



# Civil Resolution Tribunal

Date Issued: December 10, 2018

File: SC-2017-005352

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *bual v. sky blue transport ltd.*, 2018 BCCRT 827

BETWEEN:

gurprit bual

**APPLICANT**

AND:

sky blue transport ltd.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kate Campbell

## INTRODUCTION

1. The applicant, gurprit bual, says the respondent, sky blue transport ltd., wrongfully cashed a cheque from the Insurance Corporation of British Columbia (ICBC) that should have gone to him. The applicant seeks \$2,500 for the amount of the cheque, plus interest and dispute-related expenses.

2. The respondent denies the applicant's claim, and says the applicant agreed to full liability for any accidents.
3. The applicant is self-represented. The respondent is represented by Ranjit Bhangoo, its principal.

## **JURISDICTION AND PROCEDURE**

4. 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.
5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. 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.
6. 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.

7. 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.

### ***Limitation Period***

8. There is a potential limitation issue in this dispute, as the applicant's motor vehicle accident (MVA) occurred in September 2013, and the Dispute Notice was not issued until September 29, 2017. However, I find the claim was filed within the applicable 2 year limitation period.
9. A limitation period is a specific time period within which a person may pursue a claim. If the time period expires, the right to bring the claim disappears. Section 6 of the *Limitation Act* says that the basic limitation period is two years. Section 8 of the *Limitation Act* says a claim is "discovered" on the first day that the person know or reasonably ought to have known that the loss had occurred, that it was caused or contributed to by an act or omission of the person against whom the claim may be made, and that a court or tribunal proceeding would be an appropriate means to seek to remedy the loss.
10. By April 2016, the respondent knew or reasonably ought to have known that ICBC was not going to issue the deductible cheque to him. The tribunal issued the Dispute Notice on September 29, 2017, which is within 2 years of April 2016. Accordingly, I find the claim is not barred under the *Limitation Act*.

### **ISSUES**

11. The issue in this dispute is whether the respondent must reimburse the applicant for the \$2,500 payment from ICBC.

## EVIDENCE AND ANALYSIS

12. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
13. The parties agree that the applicant was employed by the respondent. On September 12, 2013, he was involved in a MVA. ICBC documents show that the respondent was the registered owner of the truck the applicant was driving at the time of the accident. The applicant says he owned the truck, and this is confirmed by a May 16, 2013 owner-operator agreement (agreement) provided by the respondent. That agreement says, "The Truck and Trailer owned by the owner operator will be registered for insurance purpose in the company's name." The applicant is identified as the "owner operator", and the respondent is identified as "the company".
14. Items 16 and 17 of the agreement say the owner operator will be responsible for any financial obligations resulting from an accident, such as ICBC insurance deductibles.
15. On November 7, 2013, ICBC sent a letter to the applicant stating that he had been found 0% responsible for the claim, so the owner's (respondent's) insurance policy would cover the claim.
16. A December 16, 2013 invoice shows that the total cost of truck repairs was \$3,094.05. The applicant provided a credit card statement showing that he paid this bill using his own credit card on January 9, 2014.
17. The applicant also provided a June 17, 2016 email from ICBC, stating that a cheque for \$2,500 was issued to the respondent and cashed on April 27, 2016.
18. The applicant says that he paid all the expenses for the accident, as set out in the agreement, and as proven by the January 2014 credit card statement. He says the respondent was therefore not entitled to keep the \$2,500 refund of the deductible.

The applicant says ICBC eventually refunded the \$2,500 deductible because it was a no-fault accident, and because he fully paid for all truck repairs himself.

19. The respondent says that under the agreement, the applicant is fully responsible to pay for all accidents. The respondent did not provide a specific explanation about why it was entitled to the deductible refund, and did not provide any evidence that they had paid anything for the truck repairs or the deductible.
20. Because the respondent did not pay anything for the accident, including repairs or insurance deductibles, I find it was not entitled to keep the \$2,500 deductible refund. Keeping the refund would result in an unfair windfall to the respondent. Rather, I find the applicant has established that he is entitled to the refund, since he paid for the truck repairs. I therefore order the respondent to pay the applicant \$2,500.
21. I find the applicant is also entitled to interest on that amount, from April 28, 2016. While the applicant claims 1% interest, I find that amount does not apply, as the agreement between the parties did not specify any interest rate. Rather, I find the applicant is entitled to pre-judgment interest under the *Court Order Interest Act* (COIA). This equals \$42.77.
22. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. I find the applicant is entitled to reimbursement of \$125. The applicant also claimed \$85 for a corporate search. I find that amount is reasonable in the circumstances and order reimbursement of \$85 as a dispute-related expense.

## **ORDERS**

23. I order that within 30 days of the date of this order, the respondent pay the applicant a total of \$2,752.77, broken down as follows:
  - a. \$2,500 for the ICBC deductible refund,

- b. \$42.77 in pre-judgment interest under the COIA, and
- c. \$210 for tribunal fees and dispute-related expenses.

24. The applicant is entitled to post-judgment interest, as applicable.
25. 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.
26. 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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Kate Campbell, Tribunal Member