



# Civil Resolution Tribunal

Date Issued: December 23, 2020

File: SC-2020-004296

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Dual Mechanical Ltd. v. Vicencio*, 2020 BCCRT 1460

B E T W E E N :

DUAL MECHANICAL LTD. and Gold Key Sales and Lease Ltd.

**APPLICANTS**

A N D :

BERNARDINO VICENCIO, DEKOW MOHAMED ALI,  
DAVID SKIDMORE, and HONDA CANADA FINANCE INC.

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Lynn Scrivener

## INTRODUCTION

1. This dispute flows from a June 4, 2018 motor vehicle collision. The applicant, Dual Mechanical Ltd. (Dual Mechanical), leased a Chevrolet Suburban from the applicant Gold Key Sales and Lease Ltd. (Gold Key). The Suburban was involved in a 4-car collision on June 4, 2018 with vehicles owned and/or operated by the respondents

Bernardino Vicencio, Dekow Mohamed Ali, David Skidmore, and Honda Canada Finance Inc.

2. The applicants say that the Suburban was damaged in the collision, and that this damage accelerated the Suburban's depreciation such that it is now worth less than it would have been had the collision not occurred. They seek \$4,440 in compensation from the respondents. The respondents deny that they are responsible for these damages.
3. Dual Mechanical's owner represents the applicants. An employee of the Insurance Corporation of British Columbia (ICBC) represents the respondents, although Mr. Vicencio provided his own submissions.

## **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. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
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.

## **ISSUES**

8. The issues in this dispute are:
  - a. Who is responsible for the collision and the damage to the Suburban,
  - b. Whether the applicants are entitled to damages for accelerated depreciation and, if so, how much.

## **EVIDENCE AND ANALYSIS**

9. In a civil dispute like this, an applicant bears the burden of proof on a balance of probabilities. Mr. Vicencio provided submissions, and Dual Mechanical and ICBC provided evidence and submissions in support of their respective positions. While I have considered all of this information, I will refer to only what is necessary to provide context to my decision.

### ***Who is responsible for the collision?***

10. Accelerated depreciation is the loss in market value to a vehicle that may be caused by damage, even if that damage was repaired (see *Squire v. ICBC*, 1990 CanLII 711 (BCCA)). The court in *Squire* noted that claims for accelerated depreciation have been successful in tort against the person whose fault caused the damage. This has been the case in several CRT decisions which, although not binding upon me, are persuasive (see, for example, *Liang v. ICBC*, 2020 BCCRT 192, *Lai v. Leung*, 2020 BCCRT 1111, and *Hartery v. ICBC*, 2020 BCCRT 1114).
11. As there is no dispute that the Suburban was damaged in the collision, the first consideration is who was responsible for the collision. The applicants have named as respondents the drivers and owners of the 3 other vehicles involved in the collision.

They did not make submissions about liability, other than to say that the driver of the Suburban was not at fault for the collision.

12. ICBC submits that, as Mr. Ali was found to be 100% responsible for the collision, the other named respondents bear no responsibility for the applicants' claims.
13. The details about how the collision occurred are not before me. However, given Mr. Ali's admission of liability, I find that nothing turns on this. I find that Mr. Ali is the proper respondent to this claim. As such, I dismiss the claims against Mr. Vicencio, Mr. Skidmore, and Honda Canada Finance Inc.

***The applicants' entitlement to damages for accelerated depreciation***

14. The applicants say that Dual Mechanical or, in the alternative, Gold Key, is entitled to damages for accelerated depreciation. The applicants say that the terms of their lease result in Dual Mechanical being responsible for any deficit resulting from a sale to a third party at the end of the lease term. According to the applicants, the Suburban's value is decreased by \$4,400 in accelerated depreciation.
15. ICBC says that the applicants' claim for accelerated depreciation is not established by the evidence and that Dual Mechanical does not have a claim for damages in any event.
16. The courts have held that a party does not have a claim for accelerated depreciation on a vehicle to which they have no claim of title (see, for example, *Nguyen v. Johnson*, 2007 BCSC 388). As noted, Dual Mechanical is the lessee and Gold Key is the lessor and owner of the Suburban.
17. Under the terms of the lease, the Suburban's title remains with Gold Key, which retains the right to sell the vehicle at the end of the lease. Notwithstanding the lease terms between the applicants, Gold Key will bear any loss associated with a decreased sale price at the end of the lease term. On this basis, I find that Gold Key is entitled to claim damages for accelerated depreciation.

