



Civil Resolution Tribunal

Date Issued: June 9, 2020

File: SC-2020-000729

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Chen v. ICBC*, 2020 BCCRT 636

BETWEEN:

WALTER CHEN

APPLICANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA and JOHN
DOE

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Rama Sood

INTRODUCTION

1. This small claims dispute is about insurance coverage for vehicle damage. The applicant, Walter Chen, says the respondent insurer, Insurance Corporation of British Columbia (ICBC), unfairly conducted its investigation and wrongly accused

him of filing a false insurance claim for a hit and run. Mr. Chen seeks \$5,000 from ICBC for the cost of repairs to his vehicle.

2. Although Mr. Chen did not identify John Doe's role in this dispute, I infer this respondent was included to represent the unidentified owner of the vehicle that the applicant says struck his vehicle.
3. ICBC says their estimator's evidence shows the damage was the result of a single-vehicle collision. Also, ICBC says it concluded Mr. Chen provided a willfully false statement to ICBC. ICBC says by doing so Mr. Chen breached his insurance coverage, as set out in section 75(1)(c) of the *Insurance (Vehicle) Act* (IVA).
4. Mr. Chen is self-represented. ICBC is represented by an employee.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT 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 CRT 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.
7. The CRT 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 CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

8. 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

9. The issues in this dispute are:
 - a. whether ICBC reasonably assessed how Mr. Chen's vehicle was damaged, and
 - b. whether Mr. Chen's vehicle was damaged in a hit and run.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, Mr. Chen must prove his claim, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.
11. Mr. Chen says the passenger side of his vehicle was damaged in a hit and run collision on September 22, 2019 while it was parked on the wrong side of the street near his home. I infer this means that his vehicle was facing oncoming traffic with the driver's side against the curb.
12. Mr. Chen reported the damage to ICBC the same day under section 24 of the *Insurance (Vehicle) Act* (IVA). Section 24 of the IVA describes remedies available for hit and run accidents. By definition, a "hit and run" involves a second vehicle. Mr. Chen's vehicle was examined by at least 4 ICBC employees. ICBC relied on its estimators' notes and made the following conclusions:
 - a. The rear side and front damages were not consistent with vehicle impact.
 - b. The rear side damages indicated the impact direction was rear to front starting from the rear bumper cover and ending at the centre of the front door.

- c. The flat gray paint that was transferred on the damaged areas and did not appear to be automotive grade.
 - d. Based on gray paint on the right rear wheel circumference, the vehicle was in motion when it was damaged.
13. ICBC then determined the most likely cause of damage was not vehicle to vehicle impact but instead that Mr. Chen struck a stationary object. Therefore, ICBC denied Mr. Chen's claim for compensation. Mr. Chen says ICBC's estimators made inconsistent statements in their assessment and did not take into account the weather, location of impact, or the cause of the damage.

Did ICBC reasonably assess how Mr. Chen's vehicle was damaged?

14. To succeed against ICBC, the applicant must prove on a balance of probabilities that ICBC breached its statutory obligations or its contract of insurance, or both. The issue against ICBC is whether ICBC acted "properly or reasonably" in administratively assessing how the applicant's vehicle was damaged (see: *Singh v. McHatten*, 2012 BCCA 286). Given the evidence and submissions before me, I find ICBC failed to reasonably assess the cause of vehicle damage. My reasons follow.
15. I agree with Mr. Chen that some of the observations made by ICBC's estimators are inconsistent. Specifically, ICBC's estimators gave opposing views about the direction of the damage. RJ, an estimator, stated the rear side damage indicated the damage direction was from the rear bumper to the front passenger door. However, another estimator, SL, stated the damage was from the front to the back which was typical of a vehicle rubbing against a post or a wall. In his note to file, SL stated the damage was from a single vehicle accident but then later in the same note, he stated he could not tell if the damage was from vehicle to vehicle or from something else. SL did not explain why he changed his opinion.
16. Was ICBC's assessment reasonable despite these inconsistencies? I find it was not. Based on its reasons, ICBC preferred the assessments of other estimators over that of SL's assessment. However, ICBC did not explain why it disregarded SL's

assessment. Since ICBC's decision, in part, was based on the direction of the damage, I find ICBC was required to explain how it resolved the inconsistencies in its estimators' assessments. Since it did not do so, I find ICBC's assessment was not reasonable.

Was Mr. Chen's vehicle damaged in a hit and run?

17. My decision above does not mean Mr. Chen automatically qualifies for hit and run coverage under section 24 of the IVA. Mr. Chen must still prove on a balance of probabilities that his vehicle was damaged by another vehicle. Based on the evidence before me, I find Mr. Chen has failed to meet this burden. My reasons are as follows.
18. Mr. Chen says the damage to his vehicle was at the height of typical vehicle bumpers. He says it could have been caused by another vehicle's bumper scraping along his vehicle. He also says there is no evidence of another stationary object being at the proper height to cause the damage. Finally, he says even if the paint transferred to his vehicle was non-automotive, in general there are several areas on vehicles that have non-automotive paint.
19. In this case, I find the issues raised by Mr. Chen are subjects outside ordinary knowledge that requires expert evidence (see *Burbank v. R.T.B.*, 2007 BCCA 215). I find expert evidence is needed as it is not readily apparent how Mr. Chen's vehicle was damaged, what types of paint are typically used on vehicles, or whether the paint transferred to Mr. Chen's vehicle was automotive.
20. Mr. Chen says a person at an autobody shop who examined his vehicle on September 23, 2019 stated it was likely the paint transferred from another vehicle to his. Mr. Chen also says he spoke to an "ASE-certified mechanic" located in Florida who told him that while some damage to his vehicle was unrelated, he should continue with the rest of his claim. I give no weight to either of these statements since Mr. Chen did not provide written statements from either person or even provide their names.

21. I acknowledge Mr. Chen gave several reasons for not providing statements from the mechanics or any expert evidence. First, he says most local automotive shops do not want to be involved in ICBC disputes because it will affect them financially. Second, he says it is too expensive to retain an impartial mechanic. Third, the applicant says the mechanic in Florida would only speak to him if he agreed not to disclose the mechanic's name.
22. I find these explanations are insufficient. Mr. Chen did not produce any evidence that he approached any mechanics for their opinions or any estimates for the cost of a report. Also, a successful party in a dispute before the tribunal can recover reasonable dispute-related expenses, including expert reports from an unsuccessful party (see *Kubbernus v. McBride*, 2020 BCCRT 546, a non-binding decision I find helpful). Finally, Mr. Chen did not provide an explanation for why the mechanic in Florida wanted to remain anonymous since he does not work in British Columbia.
23. Based on my reasons above, I dismiss the applicant's claim. Given my conclusions, I do not need to address the applicant's damages claim in detail. However, I note that while he claims \$5,000, the applicant did not provide evidence in support of this figure. As noted, I find the applicant is not entitled to coverage and I dismiss his claim.
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. I see no reason in this case not to follow that general rule. Since the applicant was unsuccessful, I dismiss his claim for reimbursement of tribunal fees. The applicant did not claim any dispute-related expenses.

ORDER

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

Rama Sood, Tribunal Member