



Civil Resolution Tribunal

Date Issued: September 1, 2020

File: SC-2020-003653

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Blais v. ICBC*, 2020 BCCRT 973

BETWEEN:

ALAN BLAIS and ALEXANDRA BLAIS

APPLICANTS

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This small claims dispute is about insurance coverage for an alleged “hit and run” collision on February 18, 2020.

2. The applicants, Alan Blais and Alexandra Blais, say the respondent insurer, Insurance Corporation of British Columbia (ICBC), incorrectly refused their claim that their vehicle was damaged as a result of a hit and run. The applicants seek an order that ICBC “put through the claim” as a hit and run to allow the vehicle damage to be repaired. They value this aspect of their claim at \$3,500. The applicants also seek \$50 as reimbursement for having a form notarized, and \$157.50 for the cost of an independent appraisal of their vehicle damage.
3. ICBC says its estimators’ evidence shows the damage is not consistent with vehicle-to-vehicle contact, as is required for a hit and run claim, and instead is consistent with the vehicle hitting a stationary object while in motion. Further, it says the notarized form is a requirement for making a hit and run claim.
4. The applicants are 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 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.
6. 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.

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. In resolving this dispute the CRT may make one or more of the following orders, where permitted by 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 CRT considers appropriate.

ISSUE

9. The issue in this dispute is whether the applicants are entitled to “hit and run” vehicle damage coverage from ICBC.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicants bear the burden of proof on a balance of probabilities. 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.
11. The applicants say that on February 18, 2020, Mr. Blais noticed damage to their vehicle. The applicants say the vehicle was parallel parked on a narrow one lane residential street with parking on both sides. They say another vehicle, such as a trailer or a delivery truck, may have backed up and caused the damage.
12. The applicants reported the damage to ICBC under section 24 of the *Insurance (Vehicle) Act* (IVA). Section 24 of the IVA describes remedies available for hit and run accidents and, where a hit and run driver remains unknown, says that ICBC may be named as a nominal defendant in claims for damages.

13. Due to COVID-19 restrictions, the applicants' vehicle was never inspected in person by ICBC. However, it was reviewed by an Express Estimator, Sacha Hanley, at an ICBC Express Valet shop. Photos taken by Sacha Hanley were reviewed by several other employees at ICBC, including Henry Chan, a Material Damage Supervisor, Peter Dunbar, an estimator, Jamie Krimmer, a Material Damage Manager, and Larry Kuchar, an Operations Manager. Neither the Express Estimator's nor any of the ICBC employees' qualifications are in evidence, aside from their brief job title.
14. Each of the above-noted estimators/employees noted the damage to the applicants' vehicle was coarse and abrasive, low on the vehicle, and they each stated it was not consistent with vehicle to vehicle contact. As a result of the employees' opinions, ICBC determined the damage was not a result of a "hit and run", which by definition I accept requires a second vehicle. Instead, ICBC determined the most likely cause of the damage was that, while in motion, the applicants' vehicle struck a stationary object. ICBC notified the applicants their hit and run claim was denied, but that Ms. Blais could make a claim under her collision coverage. However, ICBC also noted that if she did so, it would seek recovery from Mr. Blais any amounts paid under the claim, as he was the last known driver of the vehicle.
15. The applicants disagree with ICBC's determination of how the damage occurred, and say the damage was caused by an unknown vehicle's low metal bumper. In support of their position, the applicants submitted two reports from Leo Rutledge, owner and president of BC Appraisals Ltd. In his first report, dated May 6, 2020, Mr. Rutledge noted that he reviewed photographs of the applicants' vehicle and concluded that a "step bumper" on a delivery truck or something similar most likely caused the damage to the applicants' vehicle. Mr. Rutledge further noted that given the directionality and angle of the impact, the damage would be difficult to achieve by the vehicle striking a fixed object, but rather was consistent with a low bumper hitting the vehicle while turning.
16. In response to Mr. Rutledge's May 6, 2020 report, Mr. Kuchar provided an updated opinion by email on May 13, 2020. In that email, Mr. Kuchar stated he disagreed

with Mr. Rutledge's opinion given the damage height and striations. Again, Mr. Kuchar's qualifications were not provided.

