

CANADA / JUDGMENT

Yang v. Croin

2021 BCSC 955

COURT

Supreme Court of British Columbia

DECIDED

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2021 BCSC 955 Yang v. Croin IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Yang v. Croin, 2021 BCSC 955 Date: 20210519 Docket: M186350 Registry: Vancouver Between: Betty Pu-Yin Yang Plaintiff And Patricia Croin Defendant Before: The Honourable Madam Justice Jackson Reasons for Judgment Counsel for the Plaintiff: S.E. Gibson Counsel for the Defendant: T.W. Brine Place and Dates of Trial: Vancouver, B.C. August 24-28 and October 30, 2020 Written Submissions of the Plaintiff Received: October 28, 2020 Written Submissions of the Defendant Received: November 5, 2020 Place and Date of Judgment: Vancouver, B.C. May 19, 2021 Table of Contents I. OVERVIEW.. 3 II. LIABILITY. 3 A. Negligence. 3 B. The law governing left turn / straight through collisions. 3 C. Who had the right-of-way?. 5

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- [1] In this fast track action the plaintiff claims damages for injuries and loss arising out of a motor vehicle accident that occurred at a busy traffic-light controlled intersection in Vancouver, BC. The plaintiff was travelling straight; the defendant was turning left. Liability turns on which of the parties was the dominant driver and entitled to the right-of-way.
- [2] For the reasons that follow, I conclude the defendant was the dominant driver and entitled to the right-of-way. The plaintiff was required to yield. The plaintiff has not established on a balance of probabilities, either that the defendant was (or ought to have been) aware the plaintiff would breach her duty to yield, or that the defendant could have avoided the accident if she had acted with reasonable care. Accordingly, the plaintiff's claim against the defendant is dismissed. II. LIABILITY A. Negligence
- [3] To prove negligence the plaintiff must prove, on a balance of probabilities, the defendant owed a duty of care to the plaintiff, that the defendant breached the standard of care applicable, and that the breach caused, in fact and in law, the plaintiff to suffer damage: *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 at para. 3. Legislative standards are relevant to the common law standard of care, although the two are not necessarily co-

extensive: *Ryan v. Victoria (City)*, [1999] 1 S.C.R. 201 at para. 29, 59 B.C.L.R. (3d) 81. B. The law governing left turn / straight through collisions

- [4] The standard of care governing drivers turning left at light-controlled intersections is determined by a combination of statutory provisions and case law interpreting them. In collisions, the driver who has the right-of-way is the dominant driver; the other driver is often referred to as being servient because they have the duty to yield: *Nerval v. Khehra*, 2012 BCCA 436 at para. 33. In cases involving a collision in an intersection between a left-turning driver and a straight-through driver, it is the colour of the lights that determines which of the drivers has the right-of-way: *Lozinski v. Maple Ridge (District)*, 2015 BCSC 1277 at para. 70.
- [5] A driver approaching an intersection facing a red light must stop and not proceed until their light turns green: *Motor Vehicle Act*, R.S.B.C. 1996, c. 318 [MVA], s. 129(1). A driver approaching an intersection facing a yellow light must stop, unless the stop cannot be made in safety: *MVA*, s. 128(1). When a vehicle is in an intersection and its driver intends to turn left, the left-turning driver must yield the right-of-way to opposing traffic that is either in the intersection or so close to the intersection as to constitute an immediate hazard: *MVA*, s. 174. However, a left-turning driver is not without rights: *Bailey v. Jang*, 2011 BCCA 146 at para. 16. Having yielded to traffic in the intersection and traffic so close as to constitute an immediate hazard, a left-turning vehicle that has signalled their left turn (as required under the MVA) may complete the turn, and traffic approaching from the opposite direction must yield: *MVA*, s. 174.
- [6] The term "immediate hazard" is not defined in the MVA but has been described as an approaching car that is so close to the intersection when the other driver makes their turn that a collision is threatened if the approaching driver does not take some "violent or sudden avoiding action": *Raie v. Thorpe* (1963), 43 W.W.R. 405 at 410, [1963] B.C.J. No. 14 (C.A.). Whether a straight-through driver constitutes an immediate hazard depends on its speed and proximity to the intersection: *Mitchell v. ICBC*, 2004 BCSC 983 at para. 36. Simply put, a left-turning driver (after signalling appropriately) must yield to straight-through traffic that is so close that a left turn cannot be made safely, but it has the right-of-way vis-à-vis traffic that does not constitute an immediate hazard. In the latter circumstance, it is the approaching straight-through traffic that must yield to the left-turning driver.
- [7] Where a left-turning driver enters the intersection without breaching traffic signals, and the straight-through driver enters the intersection on a red light, the left-turning driver is dominant and is entitled to proceed on the assumption that oncoming traffic will stop at the red light: *Lozinski* at para. 70. A left-turning driver is not obliged to ensure all traffic has stopped before proceeding on a yellow light, but their right to proceed on the assumption traffic will stop does not negate their duty to react to "manifest hazards", meaning what is there to be seen: *Tejani v. Greenan*, 2001 BCSC 803 at para. 29. C. Who had the right-of-way?

