Civil Resolution Tribunal

Date Issued: November 26, 2019

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Goodrich v. Fell et al*, 2019 BCCRT 1326

BETWEEN:

ROBERT GOODRICH

APPLICANT

AND:

AARON FELL, BREAKWATER MARINE LTD. and CORNERSTONE UNITED LTD.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member: Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about marine insurance policies.

2. The applicant, Robert Goodrich, says he purchased a marine insurance policy and a "guaranteed price refund" policy (GPR) from the respondent, CornerStone United

Ltd. (CornerStone), through its dealer, the respondent, Breakwater Marine Ltd. (Breakwater). The respondent, Aaron Fell, is a director of Breakwater. The applicant says he is entitled to a refund for the policies because of the GPR and that he made no claims during the policies' term. The applicant says he requested the refund and the respondents refuse to pay him. He seeks $2,500, the cost of the two policies. CornerStone, the insurance policies' administrator, says the policies were never registered with it and that the applicant's claim is properly against Breakwater.

3. Mr. Fell did not file a Dispute Response as required. However, I note he is the representative of Breakwater, which filed only a very brief Dispute Response but no submissions or evidence, despite being given the opportunity to do so.

4. The applicant is self-represented. CornerStone is represented by an employee or principal.

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 118 of the *Civil Resolution Tribunal Act* (CRTA). 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. 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 British Columbia Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is an 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 9.3(2), in resolving this dispute the tribunal may make one or more of the following orders, where permitted by section 118 of the CRTA:

    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.

ISSUE

9. The issue in this dispute is whether the applicant is entitled to a $2,500 refund for unused insurance policies, and if so, from which party.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant bears the burden of proof on a balance of probabilities. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.

11. At the outset, I note that Mr. Fell is in default for failing to file a Dispute Response as required. However, given his representative role for Breakwater, which did file a Dispute Response, in the circumstances discussed below I find nothing turns on Mr. Fell's default status.

12. Although Breakwater filed a Dispute Response, as noted above, neither Breakwater nor Mr. Fell provided any submissions or evidence, despite being given the opportunity to do so. While parties are under no obligation to provide evidence or

submissions during the tribunal decision process, failing to do so can lead to the tribunal making an adverse inference.

13. It is undisputed that on March 27, 2012, the applicant purchased a new boat and engine from Breakwater, as well as a "protection plan", which I find is the two insurance policies at issue in this dispute. The applicant says that while making the purchase, Mr. Fell verbally told him that the insurance would extend the manufacturer's 2-year warranty to a 7-year warranty. The applicant further says Mr. Fell advised him that if no claims were made on the policy during those 7 years, the total amount paid for "the policy" would be refunded to the applicant. The applicant paid a total of $2,500, including $2,000 for a "Marine Engine & Personal Watercraft Mechanical Breakdown Insurance Policy" (service plan) and $500 for the GPR. It is unclear whether Mr. Fell told the applicant he would be entitled to a refund of one or both policies. Both policies state they are administered by CornerStone.

14. The applicant says he was not immediately provided a copy of the insurance policies, so he kept following up with Mr. Fell and Breakwater. At some point around June 2013, he received CornerStone's policies in the mail. Both policies noted a March 27, 2012 purchase date and on April 26, 2012 were signed by a representative of Breakwater. The line requiring the policy holder's signature (that is, the applicant's signature), was marked "on file" on both policies. There was no requirement on either policy for a signature from CornerStone.

15. It is undisputed that some time in early 2019, the applicant requested a refund of the policies' purchase prices from CornerStone, as he had not filed a claim during the term of his insurance and because he had bought the GPR. At that time, CornerStone says it realized it had no policy for the applicant or his engine's serial number, and was never paid by Breakwater for the applicant's policies. It says the applicant's claim is against Breakwater, not it, and references a "Dealer Sales / Service Agreement" (dealer agreement) between Breakwater and CornerStone signed in January 2009. The dealer agreement authorized Breakwater as a dealer

of CornerStone's insurance policies, and says that CornerStone agreed to be bound by representations made by Breakwater, subject to a claim for indemnification.

16. The GPR policy states that based on payment for the GPR and on statements and selections made by the applicant (as policyholder) and the issuing dealer (Breakwater), the applicant is eligible for benefits under the policy.

17. The GPR's payout terms state that, if no claim or any other benefit is made during the term of the service plan, the policy holder may request a refund of the "total retail cost" of the service plan, up to the maximum level of coverage noted in the GPR policy, including applicable taxes, but **not including** the GPR price (my emphasis added). As noted above, the "total retail cost" is the cost of the service plan only, and included $2,000 for the service plan plus $240 tax. The cost of the separate GPR policy was $500 plus tax.

