



Civil Resolution Tribunal

Date Issued: March 3, 2020

File: SC-2019-007326

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Rondpre v. ICBC*, 2020 BCCRT 246

B E T W E E N :

ALAN RONDPRE

APPLICANT

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This is a summary decision of the Civil Resolution Tribunal (tribunal) about a jurisdiction issue relating to this small claims dispute. Only evidence and submissions relevant to the jurisdiction issue are referenced below.

2. In October 2017, the applicant Alan Rondpre says his truck canopy was smashed in a vandalism incident. The applicant says the glass for the canopy is no longer available. The applicant says that his insurance covers a sealed truck canopy and seeks an order that the respondent insurer Insurance Corporation of British Columbia (ICBC) pay \$3,918.88 for a replacement canopy.
3. While the applicant describes an “all glass” canopy at one point, his detailed claim is for a replacement truck canopy that seals to become watertight. The applicant says ICBC should pay for a whole replacement. The applicant reasons that because the glass insert for his existing truck canopy is no longer available, he cannot repair it to keep his equipment clean and dry.
4. The vandalism incident occurred on October 18, 2017. The tribunal issued the Dispute Notice on September 11, 2019.
5. In its Dispute Response, ICBC says this is a “coverage dispute” and therefore outside the tribunal’s jurisdiction, given sections 176 and 177 of the *Insurance (Vehicle) Regulation (Regulation)*. ICBC also says that its contractual obligation is limited to the manufacturer’s last listed price for the glass only, less the deductible. ICBC says the applicant also failed to prove the last list price of the glass.
6. ICBC made extensive submissions about jurisdiction, and the applicant had an ample opportunity to address them in reply.
7. The applicant is self-represented. The respondent is represented by ICBC employee NT.

ISSUE

8. The issue is whether or not the applicant’s claim for vehicle damage is within the tribunal’s jurisdiction.

JURISDICTION AND PROCEDURE

9. 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.
10. 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.
11. ICBC initially submitted that the tribunal does not have jurisdiction over this dispute. However, ICBC then informed the applicant and case manager that the dispute should remain before the tribunal. However, I find that jurisdiction must be determined by the tribunal, not by the parties.

ANALYSIS

12. Section 176 (2) of the *Regulation* defines a 'coverage dispute' as one between an owner and an insurer about the nature or extent of required repairs or the amount payable for damage to a vehicle.
13. Unless "resolved voluntarily by the parties", a coverage dispute must be resolved by arbitration under section 177, within 2 years of the occurrence. While the applicant may believe he ought to have the ability to pursue this matter before the tribunal, I find that the Regulation imposes a mandatory forum to resolve coverage disputes. The tribunal is not included in that mandatory process. On this point I follow the Court's reasoning in *Avjazi v. ICBC*, 2006 BCPC 0087 at paragraph 10. I find that "resolved voluntarily by the parties" is not consistent with the parties failing to reach

their own resolution and then asking the tribunal to provide a final decision regarding a coverage dispute.

14. The next question is whether this claim is a coverage dispute.
15. I find that a permanently attached canopy is part of the vehicle for purposes of section 176(2).
16. The applicant says that ICBC must pay him to repair the entire canopy, whereas ICBC says it must pay only for the broken glass. For the reasons given below, I find that this dispute is about the nature and extent of required repairs and is a “coverage dispute” as described in section 176.
17. In *476605 v. Insurance Corporation of British Columbia (ICBC)*, 2011 BCCA 181, affirming the British Columbia Supreme Court decision in 2010 BCSC 1149, the Court of Appeal held that courts lack jurisdiction to hear coverage disputes under the *Regulation*, referring to previous language like what now appears in section 176 and 177.
18. In *476605*, ICBC and the plaintiff disagreed about the appraised actual cash value of a truck tractor “and its accessories” that were written off after a single vehicle accident. The plaintiff submitted that because ICBC had not given it credit for a new engine, ICBC had in effect denied liability about that claim and therefore the dispute was a liability claim, not a coverage dispute. The Court disagreed, concluding that the dispute was over a single claim, with the value of different components contributing to the figure representing the total loss. I find that reasoning applicable to the glass versus whole canopy disagreement in this dispute.
19. The applicant also submits that the deductible for his claim ought to be \$200 rather than \$300, referring to the policy language for a front windshield deductible. I find the deductible issue is part of the whole claim about the amount payable for vehicle damage. Therefore, I find my decision regarding jurisdiction applies equally to it.

20. In *Robinson v. ICBC*, 1999 CanLII 6152 (BCSC), the plaintiff said his vehicle had been stolen. ICBC took the position that the plaintiff had made a willfully false statement that the vehicle was stolen. ICBC denied coverage based on fraud. Because liability for the claim was in issue, the Court held that the section 176 precursor did not apply to preclude the court determining the claim. As I read *Robinson*, a claim for liability involving a fraud allegation falls outside a “coverage dispute” as defined in section 176.
21. Here, ICBC did not submit that the glass damage was caused other than by vandalism. In a document uploaded as evidence titled Evidence Discussion, ICBC suggested that the applicant provided false information about the year, make and model of the subject canopy. ICBC wrote that section 75 of the *Insurance (Vehicle) Act* would render the applicant’s claim invalid due to this allegedly false information.
22. However, neither ICBC’s formal submissions nor its Dispute Response made any reference to the section 75 *Insurance (Vehicle) Act* allegation that the applicant falsified information. The defenses raised by ICBC were framed as jurisdiction under section 176 and 177 of the Regulation, that the policy only requires ICBC to pay the last manufacturer’s listed price for the glass, and that the applicant had failed to provide the make and model of his canopy making it impossible for ICBC to pay the applicant for the glass.
23. I find that ICBC did not raise the issue of falsified information here in pleadings or submissions in a way that fairly permitted the applicant to respond. As well, none of their correspondence with the applicant filed in evidence raised this issue, nor did the evidence show that ICBC denied coverage based on section 75. I find this dispute is not a bad faith or fraud claim that would take it outside section 176 and 177. This makes it different from claims such as that considered in *Heran v. ICBC*, 2018 BCSC 344 at paragraphs 23 to 26.
24. Further on this point, ICBC noted that it now has “correct canopy information” enabling it to obtain quotes for a last list price of the glass. ICBC wrote that it would “use the average last known price of the glass...one hour labour cost, GST/PST,

less the \$300 deductible.” As such, the remaining dispute appears to be over the amount to be paid for the damage, which falls squarely within section 176.

25. I find that ICBC’s correspondence with the applicant says that ICBC will pay the last list price of the glass. For these reasons, I distinguish *Robinson* from this dispute on the basis that there is no allegation of fraud or denial of liability here.
26. I follow the analysis in *476605* and find that this dispute between an insurer and owner about the amount payable for damage must be resolved by arbitration, given sections 176 and 177 of the Regulation.
27. I also previously decided that a claim for vehicle damage is outside the tribunal’s jurisdiction: *Hossain v. Prystay*, 2018 BCCRT 207 at paragraph 24. I remain of that view.
28. While I understand that the applicant may now find himself out of time to request arbitration under section 177, *476605* is binding upon me, so I find that the tribunal does not have jurisdiction over this dispute.

ORDER

29. I refuse to resolve this dispute, under section 10(1) of the CRTA.

Julie K. Gibson, Tribunal Member