- [8] The accident took place at the intersection of Cambie Street and 10th Avenue, Vancouver, BC. At that intersection there are three southbound lanes on Cambie Street going straight, and a further southbound median lane designated for traffic turning left to be eastbound on 10th Avenue. Similarly, there are three northbound lanes on Cambie Street going straight plus a median lane designated for left turning traffic heading westbound onto 10th Avenue. The plaintiff was travelling southbound on Cambie Street going straight in the curb lane. The defendant was travelling northbound on Cambie Street in the designated left turn lane.
- [9] Southbound traffic was very heavy at the time of the collision and the two straight southbound lanes to the left of the plaintiff were bumper-to-bumper, heavily congested, and had come to a standstill, but the plaintiff's lane was clear and she estimated her speed to be between 40 and 50 km an hour at the time of the collision.
- [10] If the plaintiff's light was red when she entered the intersection, or if she was not an immediate hazard to the defendant, the defendant was the dominant driver and enjoyed the right-of-way. The various witnesses disagree over the colour of the plaintiff's light at the key moment. Therefore, the reliability of the parties and the independent witnesses plays a significant role in the determination of this issue.

1. Plaintiff's testimony

- [11] The plaintiff's testimony about the colour of the light was internally inconsistent and I find it is unreliable. She testified she last looked at the traffic light when she was approximately two to three car lengths from the intersection, at which time it was green. The plaintiff also conceded it was possible the light changed to yellow after she looked at it from that distance. However, the plaintiff also testified she double-checked her light as she entered the intersection, and that it was still green; yet, under cross-examination, her evidence about how much time passed between seeing the light and entering the intersection varied. Ultimately she conceded she does not know what colour the light was when she entered the intersection.
- [12] I find the plaintiff does not know what colour the light was when she entered the intersection. Therefore, her evidence on that point does not assist me in determining the colour of the light at the time the plaintiff entered the intersection, nor is it of assistance in determining the plaintiff's speed and proximity to the intersection when the defendant began to complete her left turn.

2. Defendant's testimony

- [13] The defendant's light was green when she entered the designated left turn lane travelling northbound on Cambie Street. She was the first car in her lane, and entered into the intersection when the light was green, but stopped because of approaching southbound traffic. When her light turned from yellow to red she began to execute her left turn, accelerating and passing across the median and centre southbound lanes of traffic. She testified she did not hesitate before moving across the southbound curb lane, relying on the

fact that the light had changed to red, and then collided with the plaintiff's vehicle at the curb lane.

- [14] I agree with the plaintiff that the defendant was reluctant to admit at trial that her prescription glasses were not working well at the time of the collision, and that she gave contradictory evidence about being required to wear corrective lenses when she renewed her driver's license. However, despite the fact that the manner in which the defendant gave her evidence was somewhat defensive, collectively, those frailties do not adversely impact my overall assessment of the reliability of her evidence, which is largely consistent with the evidence of the independent witnesses.

3. Independent witnesses and other evidence

- [15] According to information provided by the City of Vancouver, which I accept, the traffic light at the corner of Cambie Street and 10th Avenue is semi-actuated, meaning it continually displays a green light for Cambie Street traffic until demands are received from vehicles, cyclists, or pedestrians to cross Cambie Street. At the date and time of the collision, the designed signal sequence and timing in effect at that intersection, following a demand to cross Cambie Street, would result in the light remaining green for six seconds, followed by a yellow light that lasted three and a half seconds, at which time the light would turn to red. There was no malfunction of the light sequencing reported at that intersection on that date.
- [16] Constable Kaithlin Trudeau of the Vancouver Police Department attended the scene but only after the accident. Her evidence does not assist me in determining the colour of the light at the time the plaintiff entered the intersection, or the plaintiff's speed and proximity to the intersection when the defendant began to complete her left turn.
- [17] Jonathan Choi had been travelling southbound on Cambie Street in the middle lane just before the collision occurred. He gave his evidence in a very straightforward, candid manner and did not appear to have an interest in any particular outcome of the case. At the time of the collision he was stopped and was the second car back from the intersection. The car ahead of him was also stopped. He brought his car to a stop after the light had been yellow for one to two seconds. After he had been stopped for a further one to two seconds, he saw the plaintiff's vehicle enter the intersection and observed the collision. His impression was that the plaintiff had been accelerating at the time of the collision. According to Mr. Choi, the light was late yellow or red when the plaintiff entered the intersection.
- [18] Kerry Winkler had been a passenger in a vehicle being driven by his wife, Wendy Winkler, travelling southbound in the centre lane on Cambie Street and was stopped several cars behind Mr. Choi at the time of the collision. He testified that he heard the plaintiff's vehicle before he saw it, and that his attention was brought to the curb lane by the sound of acceleration. He looked to his right and saw the plaintiff pass. His evidence was that the light had been yellow "for a while", was turning to red by the time the plaintiff passed the point where his vehicle was stopped, and was red when the plaintiff entered the intersection. Mr.

