should become necessary, and must yield the right of way to pedestrians lawfully in a crosswalk in the vicinity of the signal or in the intersection.

[28] These statutory provisions do not provide a rigid code to be applied in assessing negligence; they are merely guidelines and thus are not determinative of the issue of liability. As Mr. Justice Groberman reminded in *Salaam v. Abramovic*, 2010 BCCA 212, at para. 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 Motor Vehicle Act 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.

- [29] Ms. Chen's attempted left-turn manoeuvre was fraught with multiple deficiencies and was marked by extreme carelessness. She did not come to a complete stop at the stop sign in compliance with s. 186. She did not remain stopped until traffic visible to her and approaching traffic which might be obscured by the two stopped vehicles, had passed by or were determined not to pose her an immediate hazard. Nor did Ms Chen check the colour of the light controlling the traffic on Clark Drive or survey the scene so as to gauge the status of the oncoming traffic in the lane occupied by Mr. Seddiq which she intended to traverse. It is not overly harsh to say that Ms Chen utterly failed to assess her situation so as to make a reasonable prediction about whether the Clark Drive traffic light would remain red long enough to enable her to safely carry out her turn. Rather, she halted at the stop sign only momentarily and despite the presence of a solid "don't walk" hand warning her of an impending green light change for the Clark Drive traffic, hastily ventured on to Clark Drive without properly evaluating whether she had a safe window of opportunity to do so.
- [30] In the circumstances, Ms. Chen occupied the position of the servient driver. Looking at the scene from the broad view of a prudent motorist about to negotiate that left-turn, I conclude that a collision was threatened by the approach of Mr. Seddiq's vehicle and that it posed an immediate hazard to Ms. Chen within the meaning contemplated by s. 175 and the leading authorities: *Raie v. Thorpe* (1963), 43 W.W.R. 405 (B.C.C.A.); *Keen v. Stene* (1964), 44 D.L.R. (2d) 350 (B.C.C.A.). Her ill-founded decision to enter the intersection was highly imprudent and extremely careless, involving the acceptance on her part of a great degree of risk to herself and the other users of the road.
- [31] With reference to the dominant/servient driver analysis, the time-honoured remarks of Cartwright J. in *Walker v. Brownlee and Harmon*, [1952] 2 D.L.R. 450 (S.C.C.) (at 49) [Walker] are apposite:
- [49] While the decision of every motor vehicle collision case must depend on its particular facts, I am of opinion that when A, the driver in the servient position, proceeds through an intersection in complete disregard of his statutory duty to yield the right-of-way and a collision results, if he seeks to cast any portion of the blame upon B, the driver having the right-of-way, A must establish that after B became aware, or by the exercise of reasonable care should have become aware, of A's disregard of the law B had in fact a sufficient opportunity to avoid the accident of which a reasonably careful and skilful driver would have availed himself; and I do not think that in such circumstances any doubts should be resolved in favour of A, whose unlawful conduct was *fons et origo mali*.
- [32] Mr. Justice Cartwright's formulation has been consistently applied by this Court and endorsed by the Court of Appeal since its articulation: see generally, *Pacheco et al. v. Robinson et al.* (1993), 75 B.C.L.R. (2d) 273, 22 B.C.A.C. 185; *Gautreau v. Hollige* 2000 BCCA 390.

- [33] Ms. Chen ought reasonably to have detected that the intersection and, in particular, the travel lane occupied by Mr. Seddiq was impassible at that critical time. Yet, due to her carelessness she failed to reasonably appreciate the threat of his approach. Ms. Chen was fixed with the primary obligation to stop at the stop sign and to not enter the intersection unless it was safe for her to do so. She failed to discharge that obligation and cannot be said to have been lawfully in the intersection when the Accident occurred. Her substandard driving conduct contributed in a substantial way to the Accident.
- [34] In support of Mr. Seddiq's assertion that his conduct is faultless, he cites the factually similar decisions of *Moore v. Wong*, [1984] B.C.J. No. 848, 29 A.C.W.S. (2d) 160 (S.C.) and *Wong v. Mead*, [1992] B.C.J. No. 743. In *Wong*, the more recent of those two decisions, the straight-through driver entered the intersection shortly after his traffic light had changed from red to flashing green. He did so even though his view of the intersecting street was blocked by vehicles who had remained stopped.
- [35] Relying on s. 136 (5) of the then Motor Vehicle Act (the predecessor to s. 131(5)(a)), the left-turning driver argued that the straight-through driver ought not to have entered in the intersection when his view was obscured by other traffic despite the flashing green light in his favour. In rejecting that argument, the court emphasized that the primary subject matter of s. 136 was the right of way of pedestrians as distinct from the right of way of a crossing vehicle. It reasoned that, accordingly, the through driver's duty to be able to stop if necessary created by that section was confined to pedestrians that may be crossing the street.
- [36] In the subsequent decision of *Gautreau v. Hollige*, 2000 BCCA 390, our Court of Appeal (affirming its earlier decision in *Weaver v. Robinson* (1992), 42 M.V.R. (2d) 262), clarified that despite the conclusion in *Wong* that s. 136 is to the advantage of pedestrians only, the presence of a flashing green light may be considered in assessing the potential liability of a dominant driver who collides with a vehicle entering the intersection from a cross street: see also, *Nonis v. Granata*, 2010 BCSC 1570.
- [37] Mr. Seddiq was the dominant driver. As observed by the Court of Appeal in *Salaam v. Abramovic*, 2010 BCCA 212 at para. 25, drivers who enjoy that superior position are not usually found liable for an accident. That is by no means an absolute rule.
- [38] Just after the light had changed to green, when Mr. Seddiq was merely seven metres or so from the start of the intersection, he accelerated slightly to proceed through. He did so in circumstances where the lead vehicles in both lanes next to him, which had been stopped at the red light and had the better view of the status of the cross traffic on 3rd Avenue, remained at a standstill position. Mr. Seddiq testified that he assumed those vehicles were about to proceed forward and that it was simply taking them a moment to get ready to do so from a dead stop. He also said the fact that the southbound traffic on Clark Drive had started to move into the intersection upon the light change, gave him confidence that he was similarly free to keep moving forward.

