



# Civil Resolution Tribunal

Date Issued: December 1, 2020

File: SC-2020-006435

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Olson v. ICBC*, 2020 BCCRT 1358

BETWEEN:

HEATH OLSON

**APPLICANT**

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Eric Regehr

### INTRODUCTION

1. The applicant, Heath Olson, claims that an unidentified driver damaged his car while it was parked. Mr. Olson made a hit and run damage claim to his insurer, the respondent Insurance Corporation of British Columbia (ICBC). ICBC denied his claim because it says that the damage is inconsistent with vehicle to vehicle

contact, which is required for a hit and run claim. Mr. Olson claims \$4,100, which he says was the cost to repair his car.

2. Mr. Olson is self-represented. ICBC is represented by an adjuster.

## **JURISDICTION AND PROCEDURE**

3. 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 the dispute's parties that will likely continue after the CRT process has ended.
4. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, both parties of this dispute call into question the credibility, or truthfulness, of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision *Yas v. Pope*, 2018 BCSC 282, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.
5. Section 42 of the CRTA says 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.
6. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to pay money or to do or stop doing something. The tribunal's order may include any terms or conditions the CRT considers appropriate.

## ISSUE

7. The issue in this dispute is whether the damage to Mr. Olson's car was caused by another vehicle.

## EVIDENCE AND ANALYSIS

8. In a civil claim such as this, Mr. Olson as the applicant must prove his case on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
9. This dispute is about whether Mr. Olson has coverage for damage to his car under section 24 of the *Insurance Vehicle Act* (IVA). Section 24 describes remedies available for hit and run accidents. Applied to this dispute, section 24 allows Mr. Olson to claim against ICBC if an unknown vehicle caused the damage to his car.
10. According to Mr. Olson, he parked his car "nose in" in his assigned parking spot in his mobile home park's parking lot at around 3:00 pm on May 21, 2020. He said that when he parked there were no vehicles on either side. According to photographs of the parking lot, it is an open-air paved area along a roadway just before a gated entrance to a mobile home park. Mr. Olson says that when he returned at around 11:00 am the next day, he discovered damage to his car. He says that there was no note left on his windshield. He reported the damage to ICBC the same day as a hit and run.
11. The damage to Mr. Olson's car is primarily on the driver side front door, near the top of the car. There is a dent with scrape marks on it above the driver side window. There was also damage to the roof rack. Mr. Olson says that the damage was likely caused by a commercial or delivery truck, which frequently use his parking lot to turn around.
12. An ICBC adjuster spoke to Mr. Olson on June 9, 2020. The adjuster said that the damage to Mr. Olson's car did not appear to be caused by another vehicle because of how high up it was on the car.

13. Mr. Olson applied for payment for hit and run damage under section 24 of the IVA on July 7, 2020. The application included a statutory declaration attesting to the truth of his claim. ICBC says that Mr. Olson made a willfully false statement in making the application.
14. ICBC provided internal notes from 4 different employees other than the initial adjuster. They each give the same opinion that the damage is inconsistent with vehicle to vehicle damage. There is no explanation of who these people are other than their names, although 2 of them are listed as “managers”. I find that under the CRT’s rules I cannot rely on any of these opinions as expert evidence about what caused the damage because I do not know their qualifications.
15. Two of the employees simply say that the damage is not vehicle to vehicle contact but do not explain how they reached that conclusion. The other 2 both speculate that Mr. Olson hit an overhang or closing garage door. None of the 4 employees appears to have considered the possibility of a large vehicle hitting Mr. Olson’s car.
16. Mr. Olson provided a report from an appraiser, Leo Rutledge of BC Appraisals Ltd. While Mr. Rutledge’s qualifications are not listed in his report, I note that the CRT has previously accepted his evidence as an expert: *Blais v. ICBC*, 2020 BCCRT 973. ICBC did not dispute the admissibility of Mr. Rutledge’s report. So, I have accepted it as expert evidence under the CRT rules, subject to my comments on weight below.
17. For the most part, I do not find Mr. Rutledge’s report helpful. He concludes that Mr. Olson did not cause the damage to his car. However, the main reason for his opinion is that the damage was “right at eye level and easily avoided”, which I find is not within the scope of his expertise and, in any event, not persuasive. I give this aspect of the report no weight. However, I do place weight on Mr. Rutledge’s opinion that the height of the damage was consistent with a flat deck delivery truck or semi-tractor trailer, which I find is within the scope of his expertise.

