IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Anderson v. Liang,*
2024 BCSC 838

Date: 20240515
Docket: M199459
Registry: Vancouver

Between:

Quinn Tyrue Anderson

Plaintiff

And

Ruoyun Liang, John Doe and
Insurance Corporation of British Columbia

Defendants

Before: The Honourable Justice Donegan

Reasons for Judgment

Counsel for the Plaintiff:	Z. Berinstein A. Majidi
Counsel for the Defendant, Ruoyun Liang:	A. Binnie M. Brar
Counsel for the Defendant, Insurance Corporation of British Columbia:	K. Jenkins
Place and Date of Trial	Vancouver, B.C. November 27–30, 2023
Place and Date of Judgment:	Vancouver, B.C. May 15, 2024

Introduction

[1] This is a liability only trial relating to claims of negligence arising out of a collision said to involve one bicycle and two motor vehicles (the "Accident"). The Accident occurred on October 27, 2017, on South West Marine Drive, just before the entrance to the Arthur Laing Bridge in Vancouver, British Columbia. The physical collision occurred between the plaintiff's bicycle and the rear of a motor vehicle driven by the defendant, Ruoyun Liang, when Ms. Liang suddenly stopped in traffic. Ms. Liang said she did so in response to the actions of another vehicle, driven by the unidentified defendant, that performed an unexpected U-turn in front of her and left the scene.

[2] The plaintiff, Quinn Anderson, submits he established that one or both of the motorist defendants were negligent and caused the Accident. The defendants take the position that the plaintiff is solely responsible for what occurred.

[3] Mr. Anderson and Ms. Liang both testified, as did Ms. Liang's front seat passenger, Michael Yang. The evidence of the parties is conflicting as to why and how the Accident occurred. There are no scene photographs, nor is there any expert opinion evidence. While some of the facts have been admitted through an Agreed Statement of Facts, key findings of fact will have to be made to determine where fault lies. To do so requires determinations about the credibility of the witnesses and the reliability of their evidence.

Credibility and Reliability

[4] Credibility and reliability are related, but distinct concepts. Reliability involves the accuracy of the testimony of the witness. It engages consideration of the witness' ability to accurately observe, recall and recount the events in issue. Credibility involves the honesty of the witness. It engages an assessment of the trustworthiness of a witness' evidence, based on their voracity and sincerity, as well as the accuracy of the evidence provided: *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186, aff'd 2012 BCCA 296, leave to appeal to SCC ref'd, [2012] S.C.C.A. No. 392 [*Bradshaw*].

[5] A witness who does not tell the truth is not providing reliable evidence. However, the reverse is not necessarily the case—a credible witness may still give unreliable evidence. This is because sometimes an honest witness, who is trying their best to tell the truth and believes the truth of what they are accounting, is nevertheless mistaken in their recollection: *R. v. H.C.,* 2009 ONCA 56 at paras. 41,53–56.

[6] The relevant principles to be considered when assessing credibility are discussed in *Faryna v. Chorny*, [1952] 2 D.L.R. 354 at 357 and *Bradshaw* at para. 186. To this, I would add that a court may believe some, all or none of the evidence of a witness, and that credibility determinations "may not be purely intellectual and may involve factors that are difficult to verbalize": *R. v. R.E.M.,* 2008 SCC 51 at para. 49.

[7] In applying all of these principles here, I have no difficulty finding the plaintiff is credible and that his evidence is, overall, reliable. The defendants agree that Mr. Anderson was a credible witness. They challenge a few areas of his evidence as unreliable, but I find his evidence to be reliable in all respects.

[8] Mr. Anderson was a well prepared, thorough and honest witness. He had a very good memory of the events at issue, unsurprising in light of its unusual nature and the impact it has so clearly had on him. He was detailed and firm in his recollections. His evidence was internally inconsistent and harmonizes with features of Mr. Yang's evidence that I accept. He appropriately conceded points and allowed for the possibility that aspects of what occurred may have been outside his powers of observation. He was, overall, a very balanced witness. I accept his evidence, in its entirety.

[9] Ms. Liang and Mr. Yang were also honest witnesses, but I find aspects of their evidence was unreliable.

[10] While I am satisfied Ms. Liang tried to provide accurate testimony, her evidence was unreliable in many respects. Her memory was less than firm in key

areas. It was, at points, inconsistent with her earlier testimony or inconsistent with the evidence she gave at her examination for discovery. It did not harmonize with features of Mr. Yang's evidence that I accept. Evidence in one of the key areas, namely the location of her vehicle when she applied her brakes and the collision occurred, was inconsistent and, ultimately, uncertain.

[11] While I am also satisfied that Mr. Yang was an honest witness who tried his best to provide accurate testimony, aspects of his memory were admittedly poor. He began his testimony by frankly offering that while he recalled the Accident, he did not remember "full details" of what had occurred. When he was reminded about some details he provided in a 2021 statement, he expressed surprise at the level of detail it contained, offering that he did not recall much of what he said in his statement. Despite these memory difficulties, Mr. Yang had fairly good recall of some of the more notable features of what occurred, such as the unidentified driver's U-turn and their location on the roadway when Ms. Liang applied her brakes. His evidence in some areas aligns with that of Mr. Anderson.

[12] Overall, I accept Mr. Anderson's evidence in its entirety. I accept aspects of Ms. Liang and Mr. Yang's evidence, but where their evidence conflicts with one another, I accept Mr. Yang's evidence as the more reliable of the two. Where either of their evidence conflicts with that of Mr. Anderson, I prefer and accept the evidence of Mr. Anderson.

The Facts

The Parties and Events Leading Up to the Accident

[13] Mr. Anderson is 48 years old. He was 42 years old at the time of the Accident and living in Richmond. He is a plumber by trade.

