Civil Resolution Tribunal

Date Issued: October 30, 2020

File: SC-2020-005292

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Herriott v. Yuen*, 2020 BCCRT 1234

BETWEEN:

ASHTON HERRIOTT

**APPLICANT**

AND:

ANDES YUEN

**RESPONDENT**

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**REASONS FOR DECISION**

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Tribunal Member: Andrea Ritchie, Vice Chair

## INTRODUCTION

1. This small claims dispute is about damage to a vehicle involved in a collision.

2. The applicant, Ashton Herriott, says his 2012 Audi Q5 2.0L Turbocharged Premium Quattro AWD 4 door sport utility vehicle (Audi) was damaged in a parking lot collision

on April 24, 2019. It is undisputed the respondent, Andes Yuen, was wholly responsible for the collision. Mr. Herriott says that, as a result of the accident, his Audi is now worth less than it would have been if not for the damage caused. He seeks $2,795 in damages for the Audi's accelerated depreciation. Mr. Yuen argues the Audi has been repaired and did not lose any value.

3. Mr. Herriott is represented by Kayla Bergsson, legal counsel. Mr. Yuen is represented by his insurer, Insurance Corporation of British Columbia (ICBC). ICBC is not a party to this dispute.

## 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). Section 2 of the CRTA states that 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. Section 39 of the CRTA says that 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.

6. Section 42 of the CRTA says that 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. 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

8. The issue in this dispute is whether Mr. Yuen is responsible to pay Mr. Herriott $2,795 for alleged accelerated depreciation of Mr. Herriott's Audi.

## EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant Mr. Herriott bears 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.

10. As noted above, it is undisputed Mr. Herriott's Audi and a vehicle driven by Mr. Yuen were involved in a collision on April 24, 2019. The details of that accident are not before me. In any event, it is undisputed that Mr. Yuen was solely responsible for the accident. As a result of the accident, Mr. Herriott's Audi underwent $10,245.92 in repairs. As noted, Mr. Herriott says that due to the damage and subsequent repairs, his Audi is now worth less than it would have been if the accident had not occurred. Mr. Herriott seeks $2,795 in compensation from Mr. Yuen for the Audi's decreased value (or accelerated depreciation).

11. Accelerated depreciation is the loss of market value of a motor vehicle, because it was damaged, regardless of the fact the damage was repaired (see: *Squire v. ICBC*, 1990 CanLII 711 (BCCA)).

12. The burden is on Mr. Herriott to prove the Audi suffered a reduction in its value because of the April 24, 2019 collision. The proper measure of damages is the difference in the Audi's value immediately before and immediately after the accident (see: *Miles v. Mendoza*, 1994 CanLII 419 (BCSC)). Accelerated depreciation is not assumed simply due to the fact a vehicle is involved in an accident and requires repairs.

13. Essentially, Mr. Yuen's response to the claim is two-fold. First, Mr. Yuen argues the Audi has been repaired to factory standards and did not suffer a loss of value. Second, Mr. Yuen says the Audi had pre-existing damage that accounts for any loss of value Mr. Herriott alleges.

14. Mr. Herriott submitted a May 29, 2019 "Preliminary Accelerated Depreciation Report" by Robert Fournier of Fournier Auto Group Ltd. (Fournier Report), along with an Excel workbook of Mr. Fournier's research and calculations. The Fournier Report explains Mr. Fournier has 15 years' experience doing motor vehicle market value valuations and has been providing accelerated depreciation reports with the Fournier Auto Group Ltd. since 2013. Mr. Fournier's qualifications are not in dispute. I accept the Fournier Report as expert evidence under CRT rule 8.3(3).

15. In his report, Mr. Fournier noted mass-production vehicles, such as the Audi, normally naturally depreciate 5% to 25% in the first year, and 5% to 20% every year after that. Mr. Fournier reviewed Mr. Herriott's Audi, photographs of the damage from the April 24, 2019, as well as the "repair supplement" which set out the Audi's necessary repairs post-accident. Mr. Fournier assumed the Audi had not previously suffered any damage cumulatively exceeding $2,000 and found that the Audi was in "average" condition at the time of the accident. Based on market research and Mr. Fournier's own expertise, he valued the Audi pre-accident at approximately $18,645 retail.

16. Mr. Fournier then addressed the Audi's post-accident market value. He determined the repairs were mostly cosmetic, with minor mechanical/electrical repairs and no structural damage. Mr. Fournier concluded that the April 24, 2019 accident reduced the Audi's market value by 14% to 15%, or approximately $2,610 to $2,795.

17. Mr. Yuen argues that Mr. Fournier's assumption that the Audi had not previously suffered any damage exceeding $2,000 was incorrect. Admittedly, the Audi had various cosmetic damage in several places. ICBC says that this damage cumulatively amounts to $3,687.89, which is not disputed. He further says that the Fournier Report failed to take this damage into account, and that the decreased value assessed by Mr. Fournier is actually due to the Audi's pre-existing damage, and is not a result of the April 24, 2019 accident repairs.

18. The parties spent some time in their submissions arguing over whether the pre-existing damage would be properly defined as "wear and tear" or "damage". I find any distinction in this case is irrelevant. It is undisputed that the pre-existing damage was not the result of any accident, but rather is damage that had accumulated over the Audi's life. Regardless of what the pre-existing damage is defined as, the issue is whether it was taken into account when the Audi's market value was assessed before and after the April 24, 2019, and I find that it was.

