



# Civil Resolution Tribunal

Date Issued: December 12, 2019

File: SC-2019-005667

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Campardo v. ICBC*, 2019 BCCRT 1398

**B E T W E E N :**

DAVY CAMPARDO

**APPLICANT**

**A N D :**

ICBC

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Eric Regehr

## INTRODUCTION

1. This is a dispute about insurance coverage. The applicant, Davy Campardo, owns a 1967 Camaro, which was insured by the respondent, ICBC. A carburetor stud fell into the motor, causing significant damage to the engine. The applicant claims that the damage is covered by his Autoplan Optional Policy (policy). He claims \$5,000

for the cost to repair or replace the engine and the cost of a mechanical assessment of the motor.

2. ICBC says that the damage is excluded under the policy. ICBC asks that I dismiss the applicant's claims.
3. The applicant is self-represented. ICBC is represented by an employee, Natasha Taylor.

## **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* (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.
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, where permitted under 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**

- 8. The issue in this dispute is whether the damage to the applicant's engine is covered by the policy.

## **EVIDENCE AND ANALYSIS**

- 9. In a civil claim such as this, the applicant must prove his case on a balance of probabilities. I have read all the parties' evidence and submissions but I will only refer to what is necessary to explain and give context to my decision.
- 10. The facts about how the Camaro's engine was damaged are not in dispute. The applicant was driving home from a car show on June 16, 2019, when his engine started to malfunction. He was close to home, so he shut the Camaro off and coasted into his driveway. He opened the hood and saw that a stud was missing from the air cleaner. He believed that the stud must have fallen into the engine's combustion chamber, damaging the engine.
- 11. The applicant says that he called ICBC. He says that a claims representative told him that the damage might be covered if it was the result of a fallen stud and not wear and tear. The claims representative said that the applicant would need to get the engine assessed, which the applicant did.
- 12. The applicant arranged for an ICBC-accredited mobile technician to come to his house and inspect the engine, at a cost of \$504. The technician determined that a carburetor stud from the engine's air cleaner assembly fell into the motor, damaging 3 cylinders. The technician found fragments of the stud. The technician recommended the engine be torn down for further inspection. ICBC does not dispute this explanation of what happened to the engine, so I accept this evidence.

13. The applicant made a claim to ICBC. ICBC denied the claim. While it appears that ICBC's reason for denying the claim may have changed over time, in this dispute it relies only on a portion of section 5.9 of the policy. The relevant part of section 5.9 says:

[ICBC] is not liable to indemnify any person for loss or damage consisting of, or caused by, mechanical fracture, failure or breakdown of any part of a motor vehicle.

14. There are other exclusions and exceptions to the exclusions in section 5.9 of the policy, but none apply to this dispute.
15. Although the general burden of proof is on the applicant to prove his claims, in cases where an insurer alleges that a loss is captured by an exclusion, the insurer must prove that the exclusion applies. Also, there is a general legal principle that in insurance contracts, coverage should be interpreted broadly and exclusions should be interpreted narrowly: see *Derksen v. 539938 Ontario Ltd.*, 2001 SCC 72, at paragraph 46.
16. The applicant argues that the exclusion does not apply because the thing that caused the engine damage – the fallen stud – was not a mechanical fracture, failure or breakdown. He says that the threads on the stud were in good shape and there was no break in the stud itself. Rather, it appears to have simply become unthreaded, for unknown reasons. He says that this spontaneous unthreading is not a mechanical fracture, failure or breakdown.
17. ICBC says that it does not rely on the part of section 5.9 that excludes damages “caused by” mechanical fracture, failure or breakdown. ICBC does not argue that the stud falling into the motor was a mechanical fracture, failure or breakdown. Rather, ICBC relies on the part of section 5.9 that excludes damage “consisting of” mechanical fracture, failure or breakdown.

18. ICBC argues that under this part of section 5.9, it does not matter what caused the damage. Rather, ICBC says it is the nature of the damage that brings the applicant's claim within the exclusion. ICBC relies on 2 cases that considered identical provisions to section 5.9.
19. In *Pfleger v. ICBC*, 2006 BCSC 1326, water in the claimant's fuel tank caused the engine to fail. ICBC said that coverage was excluded because the loss consisted of a mechanical fracture, failure or breakdown. The Court concluded that the words "caused by" and "consisting of" in section 5.9 mean different things, and that they represent separate ways that the exclusion can apply. The Court found that the words "consisting of" mean that if the damage itself is a mechanical fracture, failure or breakdown, it will be excluded.
20. The Court of Appeal came to the same conclusion in *Dawson Truck Repairs Ltd. v. Insurance Corporation of British Columbia*, 2008 BCCA 209. In that case, the Court said that "insofar as the focus is on whether the loss or damage consisted of mechanical fracture, failure or breakdown, causation is not relevant. The focus is on the nature of the damage".
21. I agree with ICBC about the applicable law. The applicant focused his submissions on whether the damage was *caused by* mechanical fracture, failure or breakdown. He did not address whether the damage *consisted of* a mechanical fracture, failure or breakdown, even though ICBC relied on this part of the exclusion in its Dispute Response and submissions.
22. So, does the damage to the engine consist of mechanical fracture, failure or breakdown? I find that the Camaro's engine is clearly a mechanical part of the Camaro. I also find on the evidence that the engine is broken down, based on the technician's assessment. I therefore find that the applicant's claim for the damage to the engine falls within the meaning of a "mechanical breakdown" and is therefore excluded from coverage.
23. For the above reasons, I dismiss the applicant's claims.

24. Under section 49 of the CRTA, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. The applicant has not been successful so I dismiss his claim for reimbursement of tribunal fees and dispute-related expenses. The respondent did not claim any dispute-related expenses.

## **ORDER**

25. I dismiss the applicant's claims, and this dispute.

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Eric Regehr, Tribunal Member