[14] Mr. Anderson is a very experienced cyclist. He has been cycling recreationally, professionally, competitively and for commuting purposes for over 30 years. He is passionate about cycling. It is an integral part of his lifestyle and who he is.

[15] Professionally, Mr. Anderson worked as a bicycle courier in Victoria from 1996 to 2000. From 2013 to the time of the Accident in 2017, he regularly cycled from his home in Richmond to his work site in Vancouver's West End and back. On his daily commutes, he travelled similar routes, following designated bike routes as frequently as possible. The Arthur Laing Bridge is one of the main access points between Richmond and Vancouver. As it has a designated bike route, Mr. Anderson found it the safest route to travel. To say he frequently travelled the route where the Accident occurred would be an understatement. He travelled that route approximately 1000 times prior to the Accident.

[16] Through his commuting, professional and recreational cycling over the years, Mr. Anderson had a tremendous amount of experience sharing and navigating busy roadways with motor vehicles at the time of the Accident. He was, and is, very safety conscious. At the time of the Accident, Mr. Anderson owned several bicycles. He took pride in maintaining them and ensuring they were in good mechanical order. Over the years he became very familiar with new motor vehicle drivers, those displaying "N" or "L" stickers on their vehicles. Describing their driving as more "erratic", he adjusted his riding to be even more defensive when around them.

[17] Despite his extensive cycling, Mr. Anderson had only ever been in one biking accident before the Accident. This prior accident did not involve a motor vehicle. It occurred in about 2013, when Mr. Anderson was cycling along the Sea-to-Sky Highway with friends and a piece of metal from the roadway went through his front wheel, causing him to fall.

[18] At the time of the Accident, Mr. Anderson was commuting home from work along his regular route. He was riding his "go-to" bike that day, choosing it for its versatility, safety, speed and reliability. This bicycle was outfitted with disc brakes, all terrain tires and reflectors. It was well maintained and in good mechanical condition at the time. Mr. Anderson was wearing a bike helmet.

[19] Mr. Anderson was working in the West End, downtown Vancouver, on the day of the Accident. He finished work at his usual time, 2:30 p.m. It was an ordinary day

and he planned to cycle to his home in Richmond. He had no specific plans that evening and was in no rush to get home. It was a nice day, sunny and warm.

[20] Mr. Anderson took his familiar route, one he had taken many times before. He planned and chose this route based on the location of designated bike lanes, explaining that he knew from years and years of cycling experience in the city which streets are “bike friendly” and where the designated bike routes were located.

[21] Mr. Anderson’s job site in the West End was located on one of these designated bike routes, so he cycled from work along the bike route, all the way through downtown and over the Burrard Street Bridge. He then continued to the Cypress Street bike route, a route which parallels Granville Street, a major thoroughfare leading to and merging into SW Marine Drive and over the Arthur Laing Bridge. Mr. Anderson followed the Cypress Street bike route until it ended at Milton Street. The bike route restarts a short distance later, at the beginning of the Arthur Laing Bridge. Between these two points on SW Marine Drive, bicycles and motor vehicles are required to share the road.

[22] Mr. Anderson described the steps he, as a cyclist, routinely took in order to safely travel between those two points. When the bike route ends, cyclists and motorists coming off of Milton Street are required to stop at a stop sign, in preparation to merge eastbound onto SW Marine Drive. He was intending to travel over the Arthur Laing Bridge to Richmond and follow the steps he had done many times before. He knew SW Marine Drive to be a popular cycling route, used by commuters, recreational cyclists and the like. He had ridden it many times.

[23] Ms. Liang was 21 years old at the time of the Accident. She was a student at the University of British Columbia (“UBC”) in Vancouver and in a relationship with Mr. Yang. She and Mr. Yang ended their relationship years ago and she now lives in California.

[24] After finishing class on Friday, October 27, 2017, Ms. Liang decided to leave campus and drive to Richmond to get some food. Ms. Liang was driving her 2017

Volkswagen Golf, a motor vehicle she had been driving for about eight or nine months at the time. She held a Class 7 “N” British Columbia driver’s license. Mr. Yang was her passenger, seated in the front seat.

[25] From UBC, Ms. Liang drove eastbound along SW Marine Drive, intending to go over the Arthur Laing Bridge into Richmond. She had taken this route several times before and was aware it was a popular cycling route. She was not aware that there was a bike lane on the bridge, and could not recall seeing cyclists on the bridge before.

[26] The Liang vehicle arrived at the stop sign at the entrance to SW Marine Drive eastbound shortly before Mr. Anderson. The time was between 3:00 and 3:30 p.m.

The Accident Location

[27] The parties agree on the general location of the Accident.

[28] In a general sense, the Accident took place in the area before the eastbound entrance to the Arthur Laing Bridge, just past where Granville Street and SW Marine Drive merge, becoming SW Marine Drive. Mr. Anderson and Ms. Liang were both travelling eastbound. In order to understand how the Accident occurred, it is necessary to understand the layout of the area.

[29] In this area, there are four eastbound lanes as follows:

- Lane 1: This is the lane closest to the raised, concrete, centre meridian that divides east and westbound traffic. It continues over the Arthur Laing Bridge.

- Lane 2: This lane is to the immediate right of Lane 1. It also continues over the Arthur Laing Bridge.

- Lane 3: This lane is between Lane 2 and the parking lane, Lane 4. Lane 3 does not continue over the Arthur Laing Bridge, but rather continues on SW Marine Drive beside the base or entrance of the Arthur Laing Bridge, and then under the bridge.

- Lane 4: This is the lane closest to the curb and is a parking lane.

[30] There are two large overhead signs located at the eastbound entrance, or base, of the Arthur Laing Bridge. One sign is located above Lanes 1 and 2 and directs users over the bridge and toward the direction of the Vancouver International Airport in Richmond. The designated bike lane, taking cyclists over the Arthur Laing Bridge is located to the immediate right of Lane 2 and begins near this overhead sign.

