



# Civil Resolution Tribunal

Date Issued: April 23, 2024

File: SC-2023-006076

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Alavian v. Wally's Auto Body Ltd.*, 2024 BCCRT 391

B E T W E E N :

SAEIDEH ALAVIAN

**APPLICANT**

A N D :

WALLY'S AUTO BODY LTD.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Alison Wake

## INTRODUCTION

1. This dispute is about vehicle repair expenses. Saeideh Alavian brought her vehicle to Wally's Auto Body Ltd. for repairs following a vehicle accident. She says that Wally's Auto Body told her that she would not have to pay anything for the repairs, but it charged her \$2,407.40 when she went to pick up her vehicle. Mrs. Alavian claims a refund of this amount, plus \$15 for insurance costs.

2. Wally's Auto Body says that it told Mrs. Alavian that it required approval from her insurer, Insurance Corporation of British Columbia (ICBC), before it could finalize the amount she had to pay. Wally's Auto Body denies telling Mrs. Alavian that she would not have to pay anything, and says it should not be required to refund her.
3. Mrs. Alavian is self-represented. Wally's Auto Body is represented by an employee.

## **JURISDICTION AND PROCEDURE**

4. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). CRTA section 2 says that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
5. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, the parties in this dispute call into question the credibility, or truthfulness, of the other. However, oral hearings are not necessarily required where credibility is in issue.<sup>1</sup> In this dispute, I find that I am properly able to assess and weigh the documentary evidence and submissions before me, as explained further below. Considering the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.
6. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court.

## **ISSUE**

7. The issue in this dispute is whether Wally's Auto Body must reimburse Mrs. Alavian \$2,407.40 for her vehicle repair costs and \$15 in insurance costs.

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<sup>1</sup> See *Yas v. Pope*, 2018 BCSC 282.

## EVIDENCE AND ANALYSIS

8. As the applicant in this civil proceeding, Mrs. Alavian must prove her claims on a balance of probabilities, meaning more likely than not. While I have considered all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
9. Mrs. Alavian's vehicle was involved in an accident on June 2, 2021. On January 30, 2023, Mrs. Alavian brought her vehicle to Wally's Auto Body for a repair estimate. Wally's Auto Body provided Mrs. Alavian with an estimate totaling \$4,322.57, which says the deductible is "waived", and the "total customer responsibility" is \$0.
10. In May 2023, Mrs. Alavian authorized Wally's Auto Body to proceed with the repairs, which it did. In June 2023, Mrs. Alavian went to Wally's Auto Body to pick up her vehicle. Wally's Auto Body required her to pay \$2,407.40 for 50% of the repair costs before she could retrieve her vehicle. Mrs. Alavian initially refused to pay this amount, but ultimately did so under protest. She now seeks a refund of the amount she paid.
11. Although she does not use this term, I find Mrs. Alavian argues that Wally's Auto Body misrepresented that she would not have to pay for the repairs.
12. A misrepresentation is a false statement of fact that induces someone to enter a contract. Misrepresentations can be innocent, negligent, or fraudulent.<sup>2</sup> Here, Mrs. Alavian argues that Wally's Auto Body misrepresented to her that she would not have to pay for the repairs to her vehicle, which caused her to authorize it to proceed with the repairs. She does not allege that Wally's Auto Body did so intentionally, but says that it should have confirmed her insurance coverage before providing the estimate. So, I find Mrs. Alavian argues negligent misrepresentation.
13. To prove negligent misrepresentation, Mrs. Alavian must prove that Wally's Auto Body owed her a duty of care, and negligently made an untrue, inaccurate, or misleading representation that she reasonably relied on to her detriment.<sup>3</sup>

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<sup>2</sup> *O'Shaughnessy v. Sidhu*, 2016 BCPC 308.

<sup>3</sup> *Queen v. Cognos Inc.*, 1993 CanLII 146 (SCC).