18. It cannot be assumed that every car that has sustained serious damage in an accident will result in future purchasers offering less, and any alleged reduction in value must be established on the evidence (see *Brian Jessel Autosport v. ICBC et al*, 2006 BCPC 206 at paragraph 38). That said, the law does not require that an applicant demonstrate the loss of accelerated depreciation by selling the vehicle. Rather, it is enough to establish a reduction in its value (*Signorello v. Khan*, 2010 BCSC 1448 at paragraph 29). Thus, the measure of damages is the difference in the Suburban's value immediately before and immediately after the collision (*Miles v. Mendoza*, 1994 CanLII 419 (BCSC)).
19. The key consideration is whether the evidence supports the presence of accelerated depreciation. The applicants submitted a Preliminary Accelerated Depreciation Report from The Fournier Auto Group Ltd. The author, Mr. Robert Fournier, detailed his years of experience in the sales and leasing of vehicles and the provision of accelerated depreciation reports. Under CRT rule 8.3(3), the CRT may accept expert opinion evidence from a person the CRT decides is qualified by education, training, or experience to give that opinion. Based on his stated qualifications, I accept Mr. Fournier's report as expert opinion evidence. I also note that Mr. Fournier has testified as an expert witness in court (see, for example, *Chiang v. Kumar and Sharma*, 2018 BCPC 127) and his evidence has been accepted as expert opinion evidence in previous CRT decisions (see *Peterson v. Texmo*, 2020 BCCRT 1224).
20. In his report for this dispute, Mr. Fournier considered similar vehicles and compared the naturally depreciated prices with their current market values. Based on the damages from the collision, and despite the performed repairs, his opinion was that the Suburban's value had decreased between \$3,885 and \$4,440.
21. Mr. Fournier set out the information that informed his opinion, and it is apparent that he was not provided with the Suburban's full history. Mr. Fournier stated that his opinion was based, at least in part, on the assumption that the Suburban had not previously suffered damage with repair costs cumulatively exceeding \$2,000. However, this is not the case.

22. ICBC submitted estimate documentation from a 2016 claim made by the Suburban's previous lessee. The repair costs for damage to the doors, glass, run channel, and trim were estimated to be \$2,470.15. This damage was attributed to a theft rather than a collision, and Dual Mechanical submitted that it did not affect the Suburban's value. I find that the cause of damage is not relevant to its possible impact on a vehicle's market value, and that it must be included in any consideration of accelerated depreciation.
23. ICBC submitted a September 10, 2020 Diminished Value Report from DCI Solution Canada Inc. The report's author, Keith Jones, detailed his years of experience in mechanical and collision repair and vehicle valuation. I am satisfied that Mr. Jones is also qualified to give expert opinion evidence about the Suburban's value, and I accept his opinion as such.
24. Mr. Jones specifically considered the nature of the damage in the 2016 claim when coming to the conclusion that the Suburban's diminished value as a result of the collision was \$2,253.90.
25. Both Mr. Fournier and Mr. Jones directly addressed the issue of accelerated depreciation. However, as Mr. Fournier did not have information about the Suburban's full history, I give his opinion less weight. I prefer Mr. Jones' opinion and find that it is more likely than not that the collision caused the Suburban's value to depreciate beyond its natural rate by \$2,253.90.
26. I acknowledge ICBC's submission that, because Dual Mechanical renewed the lease for the Suburban in 2020, Gold Key did not establish that it suffered a loss. However, as noted, Gold Key retains ownership and the right to sell the Suburban and will bear any loss in the vehicle's resale value at the end of any lease term. I have determined that Mr. Jones' opinion establishes a reduction in the Suburban's value as a result of the June 4, 2018 collision, as contemplated in *Signorello*, and find that Gold Key is entitled to damages on this basis.

27. I find that Gold Key is entitled to \$2,253.90 in damages for accelerated depreciation. I make no findings about what impact, if any, my decision has on Dual Mechanical's obligations to Gold Key at the end of the lease term.
28. The applicants did not claim pre-judgment interest and I find that this would not have been payable even if a claim were made. Section 2(a) of the *Court Order Interest Act* says that interest may not be awarded for loss arising after the date of the order. Accelerated depreciation is a loss that Gold Key has not yet incurred, so I find that it is not entitled to pre-judgment interest.
29. Under section 49 of the CRTA and CRT rules, the CRT generally will order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule as the applicants were largely successful. I find that Dual Mechanical is entitled to reimbursement of \$175 it paid in CRT fees. Dual Mechanical also claimed dispute-related expenses of \$551.25 for Mr. Fournier's report. I find that this amount is reasonable and directly related to the issue in dispute, and I grant Dual Mechanical reimbursement of this amount.

## **ORDERS**

30. Within 30 days of the date of this order, I order Mr. Ali to pay Gold Key \$2,253.90 in damages for accelerated depreciation.
31. Within 30 days of the date of this order, I order Mr. Ali to pay Dual Mechanical a total of \$726.25 as reimbursement for CRT fees and dispute-related expenses.
32. The applicants are entitled to post-judgment interest, as applicable.
33. The applicants' claims against Mr. Vicencio, Mr. Skidmore, and Honda Canada Finance Inc. are dismissed.
34. 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.

35. 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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Lynn Scrivener, Tribunal Member