[31] The other overhead sign is located to the right of the airport sign above Lane 3 and directs users to follow Lane 3 under the bridge to continue along SW Marine Drive eastbound.

[32] The terrain in this area is flat, with an uphill pitch for Lanes 1 and 2 as they approach the entrance, or base, of the Arthur Laing Bridge.

[33] Prior to the entrance of the bridge and to the right of Lane 4 is a shopping complex housing several businesses, including a Dollarama Store. The complex has a parking lot (the “Dollarama Parking Lot”), which can be accessed from Lane 4.

[34] The stop sign, where Mr. Anderson and Ms. Liang first encountered one another, stops traffic for Lanes 3 and 4 at the entrance to SW Marine Drive, prior to the Dollarama Parking Lot and, of course, prior to the bridge.

[35] The parties also agree on one specific aspect of the Accident location. They agree that the Accident occurred on SW Marine Drive, at or before the entrance to the Dollarama Parking Lot. Other details, such as the lane in which the impact occurred, are disputed. As I indicated, in this, and other contested areas, I prefer and accept the evidence of Mr. Anderson.

The Accident

[36] When Mr. Anderson stopped at the stop sign, the Liang vehicle was already there. Mr. Anderson was very aware of his surroundings. He stopped beside the Liang vehicle, to its right and next to its passenger door. He saw a male in the

passenger seat, who we know now was Mr. Yang. While he was stopped there, Mr. Anderson could see the bridge, including its entrance, and the traffic ahead.

[37] Weather conditions were good and the road surfaces were dry. Mr. Anderson had taken this route approximately 1000 times before. He explained that from the stop sign, whether one is operating a bicycle or a motor vehicle, in order to merge into Lane 2 to access the bridge, one has to merge from Lane 4, then to Lane 3 and then to Lane 2. The bike lane starts near the entrance to the bridge. As a cyclist, he explained that in order to safely access the bike lane from Lane 2, one has to accelerate and gain enough speed to have enough momentum to travel up the incline.

[38] When Mr. Anderson was stopped at the stop sign that day, he noticed that traffic was congested in Lanes 1 and 2. It was flowing, but not moving that quickly. He noticed that the traffic in Lane 3 was flowing quickly.

[39] Ms. Liang did not see Mr. Anderson as he was stopped next to her at the stop line, or at any point prior to the Accident. Ms. Liang left her position at the stop line first, driving directly into Lane 3. She accelerated quickly, spinning the vehicle's tires as she did so.

[40] Mr. Anderson left his position at the stop line immediately after Ms. Liang, cycling directly into Lane 4 in front of him. The Liang vehicle was ahead of him in Lane 3. Mr. Anderson checked to see if Lane 3 was clear, saw that it was, signalled his intention to move into Lane 3, and then did so. His move into Lane 3 occurred about 20–30 metres from the stop sign. By this point, the Liang vehicle was about 15 metres ahead of him, still in Lane 3, travelling at a faster rate of speed than he was. The Liang vehicle was travelling between 50 and 60 kms/hour.

[41] Mr. Anderson then did some things to prepare to merge into the busier traffic of Lane 2, things he had done many times before. First, he positioned himself on the left side of Lane 3, specifically in order to remain visible to the other vehicles. He knew he had to be firmly established in the lane to catch the attention of drivers

behind him, particularly those wishing to travel in Lane 3. His intention was to remain positioned there, on the left side of Lane 3, until he was able to safely merge into Lane 2.

[42] Mr. Anderson then signalled his intention, with the appropriate cycling hand gestures, to merge into Lane 2. He looked ahead, and periodically conducted quick shoulder checks to his left. He next ensured that he generated some speed so that he would not be “standing still”, and posing a potential hazard, amongst the moving cars once he merged into Lane 2. He also needed to ensure he would have sufficient speed to accelerate up the grade of the bridge.

[43] In the moments before the Accident, Mr. Anderson was looking ahead at traffic and saw the Liang vehicle continuing its path, straight down Lane 3, with no vehicles ahead of it. The Liang vehicle was now about 25 metres ahead of him and was accelerating away from him. Mr. Anderson felt this distance, about 25 meters, was not too close, noting that the Liang vehicle was accelerating away from him.

[44] Mr. Anderson did not see a turn signal activated on the Liang vehicle at any time. His positioning in Lane 3 was such that he was not directly behind the Liang vehicle, but to its left and further back. Given the Liang vehicle’s positioning, speed, and direction of travel, Mr. Anderson presumed it would continue travelling in Lane 3 and not over the bridge.

[45] After performing a quick shoulder check to his left, Mr. Anderson then saw, without warning, that the Liang vehicle had come to an abrupt stop in his path of travel. Mr. Anderson testified that the vehicle had unexpectedly stopped in front of him, positioned on an angle between Lanes 2 and 3, partially blocking Lane 2 and fully blocking Lane 3. He did not know why the vehicle had stopped in the manner it had. Prior to his last, brief shoulder check, the Liang vehicle had been entirely in Lane 3 and was accelerating away.

[46] The location of the Liang vehicle immediately before and after Ms. Liang brought it to an immediate halt is one of the areas where the parties' evidence conflicts.

[47] Ms. Liang testified that she was entirely in Lane 2, signalling her intention to merge into Lane 1, before she brought her vehicle to an abrupt stop. I do not accept her evidence on this point. Ms. Liang is clearly mistaken in her recollection. Both Mr. Anderson and Mr. Yang say the Liang vehicle was entirely in Lane 3 when Ms. Liang hit her brakes. Not only was her evidence inconsistent with the evidence of the other two witnesses, it was confused, internally contradictory, and inconsistent with her examination for discovery evidence.

