



Civil Resolution Tribunal

Date Issued: January 27, 2020

File: SC-2019-007453

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Bull v. ICBC*, 2020 BCCRT 101

B E T W E E N :

MICHAEL BULL

APPLICANT

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This dispute is about insurance coverage for windshield damage. The applicant, Michael Bull, says that the respondent, Insurance Corporation of British Columbia

(ICBC), breached their agreement when it denied coverage for a windshield replacement on his motorhome. The applicant seeks an order that ICBC pay him \$2,200 for the new windshield. ICBC denies that it owes the applicant any money.

2. The applicant is self-represented. The respondent is represented by an employee.

JURISDICTION AND PROCEDURE

3. 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.
4. 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.
5. 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.
6. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

ISSUES

7. The issues in this dispute are:

- a. whether ICBC breached its agreement with the applicant, and
- b. whether the applicant is entitled to \$2,200 in damages.

EVIDENCE AND ANALYSIS

8. In a civil dispute like this one, an applicant bears the burden of proof on a balance of probabilities. The parties provided evidence and submissions in support of their respective positions. While I have considered all of this information, I will refer to only what is necessary to provide context to my decision.
9. The applicant owned a motorhome that was insured under an ICBC policy. The applicant says that this policy expired on June 18, 2019, and contained optional comprehensive coverage with a \$200 deductible. Comprehensive coverage provides coverage for loss or damage in situations where collision coverage does not apply.
10. The applicant says that the windshield was damaged in September of 2018 and the problem worsened in October of 2018. The applicant says he submitted a claim to ICBC, but had difficulty finding a suitable vendor to provide him with a new windshield. Once he located a vendor, the new windshield could not be installed right away as it had to be shipped from another jurisdiction.
11. In the spring of 2019, the applicant decided to sell his motorhome. According to the applicant, he sold the motorhome and the sale was “conditional” upon the windshield being replaced when it arrived. The applicant says he took the buyer to the vendor, gave the buyer the \$200 deductible in cash, and gave the buyer’s contact information to the vendor, with the intention that the vendor would telephone the buyer to arrange for installation once the windshield arrived.
12. The applicant transferred the ownership of the motorhome at some point before the windshield was replaced. He did not cancel the insurance policy which, as noted, was in force until June of 2019. ICBC declined to provide coverage for the new windshield due to the transfer of ownership.

13. The applicant submits that ICBC is bound to cover the loss as it occurred during the coverage period and ICBC agreed to provide an indemnity for it, subject to the deductible. He says that ICBC has relied on “in house” rules and directives known only to its employees to deny coverage. The applicant’s position is that ICBC breached its agreement with him and acted in bad faith by modifying its agreement without notice to him as the policyholder. According to the applicant, he only seeks the indemnity he contracted for.
14. ICBC says that claims may only be made by the insured named in the policy in effect at the time of the loss and that claims are not transferrable. According to ICBC, vehicles sold privately or through an auction house must have all claims initiated and work completed prior to the sale. The only exception is where the purchaser is a member of the same household, and then the work must be completed within 7 days. ICBC states that no estimate or appraisal is honoured once a vehicle’s ownership is transferred, and a new owner cannot present a claim on behalf of a previous owner.
15. The applicant submitted that ICBC’s actions are contrary to the *Insurance Act*. However, according to section 2(2)(b), the *Insurance Act* does not apply to vehicle insurance under the *Insurance (Vehicle) Act*.
16. There is no dispute that the applicant had an insurance policy on the motorhome while he owned it. According to section 61(5) of the *Insurance (Vehicle) Act*, the coverage under the optional insurance contract terminates if the coverage provided by the certificate or policy terminates. Section 1(1) states that coverage “means the right conferred on a person by this Act, the plan or an optional insurance contract to be indemnified against liability for, or compensated for, death, bodily injury, loss or damages”.
17. According to section 5.1(a) of the standard policy terms, “insured” means the person named as an owner in an owner’s certificate. Section 5.4(b) provides that ICBC must indemnify an insured, to the extent of the insured’s insurable interest, in respect of direct and accidental loss or damage to the vehicle described in the

owner's certificate that is caused by one of the perils for which the own damage coverage is provided.

18. The Supreme Court of Canada considered the definition of "insurable interest" in *Kosmopoulos v. Constitution Insurance Co.*, 1987 CanLII 75 (SCC). At paragraph 42, the court stated that "if an insured can demonstrate ... 'some relation to, or concern in the subject of the insurance, which relation or concern by the happening of the perils insured against may be so affected as to produce a damage, detriment or prejudice to the person insuring', that insured should be held to have a sufficient interest".
19. Although the applicant did not cancel his insurance policy at the time of the sale, I find that the applicant no longer met the definition of insured after he sold the motorhome as he was no longer the person named in the owner's certificate. Further, I find that the applicant no longer had "some relation to, or concern in" the motorhome after it was transferred to the new owner, and therefore he no longer had an insurable interest in it. Whatever ICBC's internal policies may be around repairs after ownership changes, I find that the applicant has not established that, under the terms of his policy, his insurable interest in the motorhome continued after he transferred the ownership to the buyer.
20. Given the circumstances, I have also considered whether the applicant could be found to have assigned his interest in the windshield claim through the "conditional" sale arrangement. In *Burns v. ICBC*, 2013 BCPC 0236, the court found that a transfer of ownership was not a clear and unambiguous assignment of the right to receive the payout from the claim. The evidence before me does not establish here that there was a specific assignment of rights, in writing or otherwise, in this regard. I find that the applicant did not assign his interest in the windshield claim to the new owner.
21. I find that ICBC did not breach its contract of insurance with the applicant when it declined to provide coverage for the windshield. I also find that the applicant is not entitled to \$2,200 in damages, and dismiss his claim.

22. 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. As the applicant was not successful, I dismiss his claim for reimbursement of tribunal fees.

ORDER

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

Lynn Scrivener, Tribunal Member