



# Civil Resolution Tribunal

Date Issued: December 3, 2018

File: SC-2017-003682

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Rahimi v. Insurance Corporation of British Columbia*,  
2018 BCCRT 786

B E T W E E N :

Abdullah Rahimi

**APPLICANT**

A N D :

Insurance Corporation of British Columbia

**RESPONDENT**

A N D :

Abdullah Rahimi

**RESPONDENT BY COUNTERCLAIM**

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## REASONS FOR DECISION

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Tribunal Member:

Shelley Lopez, Vice Chair

## **INTRODUCTION**

1. This dispute is about insurance coverage for repairs to the applicant's 2009 Porsche Cayenne. The applicant, Abdullah Rahimi, says the respondent, Insurance Corporation of British Columbia (ICBC), is unreasonably demanding repayment of \$3,278.84 that it paid for his car's repairs.
2. Mr. Rahimi's car was rear-ended by a third party, WH, on October 3, 2015. Before Mr. Rahimi took his car for repairs, he backed into a pole in late October 2015, impacting the same bumper damaged in the earlier accident. When the car was repaired, ICBC says Mr. Rahimi failed to disclose the 'pole accident', which was not covered by insurance, and the entire bumper was repaired.
3. In its counterclaim, ICBC wants an order that Mr. Rahimi repay it the \$3,278.84. ICBC says the evidence indicates there was no damage to Mr. Rahimi's car after the October 3 accident, and that as the repairs fixed all damage and it is impossible now to discern what related to the second non-covered accident.
4. Mr. Rahimi is self-represented. ICBC is represented by Rory McMullan, an employee.

## **JURISDICTION AND PROCEDURE**

5. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act (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 any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
6. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Credibility of interested witnesses, particularly where there is conflict, cannot be determined

solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is in issue.

7. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
8. Under tribunal rule 126, in resolving this dispute the tribunal may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

## **ISSUES**

9. The issue in this dispute is whether Mr. Rahimi made an improper vehicle repair claim to ICBC, and if so, whether he must reimburse ICBC \$3,278.84.

## **EVIDENCE AND ANALYSIS**

10. In a civil claim such as this, the applicant bears the burden of proof on a balance of probabilities. Here, the applicant Mr. Rahimi wants an order that he does not have to repay \$3,278.84 and ICBC counterclaims for an order that Mr. Rahimi must repay it. While I have reviewed all of the evidence and submissions provided, I have only addressed it below as necessary to explain my decision.

11. It is undisputed that WH rear-ended Mr. Rahimi on October 3, 2015 (collision). Mr. Rahimi reported the collision to ICBC within a few days. ICBC found WH liable and approved Mr. Rahimi's repairs through its 'express' process, meaning ICBC did not require Mr. Rahimi to bring in his car for assessment.
12. Mr. Rahimi admits that before he took his car to get the ICBC-approved repairs done for the October 3, 2015 accident, he backed his car into a pole in late October 2015 (pole accident). Mr. Rahimi described the pole accident as "inserting a vertical dent" to his rear bumper. It is undisputed that ICBC was not obliged to provide insurance-covered repairs related to the pole accident.
13. In Mr. Rahimi's application for dispute resolution, he said that he did not contact ICBC after the pole accident to file another claim. Instead, he decided to ask the mechanic who was doing the repairs for the collision to attend to the damages related to the pole accident also. Mr. Rahimi says he chose a mechanic who was his brother's friend. Mr. Rahimi says the damaged areas were "obviously" different. As discussed further below, I disagree. I note that Mr. Rahimi also stated that if the bumper needed to be replaced due to the collision, then he would "get lucky" and the dent caused by the pole accident would be repaired (for free) at the same time.
14. Apart from his submissions, Mr. Rahimi's only evidence before me is an undated photo of his car's rear bumper. Given the apparent dent and mark where the paint is scratched off in the left rear bumper area (mark), and based on the other evidence before me, I find this photo was taken after the pole accident.
15. Mr. Rahimi dropped his car off at the mechanic's shop for repair on November 24, 2015. Mr. Rahimi submits that when he took his car to the mechanic, he was anticipating that the mechanic might charge him extra for the pole accident. Mr. Rahimi says the mechanic told him he would contact ICBC. Mr. Rahimi says a few days later, the mechanic told him ICBC had approved the repairs. Mr. Rahimi says he "did not ask for what, how, who ...". Mr. Rahimi says his car was repaired, without his being charged anything extra. He says he was happy and moved on. Mr. Rahimi submits that if the mechanic or ICBC had informed him of the cost related to

the pole accident, he would have submitted a second claim. Mr. Rahimi denies trying to defraud ICBC.