[48] Mr. Yang testified that they were travelling in Lane 3 when he saw another motorist, the unidentified defendant, make a U-turn ahead of them, causing Ms. Liang to apply her brakes. He recalled that Ms. Liang was about to merge her vehicle into Lane 2, but had not yet done so. From the view he described having at the time, I infer that the wheels on the Liang vehicle may have begun turning in the direction of Lane 2, but Mr. Yang's recollection is that they were entirely in Lane 3 when Ms. Liang applied her brakes. This is consistent with Mr. Anderson's evidence.

[49] Ms. Liang gave different, and internally conflicting evidence, on this point. She first testified, with certainty, that she was entirely and firmly established in Lane 2 when she saw the unidentified defendant make the U-turn and applied her brakes. She later added, in cross-examination, that not only was she firmly established in Lane 2 when this occurred, she was also signalling her intention to merge into Lane 1 at the time. Her certainty on these points was undermined entirely when portions of her examination for discovery evidence were put to her in cross-examination.

[50] Ms. Liang's examination for discovery was held on August 24, 2021, much closer in time to the events in question. She agreed that her memory of the events was likely better at that time. Contrary to her evidence at trial, Ms. Liang expressed significant uncertainty at her discovery about the lane she was in when she saw the unidentified motorist and applied her brakes. At discovery, when asked if it was

possible that she was travelling in Lane 3 and in the process of merging into Lane 2 and whether she was certain she was well established in Lane 2, Ms. Liang testified "Well, okay, that part I am not completely certain".

[51] In these circumstances, I accept Mr. Anderson's evidence (and that of Mr. Yang) and find that the Liang vehicle was in Lane 3 at the time Ms. Liang saw the unidentified defendant make the illegal U-turn and applied her brakes. She had the intention of merging into Lane 2 when she applied her brakes, with her wheels starting to angle in that direction, but remained established in Lane 3. She applied her brakes abruptly and as hard as she could, causing her vehicle to slide a bit. When her vehicle came to rest, it was positioned as Mr. Anderson described, on an angle between Lanes 2 and 3, partially blocking Lane 2 and fully blocking Lane 3.

[52] I do not accept Ms. Liang's evidence, with all of its uncertainty, that she signalled her intention to merge into Lane 2. Mr. Yang did not testify about her activating her turn signal. Mr. Anderson, who was paying close attention to all of his surroundings, did not see a turn signal.

[53] Mr. Anderson was travelling about 35–40 kms/hours at the time Ms. Liang made the decision to apply her brakes. He tried to apply his brakes but, realizing that he could not do so in time, decided to take evasive action in an attempt to avoid a collision. The positioning of the Liang vehicle, on an angle, gave him limited and unsatisfactory options. Effectively, he had nowhere to go. He was still on the left side of Lane 3 at the time. He knew that if he continued straight, he would strike the front of the Liang vehicle and potentially be knocked into traffic in Lane 2, so he tried to swerve to the right, in an effort to avoid the vehicle. He could not avoid a collision. His bicycle and lower torso impacted the rear of the Liang vehicle. He felt the left side of his body skim the back end of the vehicle before he went through its rear window, and then ultimately landed on the ground in Lane 3.

[54] Mr. Anderson estimates that the impact occurred less than 100 metres, perhaps 70 metres, from the stop sign, and no more than 10 seconds after leaving it.

He believes that had Ms. Liang stopped solely in Lane 2 or Lane 3, he would have been able to avoid the collision.

[55] Mr. Anderson did not know why Ms. Liang stopped as she did. As I have alluded to, Ms. Liang claims that she stopped abruptly in response to an unidentified driver travelling from the opposite direction who jumped the median, pulled a U-turn in front of her and drove away.

[56] The Insurance Corporation of British Columbia ("ICBC") has admitted the existence of this unidentified driver, but their presence remains a disputed fact.

[57] Ms. Liang's evidence about the presence of this unidentified motorist performing a U-turn across the median is supported by the evidence of Mr. Yang. Neither witnessed was cross-examined or challenged on this point. I find as a fact that it occurred. That Mr. Anderson did not see this does not undermine his evidence or support the suggestion that he was not paying attention. To the contrary, I find that he was paying close and careful attention to everything going on around him. As my findings will reveal, the actions of the unidentified defendant occurred quickly, at a distance nearer to the entrance to the bridge, and were confined to Lane 1. It is unsurprising in these circumstances that Mr. Anderson, who was monitoring and assessing so many things as he was preparing to merge into Lane 2, did not see them.

[58] I find that a Jeep travelling in the opposite direction on SW Marine Drive made a U-turn from its lane of travel, over the cement meridian into eastbound traffic, and drove away into traffic over the bridge. Determining where the Jeep performed this manoeuvre in relation to the Liang vehicle is necessary. It is a finding made difficult by the conflicting evidence of Ms. Liang.

[59] Ms. Liang first testified that the Jeep made the U-turn "right in front of me", causing her to come to a complete stop to avoid colliding with it. In cross-examination, however, it became clear that this was not the case.

[60] In cross-examination, Ms. Liang testified that, rather than “right in front” of her, the Jeep actually made the U-turn “in between the bridge”, and “less than 200 metres” away from her vehicle. Not only was this evidence different than the impression left by her examination-in-chief evidence, it is also different than her examination for discovery testimony. At her discovery, Ms. Liang testified that the Jeep was an even greater distance away, about 200–300 metres, from her when it made its U-turn. When confronted with the inconsistencies, Ms. Liang resiled somewhat from both her earlier testimony and her discovery evidence and suggested that the Jeep was “about 200 metres away”.

[61] Mr. Yang saw the Jeep’s manoeuvre too. He was unable to precisely estimate the distance between the Liang vehicle and the Jeep when it occurred, but his evidence also makes it clear that the Jeep did not turn “right in front” of the Liang vehicle. He testified that the Jeep was “not very close”, but “not far away” either.

