



Civil Resolution Tribunal

Date Issued: June 10, 2020

File: SC-2019-010735

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Andrew v. ICBC*, 2020 BCCRT 644

B E T W E E N :

JEFFREY ANDREW

APPLICANT

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. The applicant, Jeffrey Andrew, claims \$2,473.32 for expenses allegedly related to the theft of a Toyota Matrix that he previously owned. Mr. Andrew says the respondent insurer, the Insurance Corporation of British Columbia (ICBC), should reimburse his expenses under his comprehensive insurance policy.

2. ICBC denies the claim. It says that Mr. Andrew is not the Toyota's registered owner and that he has not proven his loss. ICBC also denies that the Toyota was stolen.
3. Mr. Andrew is self-represented. ICBC is represented by an employee.

JURISDICTION AND PROCEDURE

4. 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.
5. The CRT 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 CRT'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 CRT's process and found that oral hearings are not necessarily required where credibility is an issue.
6. 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.
7. Where permitted by section 118 of the CRTA, in resolving this dispute, the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

ISSUE

8. The issue in this dispute is whether ICBC must reimburse Mr. Andrew for expenses allegedly related to a car theft.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, Mr. Andrew bears the burden of proof on a balance of probabilities because he is the applicant. 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.
10. Mr. Andrew says his Toyota was stolen from his driveway on about August 24, 2019. He reported the alleged theft to ICBC and made a claim under his comprehensive insurance policy.
11. ICBC's file notes in evidence state that ICBC investigated the theft but was unable to determine how it occurred. The Toyota was undisputedly equipped with an immobilizer and interlock device and all keys were accounted for. On October 21, 2019, ICBC denied Mr. Andrew's stolen vehicle claim because it said the theft was "not proven on a civil standard".
12. On November 5, 2019, Mr. Andrew reported to the RCMP that he had located the Toyota and had towed it to his home. Without notice to ICBC, Mr. Andrew then performed some repairs on the Toyota at his own cost. On November 9, 2019, Mr. Andrew sold or gifted the Toyota to a family member. On November 15, 2019, Mr. Andrew notified ICBC that he had recovered the Toyota. He asked ICBC to reimburse him \$2,473.32 in expenses to repair some unspecified vehicle damage. ICBC denied Mr. Andrew's reimbursement claim because it said he had no "insurable interest" in the Toyota after he sold it.
13. In this dispute, Mr. Andrew claims a total of \$2,473.32 for ignition repairs, towing fees, interlock device fees, and his own time to fix and clean the Toyota.

Repair Expenses and Towing Fees

14. There is no dispute that Mr. Andrew had optional insurance coverage with ICBC prior to selling the Toyota. His comprehensive coverage included loss and damage from theft or attempted theft. However, I find Mr. Andrew has not proven that the Toyota was damaged in a theft or that he is entitled to reimbursement for the claimed repairs and towing fees. My reasons follow.

15. To support his claim, Mr. Andrew submitted an undated photograph of serious damage to the Toyota's dashboard. The photograph shows what looks like a dismantled ignition, smashed glass, and exposed wires. None of this damage was noted by the RCMP officer who inspected the Toyota at Mr. Andrew's home on about November 5, 2019. The RCMP's email to ICBC states that its officer observed some "scratches" on the Toyota's exterior but that Mr. Andrew had told the officer they were pre-existing. The officer "could not confirm any other details about the theft". The email does not mention the damage to the dashboard, ignition, glass, and wires shown in Mr. Andrew's photograph. I find this type of damage is clearly relevant to a theft claim on an immobilized and interlocked vehicle. I find it is more likely than not that the RCMP officer did not mention the damage because it did not exist when the officer inspected the Toyota on November 5, 2019. I find the Toyota was likely damaged after this date and the damage was unrelated to the alleged theft. I find it is unclear on the evidence what or who caused the damage shown in Mr. Andrew's photographs. I find that Mr. Andrew has not proven that his comprehensive insurance with ICBC covered the claimed repairs for this damage.

16. I also find that Mr. Andrew has not proven that ICBC must reimburse him to repair and tow a vehicle that he no longer owns or insures. Under section 61(5) of the *Insurance (Vehicle) Act*, the optional insurance coverage terminates when the coverage provided by the certificate or policy terminates. When he claimed reimbursement from ICBC on November 15, 2019, Mr. Andrew was no longer the Toyota's owner and carried no insurance on the Toyota. Mr. Andrew has not established that he retained an insurable interest in the Toyota after the transfer.

17. Further, I find that Mr. Andrew did not comply with the optional insurance contract by giving ICBC prompt notice, details of the claimed damage, and an opportunity to inspect the Toyota. ICBC had undisputedly told Mr. Andrew in August that he must contact ICBC if he recovered the Toyota. It also told him to not remove it from the tow yard without discussing it with the ICBC adjuster. Without reasonable explanation, Mr. Andrew did not notify ICBC until about 10 days after he allegedly recovered the Toyota. By this date, he had also towed it to his home and performed repairs that ICBC had not authorized.
18. For all the preceding reasons, I find that Mr. Andrew has not established that he is entitled to reimbursement for the claimed repair expenses or towing fees.

Interlock Device Fees

19. As for the interlock device fees, Mr. Andrew claims for the installation of an interlock device in a new vehicle. He also claims for the interlock's lease and device protection plan payments. I find Mr. Andrew would have incurred these fees irrespective of the claimed theft. Mr. Andrew has also not established that the claimed interlock device fees are covered under his insurance policy with ICBC. I dismiss Mr. Andrew's claim for the interlock fees.

Conclusion

20. In summary, I find Mr. Andrew has not established on a balance of probabilities that he is entitled to reimbursement from ICBC for any of his claimed expenses. I dismiss Mr. Andrew's claims.
21. Under section 49 of the CRTA, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Mr. Andrew was unsuccessful and so, I dismiss his claim for CRT fees. He did not claim any other dispute-related expenses.

ORDER

22. I dismiss Mr. Andrew's claims and this dispute.

Trisha Apland, Tribunal Member