



Civil Resolution Tribunal

Date Issued: April 25, 2019

File: SC-2018-007441

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Jahromi v. Insurance Corporation of British Columbia et al*,
2019 BCCRT 499

B E T W E E N :

Mohammad Ebrahim Foroughi Jahromi

APPLICANT

A N D :

Insurance Corporation of British Columbia and South Seas Auto Body
Co. Ltd.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This is a dispute about the repair of damage to a vehicle. The applicant, Mohammad Ebrahim Foroughi Jahromi, says that his vehicle was damaged in a vandalism incident in August of 2017. He made a report to the respondent,

Insurance Corporation of British Columbia (ICBC) and took the vehicle to the respondent South Seas Auto Body Co. Ltd. (South Seas) for repair. However, the repair was not completed by South Seas and ICBC declined to cover the damage under the comprehensive portion of the applicant's policy.

2. The applicant seeks an order that the repairs be completed at the originally estimated cost of \$2,100, and claims \$2,000 in unspecified damages. ICBC says the evidence does not support a claim under the applicant's comprehensive coverage. South Seas did not provide a response and is in default.
3. The applicant is self-represented. ICBC is represented by an employee.

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 118 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. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
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 9.3(2), in resolving this dispute the tribunal may make one or more of the following orders:

- a. order a party to do or stop doing something;
- b. order a party to pay money;
- c. order any other terms or conditions the tribunal considers appropriate.

ISSUES

8. The issues in this dispute are:
 - a. whether the repairs to the applicant's vehicle should be completed at the originally estimated cost of \$2,100; and
 - b. whether the applicant is entitled to \$2,000 in unspecified damages.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, an applicant bears the burden of proof on a balance of probabilities. The applicant and ICBC have provided submissions in support of their respective positions, and the applicant provided evidence. While I have considered all of this information, I will refer to only that which is necessary to provide context to my decision.
10. The applicant noticed damage to his vehicle in August of 2017 that he believed was the result of an incident of vandalism. He reported the matter to ICBC and was provided with a list of direct repair facilities where he could have the damage assessed. The applicant chose to have his vehicle inspected and repaired at South Seas. The applicant took his vehicle to South Seas in November of 2017 for assessment.
11. For reasons that are not entirely clear, the repairs to the applicant's vehicle were not completed as he anticipated. South Seas submitted a damage repair estimate to ICBC, which the applicant says was approved by ICBC in January of 2018 but not acted upon by South Seas. The applicant states that in March of 2018, ICBC advised him that South Seas should re-submit the repair estimate. An ICBC

estimator reviewed the repair estimate and photographs of the damage and questioned whether the damage could be the result of vandalism. At ICBC's request, the applicant took his vehicle to be assessed by one of its estimators on April 26, 2018.

12. The ICBC estimator noted the presence of 3 horizontal and straight scrapes, and dents or creases that he felt was not consistent with vehicle to vehicle contact or vandalism. The estimator advised the applicant that the claim would not be approved as vandalism. ICBC offered to have the applicant make a claim under his collision coverage, but the applicant declined.
13. The applicant says that ICBC should pay to repair the damage to his vehicle under his comprehensive coverage, which would not have an impact on his insurance premiums. ICBC says that the damage to the applicant's vehicle is consistent with striking a stationary object as opposed to vandalism, and should be covered by a claim to the applicant's collision coverage, which would impact his premiums.
14. The applicant's position is that ICBC agreed to pay his claim for vandalism under the comprehensive policy. A January 17, 2018 estimate document produced by South Seas shows an estimated \$2,102.86 in repair costs, before taking into account the applicant's \$300 deductible. There is no indication on this document or elsewhere that the estimate was accepted by ICBC or that ICBC agreed to repair the damage to the applicant's vehicle as vandalism under his comprehensive policy. I find that the evidence before me does not support the existence of a specific agreement to pay as described by the applicant.
15. The applicant quoted the definition of "comprehensive coverage" from the *Insurance (Vehicle) Regulation* as "coverage for loss or damage other than loss or damage to which collision coverage applies and includes coverage for loss or damage caused by missiles, falling or flying objects, lightning, fire, theft or attempted theft, earthquake, windstorm, hail, rising water, malicious mischief, riot or civil commotion or the stranding, sinking, burning, derailment, upset or collision of a conveyance in

or on which a vehicle is being transported on land or water, vandalism and impact with a domestic or wild animal, either living or dead”.

16. The applicant also quoted a dictionary definition of “comprehensive” in the context of motor vehicle insurance as “providing complete protection”. The applicant submits that ambiguity in the insurance contract should be resolved in favour of the insured, coverage provisions should be construed broadly, and exclusion clauses should be construed narrowly against the insurer. The applicant did not identify a particular concern about ambiguity in his contract with ICBC.
17. I acknowledge the dictionary definition cited by the applicant, but find that the applicable definition of “comprehensive” in this context is that adopted by the legislature. Therefore, in order for the applicant to be successful, he must meet the evidentiary burden of establishing that the damage to his vehicle resulted from one of the perils contemplated by his comprehensive coverage rather than a collision.
18. There is no dispute that there is damage present on the applicant’s vehicle. The opinion of the ICBC estimator is that this damage is not consistent with vandalism. Although the applicant questioned the expertise and competence of ICBC’s employees, he has not provided a competing opinion from an automotive or insurance professional in support of the view that the damage to his vehicle was caused by vandalism. I find the ICBC estimator’s opinion to be persuasive in these circumstances.
19. I find that the applicant has not established on a balance of probabilities that the damage to his vehicle was caused by vandalism such that the damages should be covered by the comprehensive portion of his insurance policy with ICBC at the rate estimated by South Seas or otherwise. I also find that the applicant has not established his claim for \$2,000 in unspecified damages. Ordinarily, South Seas would be held liable because liability usually is assumed when a party is in default. However, given the facts and my findings, I dismiss the applicant’s claim against both respondents.

20. 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. As the applicant was not successful, I dismiss his claim for reimbursement of dispute-related expenses.

ORDER

21. I dismiss the applicant's claims and this dispute.

Lynn Scrivener, Tribunal Member