[62] Mr. Yang testified about the movements of the Jeep. I accept his evidence in this regard. He described that as the Jeep was travelling westbound, it was located in the lane closest to the median separating west and eastbound traffic. From that lane, it made a tight U-turn, driving over the cement median and directly into Lane 1 and over the bridge.

[63] The Jeep’s tight turn and confinement to Lane 1 also undermines Ms. Liang’s assertion that the Jeep turned “right in front” of her vehicle. The Liang vehicle was situated entirely in Lane 3 when the U-turn occurred. The evidence is clear, and I find, that the Jeep never crossed into, or directly impeded, Ms. Liang’s path of travel. It made an illegal U-turn directly into Lane 1, near to the entrance of the bridge. The Liang vehicle was approximately 200, and up to 300, metres away, situated in Lane 3, with no traffic ahead of it.

Legal Framework

[64] This is a claim in negligence. I adopt Justice Watchuk’s summary of the applicable legal principles in *Ziemer v. Wheeler*, 2014 BCSC 2049 as follows:

[103] The elements of negligence are well-established in Canadian jurisprudence. A successful action in negligence requires that the plaintiff demonstrate: (1) that the defendant owed him a duty of care; (2) that the defendant's behaviour breached the standard of care; (3) that the plaintiff sustained damage; and (4) that the damage was caused, in fact and in law, by the defendant's breach (*Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 at para. 3).

[104] The driver of a motor vehicle has a duty to conduct himself so as not to expose other users of the highway to unnecessary risk of harm. That driver will be at fault if he does not exercise the reasonable care, reasonable skill or reasonable self-possession that are required in the circumstances, whether they are in emergency or ordinary circumstances (*Sinclair v. Nyehold* (1973), 29 D.L.R. (3d) 614 (B.C.C.A.) at 618). In short, each driver owes a duty of care to not expose other drivers to unreasonable risk of harm.

[105] Conduct is negligent if it creates an objectively unreasonable risk of harm. In determining whether a person's conduct creates an objectively unreasonably risk of harm, the court must assess whether or not that person has exercised the standard of care that would be expected of an ordinary, reasonable and prudent person in the same circumstances. The Supreme Court of Canada outlined the standard of care in *Ryan v. Victoria (City),* [1999] 1 S.C.R. 201 at pp. 221-222 as follows:

> Conduct is negligent if it creates an objectively unreasonable risk of harm. To avoid liability, a person must exercise the standard of care that would be expected of an ordinary, reasonable and prudent person in the same circumstances. The measure of what is reasonable depends on the facts of each case, including the likelihood of a known or foreseeable harm, the gravity of that harm, and the burden or cost which would be incurred to prevent the injury. In addition, one may look to external indicators of reasonable conduct, such as custom, industry practice, and statutory or regulatory standards.

[106] In *Berk v. Brent*, 2001 BCSC 1441, Stromberg-Stein J., as she then was, stated that the standard of care does not require perfection. Rather, the standard of care requires a person to act reasonably in the circumstances (at para. 28).

[107] Even if a defendant has created a hazard to other drivers, other drivers must exercise reasonable care to avoid that hazard. A driver has failed to exercise reasonable care in circumstances where that driver became or should have become aware of the hazard and had in fact a sufficient opportunity to avoid the accident and where a reasonably careful and skilful driver would have availed himself of that opportunity (*Walker v. Brownlee,* [1952] 2 D.L.R. 450 (S.C.C.) at p. 461). The onus is on the party alleging that a driver failed to exercise reasonable care to prove on the balance of probabilities that that driver did not meet the required standard of care (*Haase v. Pedro* (1970), 21 B.C.L.R. (2d) 273 (C.A.) at p. 279, aff'd [1971] S.C.R. 669).

[65] Of course, Mr. Anderson bears the burden of proving that the defendants did not meet the required standard of care.

[66] All drivers have a common law duty to take reasonable care for the safety of others. The scope of this duty is guided, but not limited, by the statutory duties set out in the *Motor Vehicle Act*, R.S.B.C. 1996, c. 318 [*MVA*]. The statutory responsibilities inform the liability analysis, but are not exhaustive in determining whether a party has satisfied the requisite standard of care. As the Court of Appeal held in *Salaam v. Abramovic,* 2010 BCCA 212:

> [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. …

[67] Several provisions of the *MVA* are relevant to my assessment of responsibility for the Accident.

[68] Section 144 is consistent with a driver's common law duty. It provides:

> **Careless driving prohibited**
>
> **144** (1) A person must not drive a motor vehicle on a highway
>
> (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.
>
> (2) A person who contravenes subsection (1) (a) or (b) is liable on conviction to a fine of not less than $100 and, subject to this minimum fine, section 4 of the *Offence Act* applies.

[69] Driving with due care and attention assumes being on the lookout for the unexpected: *Cooper v. Clements*, 2023 BCSC 605 at para. 26. The standard of care required of drivers is not one of perfection; rather, it is that of a reasonably prudent motorist in light of all the circumstances. Motorists are not required to anticipate all

foreseeable road hazards, only those that are reasonably foreseeable: *Singh v. Lepitre*, 2019 BCSC 1728 at para. 72.

[70] This case involves a cyclist. Section 183(1) of the *MVA* provides that in addition to the duties imposed within the section itself, cyclists have the same rights and duties as a driver of a vehicle. The Court of Appeal discussed this section in *Ormiston v. Insurance Corporation of British Columbia*, 2014 BCCA 276 at para. 20, leave to appeal to SCC ref'd, 36067 (5 February 2015), explaining that by having the same rights as motorists, cyclists must bear the same duties because "of the importance of the right of way to the safety of traffic and the expectations motorists and cyclists take from the rules of the road."