- [39] In my view, the fact that the southbound traffic was proceeding in to the intersection ought to have alerted Mr. Seddiq to the likely prospect that his neighbouring vehicles were not doing likewise because their path was obstructed. The presence of those vehicles maintaining a stopped position even though their light was now green was a potentially dangerous circumstance known to Ms Seddiq. It called for him to exercise caution and preparedness to stop if need be, despite his dominant standing. To my mind, this factual feature distinguishes Mr. Seddiq's legal position from the defendants in *Layne v. Klein*, [1987] B.C.J. No. 1210, and from the defendant-appellant in *Wong*, relied on by the plaintiff. The case of *Horsman v. McGarvy*, [1983] B.C.J. No. 2276 (C.A.), also placed before me by Mr. Seddiq's counsel is likewise readily distinguishable on its facts and offers no guidance in resolving liability in the case at hand.
- [40] In my opinion, Mr. Seddiq was in a position similar to the defendant in the *Nonis* case. He had a duty consistent with s. 131(5)(a) of the MVA to proceed with a high degree of caution and to not accelerate even slightly, but rather to slow down on his approach to and through the intersection sufficiently to be able to bring his vehicle to a stop if required. He did not do so. I conclude that Mr. Seddiq did not exercise the care and caution reasonably required by the circumstances confronting him just before the collision occurred. I find as well that had he taken the requisite degree of reasonable care dictated in the circumstances, he should have become aware of Ms. Chen's blatant disregard of the law and would have had a sufficient opportunity to avoid the Accident.
- [41] In the end, I conclude that Mr. Seddiq exhibited an unacceptable level of indifference for his own safety, and that his carelessness, along with Ms. Chen's, contributed to the cause of the Accident.

APPORTIONMENT

- [42] Where, as here, the fault of two or more persons combine to cause a loss, liability will be apportioned. Apportionment is governed by the Negligence Act, R.S.B.C. 1996, c. 333.
- [43] In assessing apportionment, the court examines the extent of blameworthiness, that is, the degree to which each party is at fault, and not the degree to which each party's fault has caused the loss. Put another way, the court is not assessing degrees of causation, rather, it is assessing degrees of fault and the court's task is therefore to assess the respective blameworthiness of the parties. That distinction is fundamental to apportionment: *Cempel v. Harrison Hot Springs Hotel Ltd.*, [1997] 43 B.C.L.R. (3d) 219, 100 B.C.A.C. 212; *Aberdeen v. Langley (Township)*, 2007 BCSC 993; reversed in part, *Aberdeen v. Zanatta*, 2008 BCCA 420.
- [44] In *Aberdeen Groves J.* endorsed the enumeration of factors in assessing relative degrees of fault as follows:
1. The nature of the duty owed by the tortfeasor to the injured person...
 2. The number of acts of fault or negligence committed by a person at fault...

3. The timing of the various negligent acts. For example, the party who first commits a negligent act will usually be more at fault than the party whose negligence comes as a result of the initial fault...
4. The nature of the conduct held to amount to fault. For example, indifference to the results of the conduct may be more blameworthy... Similarly, a deliberate departure from safety rules may be more blameworthy than an imperfect reaction to a crisis...
5. The extent to which the conduct breaches statutory requirements. For example, in a motor vehicle collision, the driver of the vehicle with the right of way may be less blameworthy...

[Authorities omitted.]

[45] To the foregoing factors, Groves J. added the following at para. 67:

6. the gravity of the risk created;
7. the extent of the opportunity to avoid or prevent the accident or the damage;
8. whether the conduct in question was deliberate, or unusual or unexpected; and
9. the knowledge one person had or should have had of the conduct of another person at fault.

[46] After surveying the authorities, Groves J. summarized at para. 67 the approach to be taken in assessing the relative degree of blameworthiness of the parties:

Thus, the key inquiry in assessing comparative blameworthiness is the relative degree by which each of the parties departed from the standard of care to be expected in all of the circumstances. This inquiry is informed by numerous factors, including the nature of the departure from that standard of care, its magnitude, and the gravity of the risk thereby created.

[47] In my opinion, Ms. Chen's reckless disregard of her statutory duties and for the safety of herself and other users of the road, combined with her high measure of overall carelessness in sailing into a large intersection without having reasonably assessed whether it was safe for her to do so constitute actions that are considerably more blameworthy than the nature and degree of Mr. Seddiq's carelessness. I apportion liability 75% against Ms. Chen and 25% against Mr. Seddiq.

COSTS

[48] If the parties unable to agree as to costs, they are at liberty to file written submissions incorporating a mutually agreeable deadline.

___ "Ballance J." ___

Ballance J.

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