18. The service plan's maximum "level of coverage" noted in the GPR is $2,000. Although the service plan's "total retail premium" is $2,240 ($2,000 plus $240 in tax), I find the applicant was only entitled to request a return of the $2,000 paid for the service plan, because this was the maximum level of coverage stated in the GPR.

19. According to the GPR policy, to obtain a refund, the service plan must have a minimum term of 5 years, the policy holder must personally request a refund within 45 days of the term's expiration, and proof of ownership is required. The weight of the evidence shows that the applicant met these criteria. Although CornerStone suggested the applicant failed to prove he still owns the boat and engine, the applicant provided submissions that he does. I accept the applicant's submission on this point because he owned it at the time the policies were purchased and it would be difficult to prove ongoing ownership.

20. As noted above, Mr. Fell is in default and Breakwater chose not to provide evidence or submissions. Given their lack of participation, the tribunal may draw an adverse inference. I find an adverse inference is appropriate in this case. In other words,

there is no evidence to dispute the applicant's account of what representations were made to him when he purchased the CornerStone policies. As a result, I find that the applicant purchased the policies based on the representations by Mr. Fell and Breakwater that he would be entitled to a refund of the $2,000 service plan insurance policy after 7 claim-free years.

21. CornerStone says that because Breakwater never properly paid CornerStone for the applicant's policies, that it is not obligated to refund the applicant's money. I disagree. Although the dealer agreement set out the various obligations between CornerStone and Breakwater, I am satisfied that Breakwater's breach of its contract with CornerStone is a separate issue. In this case, the applicant relied on Breakwater's representations and I find the applicant held up his end of the contract.

22. Further, I find Breakwater was acting as CornerStone's agent, as evidenced by the dealer agreement, and therefore CornerStone is bound by Breakwater's representations. The law of agency says that when an agent (Breakwater) acts with actual (or presumed) authority on behalf of a disclosed principal (CornerStone), the principal can sue or be sued on the contract.

23. A third party (in this case, the applicant) can then elect to sue only the agent or the principal, or both, which the applicant has done in this case.

24. Given my conclusions above, I find the applicant is entitled to a refund of $2,000, the maximum level of coverage refundable under the GPR policy. As further set out in the GPR policy, I find the applicant is not entitled to reimbursement of the GPR's purchase price. I find the applicant is entitled to pre-judgment interest on the $2,000 under the *Court Order Interest Act* (COIA), from March 27, 2019, 7 years after the policy purchase date. This totals $26.18.

25. I find CornerStone, as the policy's administrator, and Breakwater, as CornerStone's authorized dealer, are joint and severally responsible for the applicant's claim.

Therefore, the applicant can collect this money from either Breakwater or CornerStone.

26. As noted above, the dealer agreement contains terms requiring Breakwater to indemnify CornerStone for representations Breakwater makes to its customers. As CornerStone has not filed a third party claim against Breakwater for indemnification, I will not address that issue here. Nothing in this decision prevents CornerStone from pursuing a claim for indemnification against Breakwater for alleged breaches of the dealer agreement.

27. Although Mr. Fell did not provide a Dispute Response or otherwise participate in this dispute apart from filing a very brief Dispute Response as representative of Breakwater, I dismiss the applicant's claims against him. While technically he is in default, I find there is no evidence before me to support claims against him personally, as the evidence indicates the contracts were either between the applicant and Breakwater, or the applicant and CornerStone, both limited companies. I dismiss the claims against Mr. Fell personally.

28. Under section 49 of the CRTA, and the tribunal rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. I see no reason to deviate from that general rule. As the applicant was successful, I find that he is entitled to reimbursement of the $125 he paid in tribunal fees. The applicant did not claim any dispute-related expenses.

ORDERS

29. Within 30 days of the date of this decision, I order the respondents, Breakwater and CornerStone, to pay the applicant a total of $2,151.18, broken down as follows:

    a. $2,000 for an insurance policy refund,

    b. $26.18 in pre-judgment interest under the COIA, and

    c. $125 in tribunal fees.

30. The applicant is also entitled to post-judgment interest, as applicable.

31. The applicant's claims against Mr. Fell personally are dismissed.

32. Under section 48 of the CRTA, 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.

33. Under section 58.1 of the CRTA, 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.

Andrea Ritchie, Vice Chair