[71] While cyclists have the same duties as motorists, including those in s. 144, s. 183(14)(a) of the *MVA* reiterates that cyclists must not operate a cycle on a highway without due care and attention or without reasonable consideration for other persons using the highway.

[72] This case also involves a rear-end collision.

[73] The driver of a following vehicle has a duty to drive at a distance from the vehicle in front that allows for the speed, traffic and conditions: *Barrie v. Marshall*, 2010 BCSC 981 at para. 24. This is expressly set out in s. 144(1)(c) above, as well as in s. 162(1) of the *MVA* as follows:

> **162**(1)A driver of a vehicle must not cause or permit the vehicle to follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of the vehicles and the amount and nature of traffic on and the condition of the highway.

[74] In *Chauhan v. Welock*, 2020 BCSC 1125, aff'd 2021 BCCA 216, Justice Crerar summarized the applicable legal principles in respect of rear-end collisions as follows:

> [64] All drivers have a duty to drive with due care, which includes making reasonable allowance for the possibility of unexpected hazards on the road, including a sudden stop by the vehicle ahead: *Greenway-Brown v. MacKenzie*, 2019 BCCA 137 at para. 56. As part of this duty, drivers are required to maintain a safe distance from any vehicle in front of them. These

responsibilities are codified in ss. 144 and 162 of the *Motor Vehicle Act*, RSBC 1996, c. 31:

> […]

[65] In rear-end collisions, the onus is often said to fall upon the rear driver to show that the collision was not their fault: *Barrie v. Marshall*, 2010 BCSC 981 at para. 23; *Cue v. Breitkreuz*, 2010 BCSC 617 at para. 15. This principle should not be taken as reversing the legal burden of proof where the rear driver is the defendant. Rather, it reflects the fact that a rear-end collision is itself *prima facie* evidence that the rear driver failed to keep a safe distance or drive with due care and attention.

[66] The strength of this presumption varies in accordance with the circumstances of the accident. Where a driver encounters unexpected and unforeseeable conditions, the fact of the accident itself does not necessarily establish negligence on the part of rear driver: *Vo v. Michl*, 2012 BCSC 1417 at para. 14; *Dubitz v. Knoebel*, 2019 BCSC 1706 at para. 242. Instead, the court must consider whether the driver's conduct met the applicable standard of care, in light of the conditions prevailing at the relevant time and any reasonably foreseeable risk of harm inherent in those conditions. In assessing the rear driver's conduct, the court may consider the following factors (*Biggar v. Enns*, 2017 BCSC 2290 at para. 46, citing *Ayers v. Singh* (1997) 85 BCAC 307):

a) the speed of the rear vehicle;

b) the distance between the two vehicles as they were driving along;

c) what the driver of the rear vehicle was doing as they were driving along; and

d) as the emergency arose, how the rear driver responded.

[67] Drivers are expected to exercise due care and attention, and to adapt their driving to the changing circumstances of the road, but they are not required to anticipate every possibility, however remote. In Ayers, for example, the defendant front driver stopped suddenly and inexplicably at an intersection, causing a rear-end collision. Like the plaintiff in this case, he mistakenly believed that he was faced with a red light, which was in fact green. The Court found the front driver 100% liable for the accident:

> I have given consideration to the alternative contention by counsel for the Defendant that even if the light phase was green under these circumstances where there was a chain rear-end collision is it conceivable that Mr. Ayers was following too close under the circumstances contrary to Section 164 Subsection (1) of the Motor Vehicle Act that a prudent driver should be prepared for contingencies of an emergent nature.
>
> I think that as a general proposition that is true depending on the particular circumstances. As I outlined here, this was a situation where drivers still on the green phase coming to the stop line certainly expected to go on through the traffic and no doubt were accelerating at that time. When they were

> confronted with the sudden stopping there was insufficient time for them to apply their brakes and stop in a timely manner. I am of the view that under these circumstances that certainly was an agony of the moment where it would be very difficult to stop and although I have given consideration to the application of contributory negligence, I am of the view that in these particular circumstances I would discount that factor.
>
> Accordingly, I must conclude that the proximate cause for this accident was the abrupt stopping by Mr. Singh without any contribution in terms of contributory negligence by Mr. Ayers, judgment accordingly.

[68] By contrast, in *Harry v. Kalutharage*, 2019 BCSC 579, the rear driver was found 100% liable for colliding with a truck that had stopped suddenly in the midst of a left-hand turn. In contrast to the facts in *Ayers*, the Court found that the circumstances leading to the collision were easily foreseeable (at para. 23):

> A reasonable, ordinary person who follows a left turning truck whose size and position obstructs the following driver's view of oncoming traffic would, in entering an intersection at a yellow light, anticipate the possibility that there would be sudden braking or other emergent situations that would require the following driver to leave more room between his or her vehicle and any leading vehicle.

[69] Similarly, the court in *Vo* found a rear driver liable for driving too quickly in icy conditions. These conditions were apparent to the driver, since he had been driving in them for some time. Savage J (as he then was) distinguished these circumstances from those in *Borthwick v. Campa* (1989), 67 Alta LR (2d) 123 (QB), where "a patch of 'black ice' in otherwise deceptively benign conditions" led to the accident in question (at para. 16).

[70] In other words, the standard of conduct required of a following driver must be assessed in light of the circumstances known, or reasonably knowable, to the driver in advance, and not with the benefit of hindsight. While drivers must exercise due care and caution to avoid colliding into vehicles in front of them, they are not required to foresee the unforeseeable. As in all negligence cases, the standard of care is met by reasonable prudence, not perfection.

[Footnotes omitted.]

[75] This case also involves consideration of what is often referred to as the "agony of the collision". Justice Griffin, as she then was, summarized the law in this area in *Davies v. Elston*, 2014 BCSC 2435:

> [216] The law has long recognized that if an emergency situation on the road is created by a driver's negligence, another road user's response to the emergency will be viewed less strictly. The kinds of tough decisions made by

road-users facing an emergency are sometimes referred to as decisions made in the "agony of the collision".

