



# Civil Resolution Tribunal

Date Issued: February 10, 2021

File: SC-2020-005263

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Economical Mutual Insurance Company v. Kone Inc. dba Kone Elevators*,  
2021 BCCRT 161

B E T W E E N :

ECONOMICAL MUTUAL INSURANCE COMPANY

**APPLICANT**

A N D :

KONE INC. DBA KONE ELEVATORS

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Sherelle Goodwin

## INTRODUCTION

1. This dispute is about vehicle damage costs, insurance and subrogation.
2. The applicant, Economical Mutual Insurance Company (Economical), says it insures a vehicle which was damaged by an employee of the respondent, Kone Inc., dba

Kone Elevators (Kone). Economical claims \$4,349.21 for repair costs and car rental expenses.

3. Kone admits that its employee damaged the vehicle. It says the vehicle had pre-existing damage and so Kone should not have to pay for all the repair costs or full car rental expenses. Kone says it should pay \$2,198.12 in repair costs plus \$130.85 for part of the car rental expenses, for a total of \$2,328.97.
4. Economical is represented by an employee. Kone is represented by a lawyer from outside B.C.

## **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). 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.
6. 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. 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 in the interests of justice.
7. 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.

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, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

## **ISSUES**

9. The issues in this dispute are:
  - a. Does Economical have standing to bring this claim?
  - b. If so, must Kone pay Economical for vehicle repair costs or car rental costs and, if so, how much?

## **EVIDENCE AND ANALYSIS**

10. As the applicant, Economical must prove its claims on a balance of probabilities. Although I have reviewed all the evidence and submissions provided, I only refer to that necessary to explain and provide context to my decision.
11. On June 13, 2019 Kone's employee, CC, was loading 500-pound weights into a Kone truck in a parking lot. One of the weights fell off the truck lift, striking and damaging a silver vehicle parked beside the Kone truck. None of this is disputed.

### ***Does Economical have standing?***

12. Economical says it insures the silver vehicle. Based on Economical's June 19, 2019 estimate report, and a September 6, 2019 repair shop invoice, I find the silver vehicle is owned by AH. AH is not a party to this dispute. Economical has not provided any insurance contract between itself and AH. Neither has Economical provided any evidence that AH assigned to Economical her rights of recovery against Kone. So, I infer Economical's claim is based on subrogation (see *Canadian Indemnity Co. v. Canadian Northern Shield Insurance Co.*, 1990 CanLII 721 (BCCA)).

13. Subrogation is the substitution of one person for another on a claim or legal right (see *McRae v. Canada (Attorney-General)*, 1997 CanLII 4121 (BCCA), at paragraph 25). In the context of this dispute, subrogation is where the insurer (Economical) takes the place of the insured (AH) and claims against someone (Kone) who caused or contributed to the loss.
14. Section 36 of the *Insurance Act* (IA) says that an insurer, on making a payment or assuming liability under a contract of insurance, is subrogated to the insured's rights of recovery against any person, and may bring an action in the insured's name to enforce those rights. Here, this means Economical can take AH's place and file a dispute against Kone, in AH's name. However, Economical must first either make payment toward AH's vehicle damage expenses or assume liability for such payment, under AH's insurance policy. As explained below, I find Economical has not met either requirement and so I find Economical does not have standing to bring this dispute.
15. First, Economical applied for resolution of this dispute in its own name, not in AH's name. In *Economical Insurance v. Pedre Contractors Ltd.*, 2020 BCCRT 961 another tribunal member found that section 36 of the IA prevented the insurer from bringing a claim in its own name, on behalf of its allegedly insured homeowners. While CRT decisions are not binding, they are persuasive. I agree with and adopt the reasoning in *Pedre*. I find section 36 of the IA only allows an insurer to enforce its right to subrogation by filing a dispute in the insured's name.
16. Second, I find Economical has failed to prove that it made any payment toward, or assumed liability for, AH's vehicle damage costs, as explained below.
17. Economical provided no documentary evidence of payment, such as banking records, invoices marked "paid", copies of correspondence outlining payments made, or any statement from an Economical employee saying that payment was made under AH's policy. Economical does not say that it made any payments in its submissions. So, on balance, I find Economical has not proved that it made any payment under the insurance contract.

18. I also find Economical has failed to prove that it assumed liability for the vehicle repair costs, or car rental costs. Economical provided in evidence 2 invoices from a vehicle repair shop dated September 6, 2019. The first invoice is for \$5,033.27 for vehicle repairs, minus AH's \$500 insurance deductible. The second invoice is \$281.40 for car rental costs. Although both are addressed to Economical, I find that does not prove that Economical accepted liability for paying the invoices. I find it unlikely that Economical assumed liability for these invoices, given its inconsistent findings on how much of the vehicle damage was caused by the June 13, 2019 incident, as explained below.
19. In its June 19, 2019 internal estimate report, Economical estimated AH's vehicle repair costs at \$5,033.27, minus AH's \$500 deductible. In Economical's internal May 6, 2020 supplemental report, repair costs are listed at \$4,067.81. In that report, some of the vehicle damage in the June 2019 estimate is characterized as unrelated damage. Economical's September 23, 2020 "final bill" lists repair costs at \$2,198.12 and even more of the vehicle damage from the June 2019 estimate is characterized as unrelated, pre-existing damage. Based on these 3 Economical internal documents, I find it unclear how much of AH's vehicle damage is related to the June 13, 2019 incident.
20. In its submissions, Economical says it will only pay for damage related to a reported loss or claim. I take Economical to mean it will only pay for AH's vehicle repairs if the damage is related to the June 13, 2019 incident. Given its inconsistent internal findings on how much of the identified vehicle damage is related to the June 13, 2019 incident, I find I cannot conclude that Economical has assumed liability for paying for any of the \$5,033.27 vehicle damage, or \$281.40 car rental costs listed on the September 6, 2019 invoices.
21. Economical has not provided any documents, such as correspondence with AH, or the car repair shop, showing that it accepted liability for the damages. So, I find Economical has not proven that it assumed liability for payments under the insurance contract.

22. For all these reasons, I find Economical has not shown that it is subrogated to AH's rights of recovery under section 36 of the IA. So, I find Economical does not have standing to make its claims in this dispute. I dismiss Economical's claims.

23. 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. As Economical was unsuccessful in its claims, I find it is not entitled to reimbursement of its CRT fees. Kone, as the successful respondent, does not claim any dispute-related expenses.

## **ORDER**

24. I dismiss Economical's claims and this dispute.

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Sherelle Goodwin, Tribunal Member