18. ICBC makes 3 arguments in support of its position that the damage was not vehicle to vehicle. First, ICBC says that the damage was too high to have been caused by another vehicle. Second, ICBC says that there is no automotive paint transfer. Finally, ICBC says that the damage was front to back, which is inconsistent with Mr. Olson's version of events because Mr. Olson parked nose in. ICBC believes that Mr. Olson was caught under or struck a garage door or overhang and lied to ICBC.
19. As for the height, the damage appears to have been at least 55 inches from the ground, according to ICBC's and Mr. Olson's photographs. Mr. Olson does not dispute that it is an uncommon place to be damaged by another vehicle. However, based on Mr. Rutledge's opinion, a commercial vehicle or delivery truck could do so. According to ICBC's notes, an employee viewed the car close to Mr. Olson's home at a cardlock gas station. This generally supports Mr. Olson's contention that there is considerable commercial traffic in his area.
20. The parties disagree about whether there was paint residue in the dent. The photographs show a residue of some kind, but it is impossible to determine what it is without expert evidence. Because there is no expert evidence, I make no finding about whether there was paint residue.
21. Finally, ICBC says that the direction of damage was front to back. This would rule out Mr. Olson's account because he was parked nose in, with no room for another vehicle to hit his car from the front. Again, I cannot conclude one way or another whether the dents were caused by impact from the front or back without expert evidence.
22. However, there is damage to Mr. Olson's roof rack that is clearly on the back of the bars that run horizontally across the front and back of the car. There is no damage visible on the front of these bars. Based on the where the damage is, I find that this damage is inconsistent with the impact coming from the front, as ICBC alleges. Unlike the analysis of the dent, I find that this observation is within the knowledge of an ordinary person that does not need expert evidence. This is because it is common sense that in order to damage the back of both the front and back bar

without damaging their fronts, the impact must have come from behind. Therefore, I find that the damage was back to front.

23. Therefore, there is no persuasive evidence to support ICBC's theory about a garage door or overhang. ICBC appears to be speculating based solely on the height of the damage and its belief that the damage was front to back, which suggests that the car was moving forward underneath something. I note that Mr. Olson parks outdoors, and that he denies that the damage occurred while he was driving.
24. The burden is not on ICBC to prove what caused the damage. The burden is on Mr. Olson to prove that the damage was likely caused by a hit and run. I do not agree that there must be evidence of automotive paint transfer in order for the damage to have been from another vehicle. That said, I find that ICBC's inability to propose a likely non-vehicle source of damage supports Mr. Olson's claims.
25. Mr. Olson's theory is supported by the fact that his parking lot is on a dead-end road near a cardlock gas station with frequent commercial traffic. Also, according to Mr. Rutledge, the damage is consistent with damage from a commercial truck. On balance, I find that the most likely explanation is that an unknown driver in a large vehicle damaged Mr. Olson's car. He is therefore entitled to coverage under section 24 of the IVA.
26. How much is Mr. Olson entitled to? He claims \$4,100 but does not explain how he reached this number but presumably he is rounding up. The estimate in evidence shows that the repairs would cost \$4,074.41. The estimate also shows that Mr. Olson must pay a \$500 deductible. Neither party made submissions about the amount Mr. Olson is entitled to, so I rely on the estimate. I find that that Mr. Olson is entitled to \$3,574.41, which is the estimate amount minus the deductible.
27. The *Court Order Interest Act* applies to the CRT. There is no evidence that Mr. Olson has paid for the repairs. I therefore decline to award prejudgment interest.
28. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable

dispute-related expenses. I find Mr. Olson is entitled to reimbursement of \$175 in CRT fees.

29. Mr. Olson also claims a total of \$515 in dispute-related expenses: \$210 for Mr. Rutledge's report, \$40 for a notary, \$125 for professional photography and \$140 for "labour". There is no supporting evidence for any of these claims. I decline to award reimbursement for Mr. Rutledge's report because there is no invoice, and because the majority of the report was speculative and unhelpful. I decline to award reimbursement for the notary expense since notarizing the ICBC form is a necessary step in making a claim under section 24 of the IVA: see *Blais v. ICBC*, 2020 BCCRT 973. I therefore find that it is not a dispute-related expense. Mr. Olson does not explain why a professional photographer was necessary, and again, does not provide an invoice. As for the "labour" claim, CRT rule 9.5(5) says that a party will not be compensated for time spent dealing with CRT proceedings except in extraordinary circumstances. I find there are no extraordinary circumstances here. Therefore, I dismiss his claims for dispute-related expenses.

## **ORDERS**

30. Within 28 days of the date of this order, I order ICBC to pay Mr. Olson a total of \$3,749.41, broken down as follows:

- a. \$3,574.41 in damages for car repairs, and
- b. \$175 in CRT fees.

31. I dismiss Mr. Olson's remaining claims.

32. Mr. Olson is entitled to post-judgment interest, as applicable.

33. 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.

34. 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.

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Eric Regehr, Tribunal Member