[217] The "agony of collision" doctrine was summarized in *Gerbrandt v. Deleeuw* [1995] B.C.J. No. 1022 at paras. 10-11 where Hunter J. stated as follows:

> [10] An often quoted summary of the law concerning the agony of collision is found in an old text, Huddy on Automobiles, 7th Ed., page 471 and page 335 (this passage is relied upon by the Saskatchewan Court of Appeal in *English v. North Star Oil Limited* [1941] 3 W.W.R. 622 (Sask. C.A.) and *Reineke v. Weisgerber* [1974] 3 W.W.R. 97 (Sask. Q.B.)):
>
> > "Under circumstances of imminent danger an attempt to avoid a collision by turning one's course instead of stopping the vehicle is not necessarily negligence. Or an attempt to stop when a turn would have been a more effective method of avoiding the collision is not necessarily negligence . . . one who suddenly finds himself in a place of danger and is required to consider the best means that may be adopted to evade the impending danger is not guilty of negligence if he fails to adopt what subsequently and upon reflection may appear to have been a better method, unless the emergency in which he finds himself is brought about by his own negligence."
>
> [11] In *Gill v. C.P.R.* [1973] 4 W.W.R. 593 Mr. Justice Spence speaking for the court said the following:
>
> > " It is trite law that, faced with a sudden emergency the creation of which the driver is not responsible, he cannot be held to a standard of conduct which one sitting in the calmness of a Courtroom later might determine was the best course …"
>
> [Emphasis in original.]

[76] This case also involves the crossing of a physical barrier on a highway that has been divided into two roadways, while performing a U-turn. Section 163 of the *MVA* prohibits a driver from driving a vehicle over, across or within such a barrier, except at a crossover or intersection. Section 168(a) prohibits a driver from turning a vehicle so as to proceed in the opposite direction unless the driver can do so without interfering with other traffic.

[77] Finally, this case also involves determining the degrees of fault, a matter governed by the *Negligence Act*, R.S.B.C. 1996, c. 333 [*NA*]. It provides, at s. 1, as follows:

> **Apportionment of liability for damages**
>
> **1** (1) If by the fault of 2 or more persons damage or loss is caused to one or more of them, the liability to make good the damage or loss is in proportion to the degree to which each person was at fault.
>
> (2) Despite subsection (1), if, having regard to all the circumstances of the case, it is not possible to establish different degrees of fault, the liability must be apportioned equally.
>
> (3) Nothing in this section operates to make a person liable for damage or loss to which the person's fault has not contributed.

[78] Section 4(1) of the *NA* requires the court, in situations where damage or loss has been caused by the fault of two of more persons, to determine the degree to which each person was at fault. Here, the court's task is to assess "the respective blameworthiness of the parties, rather than the extent to which the loss may be said to have been caused by the conduct of each": *Alberta Wheat Pool v. Northwest Pile*, 2000 BCCA 505 at para. 45 [*Alberta Wheat Pool*]. Fault, or blameworthiness, evaluates the parties' conduct in the circumstances, and the extent or degree to which it is said to depart from the standard of reasonable care. One's degree of fault may vary significantly, from "extremely careless conduct, by which the party shows a reckless indifference or disregard for the safety of person or property" at the one end, to a "momentary or minor lapse of care in conduct which, nevertheless, carries with it the risk of foreseeable harm": *Alberta Wheat Pool* at para. 46.

[79] Where a plaintiff negligently contributes to causing his or her own injury, the court must determine relevant degrees of fault: s. 4 of the *NA*. The correct inquiry is whether the plaintiff failed to take reasonable care for his or her own safety and whether that failure was one of the causes of the Accident: *Bradley v. Bath*, 2010 BCCA 10 at para. 27.

Parties' Positions

[80] Mr. Anderson submits that he has established that he was not negligent that day. He says that he bears no responsibility for the Accident because he was cycling in a reasonable and prudent manner in the circumstances, and took steps to avoid the Accident when presented with the unforeseeable hazard created by the defendants. He says that he has established that both defendants were negligent and that both of their negligent actions caused the Accident. The unidentified defendant's illegal U-turn over a concrete median in congested traffic, and Ms. Liang's unreasonable sudden stop in response, caused Mr. Anderson to collide with the back of the Liang vehicle. Both of the defendants, together, breached their duty of care in the circumstances and caused the Accident. But for one without the other, he says the Accident would not have occurred.

[81] Ms. Liang denies any responsibility. She submits that Mr. Anderson, as the rear driver, was negligent and is solely the cause of the Accident. She argues that her vehicle was there to be seen, regardless of why she stopped. Mr. Anderson was either following too closely, or moving too quickly, to avoid her. He has not met his onus, as the rear driver, to show that the Accident was not his fault.

[82] In the alternative, Ms. Liang takes the position that the unidentified defendant is liable for the Accident, either in whole, or in part with Mr. Anderson. She submits that her actions, in response to an emergency situation not of her making, cannot be faulted. In the further alternative, should the court find that some portion of liability rests with her, Ms. Liang submits it should be no more than 15%. Here, she emphasizes that while her stop may have been abrupt, it was created by a situation outside of her control.

[83] The defendant, ICBC, also takes the position that Mr. Anderson has not met his burden, was negligent and was solely the cause of the Accident. ICBC submits that the evidence shows that the actions of the unidentified defendant did not cause the Accident. Pointing to Ms. Liang's ability to stop in time and Mr. Anderson's failure to "see what was there to be seen", ICBC argues that Mr. Anderson was either not

paying sufficient attention to the road ahead of him, travelling too quickly, or both. He was also following the Liang vehicle too closely, and thus bears 100% responsibility for the Accident.

