



Civil Resolution Tribunal

Date Issued: January 7, 2021

File: SC-2020-007679

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Goertzen v. ICBC*, 2021 BCCRT 12

BETWEEN:

ARIANA GOERTZEN

APPLICANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about the alleged mismanagement of a motor vehicle accident claim resulting from a June 4, 2019 accident.

2. The applicant, Ariana Goertzen, says the respondent insurer, Insurance Corporation of British Columbia (ICBC), mishandled her accident claim and improperly assessed fault. Ms. Goertzen seeks \$5,000 in compensation for her “efforts in handling this matter”. ICBC says Ms. Goertzen is not entitled to any compensation as she was statutorily required to provide the evidence she spent effort putting together. Additionally, ICBC denies mishandling Ms. Goertzen’s claim and seeks that this dispute be dismissed.
3. Ms. Goertzen is self-represented. ICBC is represented by an employee.

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.
8. Ms. Goertzen started another, related dispute at the CRT, VI-2020-001855, for a liability and damages determination. That dispute is the subject of a separate, but related, decision.

ISSUE

9. The issue in this dispute is whether ICBC breached its statutory obligations or contract of insurance in investigating the accident and assigning fault, and if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant Ms. Goertzen 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.
11. As noted above, Ms. Goertzen seeks \$5,000 in compensation for ICBC's alleged mishandling of her claim, resulting in an internal liability assessment mostly against her. Ms. Goertzen's claim for compensation is framed in two ways. One, as compensation (essentially punishment) for ICBC's alleged failure to appropriately investigate the accident and assess fault, and two, as compensation for Ms. Goertzen's time spent gathering evidence and arguing her case to ICBC, her insurer. Either way the claim is framed, I find Ms. Goertzen has not proven her case, and I dismiss her claims against ICBC. My reasons follow.

12. Ms. Goertzen lists several reasons why she believes ICBC improperly handled her claim. These include her complaint that she had at least 3 assigned adjusters throughout her claim, documentation was not saved properly by ICBC, not all witnesses were contacted, and communication with ICBC only occurred if Ms. Goertzen or her advocate initiated it first.
13. In response, ICBC says it reasonably handled Ms. Goertzen's claim. ICBC laid out its steps and attempts to get witness statements, all of which were submitted by the parties in this dispute and in the related liability and damages dispute.
14. ICBC argues this dispute should be heard after the liability and damages dispute is complete. ICBC says this is because if Ms. Goertzen is ultimately held responsible for the June 4, 2019 accident, she cannot be successful in her claim against ICBC. I disagree. An applicant can be unsuccessful on liability and damages and yet still prove ICBC breached its statutory obligations or its contract of insurance, despite the ultimate liability and damages finding. In any event, Ms. Goertzen was successful in her liability and damages claim, the subject of my separate decision also released today. However, I note that just because I have made a different finding on liability than ICBC did in its internal investigation, that does not mean ICBC acted unreasonably or breached its obligations to Ms. Goertzen.
15. To succeed in her claim against ICBC, Ms. Goertzen must prove on a balance of probabilities that ICBC breached its statutory obligations or its contract of insurance, or both. The issue is whether ICBC acted "properly or reasonably" in administratively assigning 75% responsibility against Ms. Goertzen (see: *Singh v. McHatten*, 2012 BCCA 286 referring to *Innes v. Bui*, 2010 BCCA 322).
16. ICBC, as her insurer, owes Ms. Goertzen a duty of good faith, which requires ICBC to act fairly, both in how it investigates and assesses the claim, and in its decision about whether to pay the claim (see: *Bhasin v. Hrynew*, 2014 SCC 71 at paragraphs 22, 55, and 93). As noted in the Continuing Legal Education of BC's '*BC Motor Vehicle Accident Claims Practice Manual*', an insurer is not expected to investigate a claim with the skill and forensic proficiency of a detective. An insurer must bring "reasonable

diligence, fairness, an appropriate level of skill, thoroughness, and objectivity to the investigation and the assessment of the collected information” (see: *MacDonald v. Insurance Corporation of British Columbia*, 2012 BCSC 283).

17. Having reviewed the evidence before me, I find ICBC did not act unreasonably in its investigation of the accident or its assessment of fault. Although Ms. Goertzen says ICBC did not adequately interview all witnesses, I find it took appropriate steps to contact and take witness statements, including hiring an independent adjuster to meet with and take statements from the various independent witnesses. I also find it was not unreasonable for ICBC not to initially pursue a witness statement from Ms. Goertzen’s sister, given she was not an independent witness. However, the evidence is that when Ms. Goertzen provided her sister’s statement to ICBC, it was considered.
18. To the extent Ms. Goertzen says ICBC’s documentation was incomplete, I find there is insufficient evidence proving that allegation. Ms. Goertzen says she made a Freedom of Information (FOI) request and that the records she received were not complete as they did not include photos of her vehicle, which she says ICBC had in its possession. Ms. Goertzen did not provide a copy of the FOI request, or the documentation she received in response. On the evidence before me, I find Ms. Goertzen has not proven ICBC’s documentation was lacking or improper.
19. Ms. Goertzen also alleges communication with ICBC was “sparse”, and that she or her advocate were always initiating said communication. The evidence is that ICBC and Ms. Goertzen were in constant contact after the June 4, 2019 accident. There is no obligation on ICBC to initiate contact. Also, ICBC submits it was always promptly responsive to Ms. Goertzen’s enquiries, which Ms. Goertzen does not deny. I find ICBC did not act unreasonably in its communications with Ms. Goertzen.
20. I also find that changing adjusters on its own is not something that warrants compensation. There is no evidence the various adjusters amounted to anything more than a minor inconvenience. I find there is no evidence ICBC internally changing adjusters was unreasonable or done in bad faith.

21. Given all of the above, I find Ms. Goertzen has not proven that ICBC breached its statutory obligations or its contract of insurance. I dismiss Ms. Goertzen's claims against ICBC.
22. I also note that to the extent Ms. Goertzen was claiming compensation as "punishment" against ICBC, I would not have awarded that remedy in any event. Damages meant to "punish" another party are known in law as "punitive damages". Punitive damages are meant to punish extreme conduct worthy of condemnation, and can only be awarded to punish harsh, vindictive, reprehensible and malicious behaviour (see: *Vorvis v. ICBC*, [1985] 1 SCR 1085). Given this, punitive awards are rare. Even if I had found ICBC acted unreasonably in its investigation of the accident and its assessment of fault, there is no evidence of any behaviour at a level that would warrant an award of punitive damages.
23. To the extent Ms. Goertzen claims compensation for her "time spent" defending herself to ICBC, I also would not have awarded any damages. Ms. Goertzen says she spent "well over 40 hours" collecting evidence and researching the law. Such is the nature of a claim. Although Ms. Goertzen says she should not have had to perform such tasks, as a party involved in a motor vehicle accident, and as an applicant in an adversarial dispute, it is in her best interest to collect and present the evidence to support her position. I find she is not entitled to compensation for those actions. This is also consistent with CRT rule 9.5(5) which says the CRT will not order a party to pay compensation for another party's time spent dealing with a CRT dispute, except in extraordinary circumstances. I find there are no such extraordinary circumstances in this case, and would have dismissed this claim in any event.
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 Ms. Goertzen was not successful in this dispute, I find that she is not entitled to reimbursement of her paid tribunal fees. ICBC did not pay fees in this dispute. Neither party claimed dispute-related expenses.

ORDER

25. I order Ms. Goertzen's claims, and this dispute, dismissed.

Andrea Ritchie, Vice Chair