17. Mr. Rutledge provided a second report, dated June 10, 2020, after reviewing the applicants' vehicle in person. In his second report, Mr. Rutledge outlined his role as owner and president of BC Appraisals Ltd., and stated he has been doing insurance appraisals for 9 years for all of the major private insurance companies, as well as for ICBC. Mr. Rutledge again confirmed his opinion that the damage to the applicants' vehicle was consistent with being struck by another vehicle while parked on a narrow residential street, either by a vehicle attempting to turn into a driveway or attempting to parallel park. Mr. Rutledge again noted the damage would not be possible if the applicants' vehicle was in motion.
18. On balance, I prefer Mr. Rutledge's opinion over those of the Express Estimator and ICBC employees. I accept Mr. Rutledge's opinion as expert opinion under the CRT's rules. However, I do not accept the other opinions as expert evidence given their qualifications are not before me, as required by CRT rule 8.3. Although ICBC provided the brief job titles of each of the individuals, I find a job title in itself does not necessarily establish qualifications to provide expert evidence on the cause of vehicle damage.
19. Therefore, in the evidence before me, I find Mr. Rutledge is the most qualified person to give an opinion about the likely cause of damage, and I accept that opinion. As a result, on balance, I find the applicants' vehicle damage was caused by a "hit and run", likely from a low metal bumper on another vehicle backing into it.
20. So, what damages are the applicants entitled to? Although the applicants claim \$3,500 in damages, an estimate from Boyd Autobody & Glass (Boyd), totals \$3,020.17, after deducting \$300, the amount of the applicants' applicable deductible. The applicants do not explain why they claim \$3,500.
21. In any event, I find the \$3,020.17 amount is too high. In each of the applicants' statements in evidence, they refer to pre-existing front bumper damage. It is

undisputed that the only area damaged as a result of the hit and run is the driver's side front and rear doors, and moulding under the doors. I note Boyd's estimate includes 3.2 hours for work including removing and installing the front bumper cover, front combination lamp, front fender and front rocker moulding. I am not satisfied this quoted work is connected to the hit and run damage. As a result, I find Boyd's estimate must be reduced by the 3.2 hours, plus GST, for a total reduction of \$246.66.

22. Therefore, I find the applicants are entitled to \$2,773.51 in proven damages, payable by ICBC as nominal defendant. As there is no indication the applicants have yet paid to have the vehicle repaired, I make no award for pre-judgment interest on this amount.
23. I decline to order reimbursement of the \$50 notarization fee. First, ICBC says a notarized form is required for anyone to apply for hit and run coverage, which is not disputed. Second, the applicants did not provide anything to support the amount they allegedly paid for the notarization, such as an invoice.
24. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. I see no reason to deviate from that general rule. As the applicants were substantially successful, I find that they are entitled to reimbursement of the \$175 they paid in tribunal fees. I find the applicants are also entitled to reimbursement of \$157.50, the amount of Mr. Rutledge's invoice for his expert report, as a dispute-related expense.

ORDERS

25. Within 30 days of the date of this decision, I order the respondent, Insurance Corporation of British Columbia, to pay the applicants, Alan Blais and Alexandra Blais, a total of \$3,106.01, broken down as follows:
 - a. \$2,773.51 in damages for vehicle repairs,
 - b. \$175 in tribunal fees; and

c. \$157.50 in dispute-related expenses.

26. The applicants are also entitled to post-judgment interest, under the *Court Order Interest Act*, as applicable.
27. Under section 48 of the CRTA, the CRT will not provide the parties with the order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the CRT's final decision. The Province of British Columbia has enacted a provision under the *COVID-19 Related Measures Act* which says that statutory decision makers, like the CRT, may waive, extend or suspend mandatory time periods. This provision is expected to be in effect until 90 days after the state of emergency declared on March 18, 2020 ends, but the Province may shorten or extend the 90-day timeline at any time. A party should contact the CRT as soon as possible if they want to ask the CRT to consider waiving, extending or suspending the mandatory time to file a notice of objection to a small claims dispute.
28. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Andrea Ritchie, Vice Chair