Analysis and Decision

[84] I agree with Mr. Anderson's position and find that he has discharged the burden upon him. I find that both defendants were negligent and both of their negligent actions caused the Accident.

[85] The unidentified defendant breached the standard of care that would be expected of an ordinary, reasonable and prudent person in the same circumstances. The unidentified driver performed a U-turn, contrary to the provisions of the *MVA*, across a raised concrete median dividing the highway. The driver did this in circumstances that were inherently dangerous—in congested traffic in an area near the entrance of the Arthur Laing Bridge where eastbound lanes were merging. This dangerous conduct created an objectively unreasonable risk of harm to other users of the roadway and was conduct that the driver ought to have reasonably foreseen would create a substantial risk to other users of the roadway.

[86] Ms. Liang also breached the standard of care that would be expected of an ordinary, reasonable and prudent person in the same circumstances, prior to and after she saw the Jeep. Prior to the unidentified motorist's negligent act, Ms. Liang was travelling at 50–60 kms/hour in Lane 3. She was about to try to merge into busier Lane 2, but did not signal her intention to do so. She was also unaware of Mr. Anderson's presence, despite the fact that he was there to be seen behind her. She was not exercising the due care and attention the circumstances required. Then, when Ms. Liang saw the Jeep make the illegal U-turn, she brought her vehicle from its speed of 50–60 kms/hour to a complete stop in the span of about two or three seconds. She did so along a busy, major roadway, across two lanes of traffic.

[87] I find that Ms. Liang's response to the Jeep was not reasonable. It was not necessary and not one that would be expected of an ordinary, reasonable and prudent person in the same circumstances. The unidentified driver did not perform

the U-turn “right in front” of the Liang vehicle as Ms. Liang originally testified. It did so from a distance of at least 200 metres, and up to 300 metres, away. Ms. Liang did not have to stop abruptly to avoid colliding with the Jeep as she originally testified either. Not only 200 metres or more away, the Jeep was also two lanes away. It never entered her lane of travel, or even the lane of travel she was intending to enter. Her lane of travel, Lane 3, was clear and unimpeded. As such, the Jeep did not pose such an immediate and proximate hazard that Ms. Liang was required to bring her vehicle to an abrupt and complete halt in traffic, stopping in such a way as to partially block Lane 2 and fully block Lane 3.

[88] I do not consider this an “agony of the collision” situation for Ms. Liang. While I accept she was not expecting the Jeep’s illegal manoeuvre, it occurred far ahead and outside of her lane of travel. She was not faced with circumstances of imminent danger. I find Ms. Liang’s conduct in stopping as she did in these circumstances created an objectively unreasonable risk of harm, and she failed to exercise the standard of care that would be expected of an ordinary, reasonable and prudent person in the same circumstances. By stopping in the unreasonable manner that she did, very abruptly and impeding two lanes of travel, she acted without reasonable consideration for other persons using the highway, creating the situation in which Mr. Anderson had no chance to avoid the collision.

[89] I am also satisfied that Mr. Anderson has established that the Accident was not his fault. He was not negligent and bears no degree of responsibility for the Accident. I find that Mr. Anderson was cycling in a reasonable and prudent manner that day. He was an exceptionally experienced cyclist who had travelled on that roadway many times before. He employed a myriad of safety precautions leading up to the moment of impact, including using appropriate cycling hand gestures to signal his intended movements, completing frequent and quick shoulder checks, using designated bike lanes, positioning himself to be visible to users of the road, and travelling at reasonable rates of speed in the circumstances. To travel any slower in these circumstances would have created a hazard to motorists in the area.

[90] Mr. Anderson was travelling at about 25 metres behind the Liang vehicle as it was accelerating away from him in Lane 3. Traffic ahead of Ms. Liang in Lane 3 was clear. Mr. Anderson was, I find, cycling a reasonable, safe and prudent distance behind the Liang vehicle in the circumstances. He was exercising due care and attention, at all times. Mr. Anderson has a right to assume that other drivers will obey the rules of the road and operate their vehicles in a safe manner, with attention to all road users, including cyclists. He did not see a hazard far ahead of them in Lane 1. He could not have reasonably foreseen that Ms. Liang would make an abrupt stop in the two or three seconds she did, across two lanes of a major and busy thoroughfare, with no observable hazard necessitating her to do so. Simply put, Mr. Anderson did everything reasonably expected of a prudent cyclist in his position and could not avoid the Accident.

[91] Mr. Anderson has established that but for the negligence of both defendants, the damages would not have occurred. He has also established that each defendant's negligent conduct related to the risk that made the actual harm which occurred foreseeable, and was a proximate cause of his damages. In each case, injury, damages and loss were readily foreseeable consequences of their negligent conduct. What remains is to apportion their blameworthiness.

[92] I have described the manner in which the unidentified motorist and Ms. Liang fell far short of the standard of taking reasonable care for others using the roadway that day. I conclude that the unidentified motorist's actions were well outside the standard of care and highly blameworthy. Whatever their reason for doing so, there is no evidence to suggest that they were required to perform this illegal manoeuvre to avoid some other situation or danger on the road.

[93] I conclude that Ms. Liang's conduct was also highly blameworthy, but consider her departure from the standard of care to be slightly greater than that of the unidentified motorist's. Ms. Liang's actions were more than a momentary or minor lapse of care in conduct. Beginning before the U-turn occurred, Ms. Liang failed to indicate her intention to merge into Lane 2 and failed to see Mr. Anderson,

who was there to be seen behind her at all times. These factors, combined with her unnecessary and unreasonable reaction in coming to an abrupt and immediate stop across two lanes of busy traffic, rendered the Accident unavoidable for Mr. Anderson. In these circumstances, I apportion fault 60% to Ms. Liang and 40% to the unidentified motorist.

"S.A. Donegan J."

DONEGAN J.