14. For its part, Wally's Auto Body says that it is not responsible to inform Mrs. Alavian about her insurance coverage, and that this responsibility rests with ICBC as Mrs. Alavian's insurer. So, I infer Wally's Auto Body argues that it did not owe Mrs. Alavian a duty of care to confirm her ICBC coverage before proceeding with its repairs.
15. I find I do not need to determine whether Wally's Auto Body owes Mrs. Alavian a duty of care in this regard, because I find that Mrs. Alavian has not proven that Wally's Auto Body made an untrue, inaccurate, or misleading statement to her in any event, as explained below.
16. Mrs. Alavian says that Wally's Auto Body's estimator, TD, confirmed that she would not have to pay anything for the repair, and ICBC would pay the entire amount. Mrs. Alavian provided two pieces of evidence in support of this. The first is the January 30, 2023 estimate, which as noted, says that the "customer responsibility" is \$0.
17. The second is a December 16, 2023 statement from Mrs. Alavian's husband, AN. AN says that he and Mrs. Alavian went to Wally's Auto Body together when Wally's Auto Body provided the estimate. He says that Mrs. Alavian specifically asked TD whether the estimate was accurate, and whether she would have to pay for the repairs. He says that TD replied that the report was "completely accurate", and that Mrs. Alavian would not have to pay anything for the repairs.
18. Wally's Auto Body denies telling Mrs. Alavian this. It provided two statements from its employees. The first statement is from its estimator, TD. TD says that Mrs. Alavian asked for a copy of the estimate, so TD prepared a rough draft of it. TD says that they explained at the time that ICBC had not yet made a decision about responsibility for the accident and Mrs. Alavian's insurance coverage, so the customer responsibility was listed as \$0 for the time being.
19. Wally's Auto Body's second statement is from another employee, CF. CF says that Mrs. Alavian and her husband "were made aware" that they would have to pay for 50% of the repairs before picking up their vehicle.

20. Mrs. Alavian takes issue with CF's statement. She says that CF told her that they were a manager at Wally's Auto Body, but that their statement lists their position as "human resources". She also says that CF was not present for any of the relevant conversations. While I find CF's position at Wally's Auto Body is not particularly relevant, nothing turns on their statement in any event. CF's statement only addresses what Wally's Auto Body told Mrs. Alavian before she picked up the vehicle, which is not in dispute. It does not directly address whether Wally's Auto Body informed Mrs. Alavian that she may be charged for the repairs before she agreed to go ahead with the repairs, which is the central issue in this dispute.
21. Both AN's statement and TD's statement do address this issue. However, neither is entirely neutral as both AN, as Mrs. Alavian's spouse, and TD, as Wally's Auto Body's employee, have an interest in the outcome of this dispute.
22. I find AN's statement generally implausible and unpersuasive. AN notes his "deep concern" about Wally's Auto Body's business practices, and clearly advocates for Mrs. Alavian's position in this dispute. In his statement, AN sets out detailed dialogue that he says Mrs. Alavian and TD exchanged, but he does not explain how he was able to recall this highly specific dialogue almost a year after he says it happened. AN's statement is not supported by any other documentary evidence, such as a recording, other witness statements, or contemporaneous notes. So, I give AN's statement very little weight in this decision.
23. While, as noted, TD's statement is also not entirely neutral, I find it is more consistent with the other documentary evidence. Specifically, Wally's Auto Body provided system notes exchanged between TD and ICBC. These notes show that on January 31, 2023, an ICBC employee advised that Mrs. Alavian did not have collision coverage or private insurance, and would be responsible for paying the 50% of repairs that were not covered. This is the first mention in this exchange of Mrs. Alavian's responsibility to pay for a portion of the repairs. The estimate Mrs. Alavian relies on is dated January 30, 2023, before ICBC had advised TD about Mrs. Alavian's insurance coverage. I find it is unlikely that TD would have informed Mrs.

Alavian that she would not have to pay anything for the repairs before ICBC provided details about Mrs. Alavian's insurance coverage.

24. Based on this, I prefer TD's statement and give it significant weight. I find it is more likely than not that TD provided the estimate on a provisional basis, and informed Mrs. Alavian that it would be subject to ICBC's determination about her insurance coverage. On balance, I find Mrs. Alavian has not proven that Wally's Auto Body represented to her that she would not have to pay anything for her vehicle repairs. So, I find Mrs. Alavian has not proven negligent misrepresentation, and I dismiss her claims.

## **CRT FEES AND EXPENSES**

25. Under CRTA section 49 and the CRT Rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Mrs. Alavian was unsuccessful, so I dismiss her claims for CRT fees and dispute-related expenses. Wally's Auto Body did not pay CRT fees and did not claim any dispute-related expenses.

## **ORDER**

26. I dismiss Mrs. Alavian's claims and this dispute.

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Alison Wake, Tribunal Member