



# Civil Resolution Tribunal

Date Issued: October 19, 2020

File: SC-2020-004965

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Bazylak v. Guardian Risk Managers Ltd.*, 2020 BCCRT 1174

BETWEEN:

RYAN BAZYLAK

**APPLICANT**

AND:

GUARDIAN RISK MANAGERS LTD.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Shelley Lopez, Vice Chair

## INTRODUCTION

1. This dispute is about insurance coverage. The applicant Ryan Bazylak says the respondent, Guardian Risk Managers Ltd. (Guardian), wrongfully failed to provide insurance coverage for his damaged 2000 Suzuki motorcycle.

2. Mr. Bazylak claims \$4,883 under his insurance policy, for towing charges plus costs for the diagnosis and repair of electrical damage. Mr. Bazylak says he only discovered at the time of repair in 2019 the damage was likely caused when he had dropped his motorcycle on July 28, 2018.
3. Guardian says Mr. Bazylak first reported the claim on February 19, 2019, and says the repairs in 2019 are unrelated to the 2018 incident. Guardian says the damage repaired in 2019 is consistent with wear and tear and so is excluded from coverage. Guardian also says some of the other issues are maintenance costs, excluded by the insurance policy.
4. Mr. Bazylak is self-represented. Guardian is represented by an employee, JS.

## **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. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me.
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 CRT may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

## **ISSUE**

9. The issue in this dispute is whether the claimed motorcycle damage is covered under Mr. Bazylak's insurance policy with Guardian, and if so, to what extent if any is Mr. Bazylak entitled to \$4,883 in claimed damages?

## **EVIDENCE AND ANALYSIS**

10. In a civil claim such as this, as the applicant Mr. Bazylak bears the burden of proof, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.
11. As discussed below, this dispute is about whether electrical damage to Mr. Bazylak's motorcycle (bike) was the result of his accidentally dropping it or whether it resulted from wear and tear. Guardian's "all risks" policy undisputedly excludes, among other things, damage resulting from "mechanical fracture or breakdown", wear and tear, marring and scratching, chipping, or deterioration. It also excludes loss or damage to electrical devices.
12. I turn to the relevant chronology. Mr. Bazylak dropped his bike at a gas station on July 28, 2018, at the outset of a month-long road trip. Mr. Bazylak says the visible damage was not significant at the time he dropped the bike. However, he says the key electrical damage was hidden and he did not realize it was there until electrical problems escalated during the trip. Near the end of the trip, Mr. Bazylak had to have the bike towed home. Mr. Bazylak says there were no problems with his bike before he dropped it, and that there were problems "almost immediately after" he dropped it.

13. During his road trip, Mr. Bazylak took his bike to 2 different mechanic shops, Blackfoot Motorsports (Blackfoot) on July 30, 2018 and Rocky Mountain Honda (Rocky Mountain) on August 7, 2018. Neither shop pointed to the bike's having been dropped as the root cause of the bike's diagnosed problems. Blackfoot's repair order notes Mr. Bazylak reported the "FI light" was intermittently coming on, the unit was using more fuel and the front cylinder was colder. Blackfoot found no current or historical "codes", and added oil that had been low. Similarly, Rocky Mountain noted the bike was reportedly not charging, and it installed and secured a new battery.
14. Mr. Bazylak says these shops' failure to diagnose the root problem was because their inspections were relatively cursory in nature and because the bike was still somewhat functioning at the time.
15. In contrast, Guardian says Mr. Bazylak dropped the bike at the outset of his long road trip, and that if the incident was so severe to have caused the claimed damage, the damage would have been diagnosed by Blackfoot or Rocky Mountain. Guardian also says Rocky Mountain noted that the battery terminal fasteners were wood screws without good contact, which would explain the electrical issues. Mr. Bazylak denies this, saying he was the one who quickly installed the fasteners incorrectly an hour before Rocky Mountain saw the bike, just to get it there quickly for assessment.
16. Mr. Bazylak says the root of the problems were identified by a Red Seal Motorcycle Mechanic, MAS Dyno, which I discuss further below. Mr. Bazylak admits he is not a mechanic himself, but says he does not trust Guardian's appraiser, Crash Space Appraisals Ltd. (Crash Space), who Mr. Bazylak says is not a mechanic. Mr. Bazylak says Crash Space agreed the claim was valid after seeing the bike after Mr. Bazylak dropped it, but now cannot locate the photos it took at that time. I have no supporting evidence before me that Crash Space ever agreed the claim was valid, and so I place no weight on that allegation.