Winkler did not see the actual collision but heard the impact, and at that time the light was red.

- [19] Wendy Winkler also heard acceleration from the curb lane and observed that the light was yellow at that time. When the plaintiff passed the Winkler vehicle, Ms. Winkler was surprised to see the plaintiff's vehicle pass her because the light at the intersection had been yellow for a while at that point. Ms. Winkler candidly agreed she could not see the plaintiff's vehicle as it entered the intersection because she did not have a clear line of sight from the driver's seat. Ms. Winkler also did not see the impact but she heard it and at that time saw the light was red. Although there were some minor variations within Ms. Winkler's testimony, they do not adversely impact my assessment that her evidence was credible and reliable. She had the opportunity to observe the events, she gave her evidence in a candid and direct manner, she has no interest in any particular outcome of the case, and her evidence accords with the preponderance of evidence in this case.
- [20] Maria Kuikka was the ICBC adjuster who took the Winklers' statements over the telephone 10 to 11 days after the accident. Her evidence is that it was her practice when she had worked for ICBC to read the statement back to a witness; however, she could not recall doing so in this case. She also believed that if the Winklers had told her the plaintiff had been accelerating, she would have noted that in their statements, but their statements contain no such reference. Although Ms. Kuikka was a careful witness, to my mind the fact that there is no reference to acceleration in the Winklers' statements does not lead me to conclude their evidence on that point at trial was unreliable. D. Conclusion on liability
- [21] Considering the totality of the evidence, I find on a balance of probabilities the light was red when the plaintiff entered the intersection and when the defendant began her left turn, making the defendant the dominant driver and the plaintiff servient. Accordingly, the plaintiff was obliged to yield. Whether the plaintiff was accelerating into the intersection or simply continuing at her same rate of speed is immaterial; either way, she did not yield.
- [22] The plaintiff's reliance on *Hiscox v. Armstrong*, 2001 BCCA 258, and *Pacheco (Guardian of) v. Robinson* (1993), 75 B.C.L.R. (2d) 273, 22 B.C.A.C. 185, is misplaced. Those cases involve situations where a left-turning (and servient) driver proceeded through an intersection in complete disregard of their statutory duty to yield the right-of-way and a collision ensued: *Bailey* at para. 14. Similarly, cases involving uncontrolled intersections, such as *Najdychor v. Swartz*, 2009 BCSC 801, or intersections controlled with stop signs, such as *Lesavage v. Lee* (1999), 12 B.C.T.C. 65, [1999] B.C.J. No. 1103 (S.C.), both relied on by the plaintiff, must be considered with caution given the specific statutory provisions that govern intersections controlled by traffic lights.
- [23] I find the defendant did not breach any statutory duty and was entitled to proceed on the assumption that southbound traffic, including traffic in the curb lane in which the plaintiff was travelling, would stop at the red light before entering the intersection. The point in time to assess whether the through-driver poses an immediate hazard is the moment before the

left-turning driver commences to make the turn: Raie at 413-414. At that point, the defendant yielded and waited before completing her left turn. I find the defendant did not breach any statutory duty and was entitled to proceed on the assumption that southbound traffic, including traffic in the curb lane in which the plaintiff was travelling, would stop at the red light before entering the intersection.

- [24] Where a servient driver has a statutory duty to yield but fails to do so, they must establish two things to avoid a determination of liability being made against them: that the dominant driver was or ought to have been aware of the servient driver's disregard of their duty, and that the dominant driver could have avoided the accident if they had acted with reasonable care: Lozinski at para. 68.
- [25] Because of the congestion of southbound traffic, the plaintiff could not be seen by the defendant, and so was not a manifest hazard the defendant could have avoided: Tejani at para. 29. I disagree with the plaintiff's assertions that the defendant's failure to see the plaintiff's vehicle showed a lack of proper inspection of the curb lane; in the circumstances, it was not reasonably possible for the defendant to have seen the plaintiff: Lozinski at para. 81. Therefore, I find the plaintiff has failed to establish on a balance of probabilities the defendant was, or ought to have been, aware the plaintiff would disregard her duty to yield.
- [26] Further, having breached her duty to yield, to avoid a determination that she is liable, the plaintiff also bears the burden of proving on a balance of probabilities the collision could have been avoided if the defendant had acted with reasonable care. The evidence does not support that conclusion. I find the plaintiff failed to discharge her burden on that point as well.
- [27] The plaintiff has failed to establish on a balance of probabilities the defendant breached the applicable standard of care. The plaintiff's action is dismissed. III. COSTS
- [28] I find the Defendant was the substantially successful party and she would normally be entitled to her costs. Absent any further submissions from the parties respecting costs, costs are awarded to the Defendant to be assessed under Scale B of Appendix B to the Supreme Court Civil Rules. Should either party wish to apply for a different disposition of costs, that party is at liberty to file and serve written submissions, limited to five pages, within 30 days of this judgment. The other party is entitled to respond by filing and serving written submissions, limited to two pages, within 15 days of receiving the other party's submissions. "Jackson J."

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