



Civil Resolution Tribunal

Date Issued: May 25, 2018

File: SC-2017-002504

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hossain v. Prystay*, 2018 BCCRT 207

BETWEEN:

Shakawat Hossain

APPLICANT

AND:

Lorraine Prystay

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This is a summary decision of the Civil Resolution Tribunal (tribunal) about a jurisdictional issue relating to this small claims dispute. Only the evidence and submissions relevant to this issue are referenced below.

2. The applicant says that on August 1, 2016 he was the victim of a “hit and run” when a Yellow taxi hit the Bonny’s taxi he was driving.
3. He says that the respondent Lorraine Prystay, an adjuster for the Insurance Corporation of British Columbia (ICBC), took too long to examine the suspect taxi. The applicant says this delay meant that he had to pay for repair to his taxi. It is not clear how the delay impacted his obligation to pay. The respondent noted there was a \$1,000 deductible on collision coverage in any event.
4. The respondent says any claim against her for any act or omission done in good faith in connection with the administration of the insurance plan is barred by section 30(3) of the *Insurance Corporation Act* (the ICA).
5. The respondent also says that the applicant is not the registered owner of the damaged car, meaning he does not have standing to pursue this dispute.
6. The applicant is self-represented. The respondent is represented by Rory McMullan, lawyer, of the ICBC Claims Legal Department.
7. These are the formal written reasons of the tribunal. The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act* (the Act). The tribunal’s mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
8. For the reasons that follow, I find that the claim against the respondent is statute-barred. Since the dispute comprises only one claim against her, I order the dispute dismissed.

ISSUES

9. The issues in this dispute are:

- a) whether, as an employee of ICBC, Ms. Prystay is properly named as a respondent in this dispute;
- b) whether the applicant has standing to bring this claim given that he is not the registered owner of the damaged car; and
- c) whether a claim for car repairs is outside the tribunal's jurisdiction, pursuant to sections 176 and 177 of the *Insurance (Vehicle) Regulation*.

BACKGROUND AND EVIDENCE

- 10. The preliminary issue of whether this dispute was statute-barred was referred to me by the tribunal facilitator for determination. Both parties provided submissions.
- 11. The applicant's claim is for \$736.96 as a refund for repairs to his vehicle.
- 12. In the September 26, 2017 Amended Dispute Notice, the applicant alleges that he was involved in a motor vehicle accident on August 2, 2016, when a Yellow taxi cab (cab number 86) hit his Bonny's taxi cab (cab number 29).
- 13. The applicant says he reported the collision to ICBC, where it was handled by the respondent, a claims adjuster.
- 14. The applicant says that the respondent:
 - a) emailed him August 9, 2016 saying that the Yellow cab driver denied the collision;
 - b) received a GPS report from Bonny's taxi office showing cab number 29's location when the collision occurred; and
 - c) examined cab number 86 on September 2, 2016, about one month after his initial claim.
- 15. It is undisputed and I therefore find that Ms. Prystay was an employee of ICBC at all material times.

16. The respondent says she acted reasonably and in good faith at all times while adjusting the applicant's ICBC claim. The applicant alleges that Ms. Prystay took too long to examine cab number 86, and failed to obtain a GPS report for it. He argues that to meet her duty to act "properly and in good faith", the respondent should have brought in cab number 86 in for inspection sooner.

ANALYSIS

17. Section 30(3) of the ICA prohibits any proceeding being started against any person for doing or not doing something, if those steps were carried out in good faith and in the administration of any insurance plan established under the ICA.
18. I find that Ms. Prystay's role adjusting a motor vehicle claim is part of administration of an insurance plan under the ICA. I also find that this dispute is an action or other proceeding as contemplated in section 30(3) of the ICA.
19. Turning to the question of good faith, the applicant has alleged that Ms. Prystay took too long to examine cab number 86, and failed to obtain a GPS report for it.
20. Good faith requires that a person carry out their duties in an honest and reasonable manner. I find the evidence supports that the respondent acted in good faith in handling the claim. She contacted the applicant regularly, kept him up to date on developments, and took steps to obtain relevant information.
21. In *Joe v. I.C.B.C.*, 2008 BCSC 1426, at paragraphs 59 and 60., affirmed on appeal at 2012 BCCA 90, the court dismissed a claim against an adjuster and found she acted in good faith, even where she sent a letter to the plaintiff in error, warning of a possible breach in coverage, despite the fact that a breach was not being pursued.
22. Examining a suspect vehicle one month after a collision may not be ideal timing, but it is not evidence of a lack of good faith given the volume of ICBC claims. The failure to obtain a GPS report for cab number 86 also does not establish a lack of good faith.

23. Ms. Prystay was entitled to obtain the information she thought was necessary for adjusting purposes. To act in good faith does not require an adjuster to obtain every piece of information the claimant thinks is required, nor does it require perfection. I find that the respondent was acting in good faith at all material times.
24. As well, the *Insurance (Vehicle) Regulation*, at sections 176 and 177, requires that a dispute between an owner and an insurer about the nature and extent of required repairs or the amount payable for damage to a vehicle, must be resolved by arbitration, within two years of the occurrence. Arbitration is not a tribunal proceeding. So, even if this dispute had been brought by the vehicle's registered owner, the subject matter would be subject to arbitration, and outside the tribunal's jurisdiction.
25. For the above reasons, the applicant's claim is statute-barred.
26. Given my decision, it is not necessary for me to decide whether the applicant has standing to bring this claim when he is not the registered owner of the damaged taxi.
27. Under tribunal rule 131 the tribunal can make orders regarding payment of fees or reasonable expenses in the case of a withdrawal or dismissal. The respondent did not pay fees or claim expenses in this dispute. Therefore, I make no order as to the payment of tribunal fees or expenses.

DECISION AND ORDERS

28. I order that the applicant's dispute is dismissed.

Julie K. Gibson, Tribunal Member