16. After ICBC paid for the repairs, it came to ICBC's attention that the repairs done may have been for damage unrelated to the collision. ICBC investigated. ICBC provided photos taken by WH, at the time of the October 3, 2015 accident. They do not show the mark. They also do not show any other apparent damage to Mr. Rahimi's rear bumper. The mechanic also took photos of the vehicle at the time of repair, and they show damage that is not present in the photos taken by WH at the time of the collision. I find these photos are most consistent with ICBC's position that there was no damage to Mr. Rahimi's rear bumper after the October 3, 2015 incident, and, that the mechanic repaired damage related to the pole accident.
17. ICBC says Mr. Rahimi has not proved that his car sustained any damage as a result of the collision. As noted above, I agree, based on WH's photos of Mr. Rahimi and his rear bumper, which ICBC obtained. While Mr. Rahimi describes specific bumper damage from the collision, I find this is not evident from WH's photos, which is the only and best evidence before me as to what Mr. Rahimi's rear bumper looked like after the collision and before the pole accident.
18. It is undisputed that Mr. Rahimi did not disclose the damage resulting from the pole accident at the time he had the car repaired. That failure was Mr. Rahimi's, and I note he signed the "Repair Sheet" when he picked up his repaired car, which declared that his vehicle was damaged in the collision and had been repaired satisfactorily. There is no mention of the pole accident on the Repair Sheet.
19. ICBC also says that Mr. Rahimi has given inconsistent statements about the history of damage to his car:
  - a. On January 20, 2016, Mr. Rahimi allegedly told an ICBC adjuster Ms. Z that his vehicle was not involved in any accidents or sustained any damage after the collision. Mr. Rahimi allegedly said that he would have reported it to ICBC. Mr. Rahimi also denied going over the damage with the mechanic. This is

- what is recorded in ICBC's contemporaneous telephone note. Mr. Rahimi admits in his reply submission that it was true when he spoke with ICBC's adjuster Ms. Z the first time that the pole accident was not discussed.
- b. On May 26, 2016, Mr. Rahimi spoke with a different ICBC adjuster about ICBC's request for payment of \$3,278.54. Mr. Rahimi allegedly said that an ICBC estimator/adjuster had attended at the mechanic and confirmed all areas of rear bumper's repair arose from the collision. Mr. Rahimi allegedly said that he thought the purpose of this visit by ICBC was to determine what damage arose from his claim, and Mr. Rahimi said he did not know how the rear left bumper was damaged and that he could not recall any subsequent incidents after the collision. ICBC says it is not aware of any ICBC estimate/adjuster attending the mechanic's shop to inspect Mr. Rahimi's car. Mr. Rahimi denies this conversation, but it is consistent with ICBC's contemporaneous telephone note.
  - c. On October 5, 2016, Mr. Rahimi spoke to ICBC's customer service manager and said that he had told the mechanic about the pole accident and had asked them to either fix it as a favour to him or to bill him separately. This is set out in ICBC's contemporaneous telephone note.
  - d. In Mr. Rahimi's application for dispute resolution, he acknowledged that he had the pole accident. ICBC says this was the first time it was officially notified of the pole accident.
20. I agree with ICBC. I find the weight of the evidence, including the contemporaneous business records noted by different ICBC employees, supports the conclusion that Mr. Rahimi did not disclose the pole accident when he ought to have done so. I find I do not need to go so far as to decide whether Mr. Rahimi intentionally defrauded ICBC. I find that he failed to disclose the pole accident and that the mechanic's repair bill in question related to repairs for the pole accident, not the collision. Further, as noted above, I find that there was no damage to Mr. Rahimi's car after the collision, and even if there had been damage (which at most would have been

minimal based on WH's photos), Mr. Rahimi's conduct unreasonably deprived ICBC of the ability to separate out the cost of any necessary collision repairs, which was the only thing ICBC would have had to pay for.

21. ICBC also provided a statement from the mechanic, which does not support Mr. Rahimi's version of events.
22. On balance, I find that the mechanic's repair charges were for damage related to the pole accident, and not for the collision. The amount and description of the repair charges is more consistent with the mechanic's photos that show damage after the pole accident, and inconsistent with WH's photos, which showed no damage, after the collision.
23. Under section 84 of the *Insurance (Vehicle) Act*, I find ICBC has a valid claim for repayment of the \$3,278.84, which was for the car's repairs and car rental charges while the repairs were done. Given my conclusions above, I find that ICBC is entitled to an order that Mr. Rahimi repay \$3,278.84. For the reasons above, I dismiss Mr. Rahimi's claims.
24. ICBC is entitled to pre-judgment interest on the \$3,278.84 under the *Court Order Interest Act* (COIA), from December 4, 2015.
25. In accordance with the Act and the tribunal's rules, as the successful party I find ICBC is entitled to reimbursement of the \$225 it paid in tribunal fees. There were no other dispute-related expenses claimed. As he was unsuccessful, Mr. Rahimi is not entitled to tribunal fees.

## **ORDERS**

26. Within 14 days of the date of this order, I order Mr. Rahimi to pay ICBC a total of \$3,591.79, broken down as follows:

- a. \$3,278.84 in debt,

- b. \$87.95 in pre-judgment interest under the COIA, and
- c. \$225 for tribunal fees.

27. ICBC is entitled to post-judgment interest, as applicable.

28. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.

29. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

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Shelley Lopez, Vice Chair