17. Guardian submitted a “CV” for Crash Space’s founding partner since April 2016, Richard Setter. In it, Mr. Setter says he handles all aspects of insurance claims for vehicles, including motorcycles. He says he has a “high level of expertise” in the automotive insurance industry. Previously, Mr. Setter was a manager of estimating services with the Insurance Corporation of British Columbia. I accept that Mr. Setter has expertise in valuation of damage and repairs of motorcycles. Guardian submits Mr. Setter has “expert status” in BC Supreme Court, but did not cite the particular case in which he testified. In any event, there is no indication in his CV that Mr. Setter is a mechanic qualified in assessing how electrical damage may be caused in a motorcycle. So, I find Mr. Setter is not qualified as an expert under the CRT’s rules to give an opinion on how the bike’s damage was caused.
18. I turn to the applicable law. Where the subject matter is technical, or beyond common understanding, it is often necessary to produce expert evidence to determine the appropriate standard of care: see *Bergen v. Guliker*, 2015 BCCA 283.
19. I find that whether Mr. Bazylak’s dropping his bike in 2018 was the cause of his bike’s electrical problems is technical and outside ordinary knowledge. Therefore, I find expert evidence is required to prove the bike’s being dropped caused the electrical problems, and here I find there is none. While Mr. Bazylak says he spoke with MAS Dyno and they said the electrical damage was caused by his dropping his bike, there is no such statement in evidence from MAS Dyno, and no explanation for its absence.
20. In particular, while Mr. Bazylak relies on MAS Dyno, its invoice and repair notes do not say the bike’s being dropped was the cause. Rather, its November 23, 2018 shop notes only say, “problem source: short in starter relay causing intermittent system failures, electrical damage in the area of impact”. On balance, without expert evidence, I am not prepared to infer that the November 2018 reference to “area of impact” means the dropping of the bike in July 2018 was the cause of the electrical damage at issue. Further, there are also no qualifications in evidence from the MAS

Dyno mechanic that would allow me to accept their shop notes as expert evidence under the CRT's rules.

21. Mr. Bazylak also relies on evidence of someone else's bike having sustained electrical damage after being dropped. I find I can draw nothing from that evidence, particularly in the absence of expert evidence about Mr. Bazylak's bike or that other bike.
22. Next, Mr. Bazylak also relies on photos of his bike's damaged wiring, which he says was missed by MAS Dyno the first time it looked at the wiring, because the wiring was then still somewhat functional. Mr. Bazylak says he found the damaged wires "months later", and that they were next to the exhaust pipe and the only way they could get there is if they were jarred loose from dropping the bike. Again, how wires may have moved or become damaged is not within ordinary knowledge and I have no expert evidence before me that the wires were damaged by the bike's being dropped.
23. So, here I am left with no expert evidence and conflicting evidence from Mr. Bazylak and Guardian about whether the electrical damage, identified in October 2018, was likely caused by Mr. Bazylak's having dropped the bike in late July 2018, nearly 3 months prior at the outset of month-long road trip. As noted above, Mr. Bazylak has the burden of proof. On balance, I find he has not met that burden.
24. Given my conclusions above, I do not need to discuss Mr. Bazylak's damages in any detail. I find Mr. Bazylak's claims must be dismissed.
25. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to the recovery of their CRT fees and reasonable dispute-related expenses. Mr. Bazylak was unsuccessful and so I find he is not entitled to reimbursement of CRT fees. No dispute-related expenses were claimed and the successful respondent Guardian paid no CRT fees.

## **ORDERS**

26. I order Mr. Bazylak's claims and this dispute dismissed.

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Shelley Lopez, Vice Chair