19. Although Mr. Yuen argues that the Fournier Report does not address the pre-existing damage, Mr. Fournier provided a September 15, 2020 email which detailed the various pre-existing damage. Mr. Fournier described this as "wear and tear" and said it was taken into account when he assessed the Audi as being in "average" condition in the Fournier Report. Mr. Fournier confirmed his opinion about the Audi's decreased value of between $2,610 to $2,795. I am satisfied Mr. Fournier took the Audi's pre-existing condition into account when he assessed the vehicle's immediate pre- and post-accident market value.

20. Mr. Herriott also submitted an email from Jae Lee, Audi Brand Specialist at Capilano Audi. In his October 10, 2019 email, Mr. Lee said the dealership would have offered Mr. Herriott $12,000 as a trade-in value for the Audi, but given the April 24, 2019 accident, was prepared to offer $9,500. There are several issues with Mr. Lee's valuation. First, Mr. Lee did not inspect the Audi in person nor any photos of the Audi before or after the accident. It is undisputed Mr. Herriott had not had the Audi serviced at Capilano Audi since 2017. Additionally, in preparing his value assessment, Mr. Lee

asked Mr. Herriott about the Audi's body condition, to which Mr. Herriott responded it was in "excellent condition". I find this was untrue, given the admitted damage valued over $3,000. Because of these issues, I place no weight on Mr. Lee's valuation of the Audi.

21. In support of his assertion that the Audi has not lost any value as a result of the April 24, 2019 accident, Mr. Yuen submitted an "Accelerated Depreciation Report" by Kelly Stapleton, an ICBC Estimating Services Manager (ICBC Report). The ICBC Report states Mr. Stapleton has been with ICBC for 20 years, and has spent the last 10 years as a "Vehicle Settlement Rep/appraiser" in the Estimating Services department, which included assessing vehicle damages and kinds of loss. I accept Mr. Stapleton's qualifications and as Mr. Herriott did not object to my receiving the ICBC Report as expert evidence, I accept it under CRT rule 8.3(3).

22. In his report, Mr. Stapleton said the Audi's market value "at time of loss" was $17,362.62. It is unclear to me whether "at the time of loss" means immediately before the accident or after the accident. In either case, Mr. Stapleton did not provide another value for the vehicle, meaning a corresponding pre- or post-accident value.

23. Mr. Stapleton attached various listings for similar vehicles, ranging from $23,000 to $24,894 for vehicles that had not been in an accident, and $17,495 to $21,900 for vehicles that had been in an accident with damage exceeding $2,000. Admittedly, Mr. Stapleton advised the amounts would need to be adjusted to reflect the Audi's specific trim line and engine configuration, but did not make these adjustments. Therefore, I find the valuations as provided by Mr. Stapleton to be of little value, except to note that they indeed show a decrease in value between similar vehicles with and without accident damage. Additionally, Mr. Stapleton stated in his report that Mr. Fournier failed to consider the Audi's pre-existing damage, which as noted above, I find is incorrect. Given these shortcomings, I find the ICBC Report of little assistance.

24. Based on all the above, on balance, I prefer Mr. Fournier's evidence on the Audi's estimated value and its accelerated depreciation. I find it more likely than not that the April 24, 2019 collision caused the repaired Audi to depreciate more quickly than it

would have if the accident had not occurred. Although Mr. Herriott claims $2,795, the top end of the estimated loss given by Mr. Fournier, he did not provide any evidence as to why he would be entitled to the high end of the range. I find Mr. Herriott has not proven he is entitled to more than the low end of Mr. Fournier's given range, or $2,610. I find Mr. Yuen must pay Mr. Herriott $2,610 in damages for accelerated depreciation.

25. Although Mr. Herriott claims pre-judgment interest under the *Court Order Interest Act* on the claim for accelerated depreciation, I dismiss this claim. It is undisputed Mr. Herriott has not yet sold the Audi, and so I find he has not yet suffered any pecuniary (monetary) loss. Section 2(a) of the *Court Order Interest Act* says that interest does not apply to a pecuniary (monetary) loss that occurs in the future.

26. 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 Mr. Herriott was successful, I find that he is entitled to reimbursement of his paid tribunal fees of $125. Mr. Herriott also claims $393.75 for the Fournier Report and $6.25 in colour printing. I find the Fournier Report was a reasonable expense, and Mr. Herriott is entitled to its reimbursement. As for the colour printing, Mr. Herriott did not provide any evidence in support of this claim, and I find he has not shown the expense was necessary. The CRT is an online dispute resolution service, and all documents are filed online. I have no reasonable explanation for why colour printing was necessary. I dismiss this claim.

## ORDERS

27. Within 30 days of the date of this decision, I order the respondent, Andes Yuen, to pay the applicant, Ashton Herriott, a total of $3,128.75, broken down as follows:

    a. $2,610 in damages for accelerated depreciation,

    b. $125 in tribunal fees, and

    c. $393.75 in dispute-related expenses.

28. Mr. Herriott is also entitled to post-judgment interest, as applicable.

29. 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, suspending or extending the mandatory time to file a notice of objection to a small claims dispute.

30. 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