



# Civil Resolution Tribunal

Date Issued: March 1, 2021

File: SC-2020-002558

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Bennett v. ICBC*, 2021 BCCRT 237

BETWEEN:

GARETH BENNETT

**APPLICANT**

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA, ADVANCED  
PARKING SYSTEMS LTD. Dba. REEF PARKING, The Owners, Strata  
Plan LMS 1847, and The Owners, Strata Plan BCS 1348

**RESPONDENTS**

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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 vehicle damage.

2. The applicant, Gareth Bennett, says as he was leaving a parking garage, the parking gate suddenly closed on his vehicle, damaging his vehicle's roof. He seeks \$5,000 for his vehicle damage.
3. The respondent insurer, Insurance Corporation of British Columbia (ICBC), insures Mr. Bennett and says it offered to pay for the vehicle damage as a collision claim, subject to Mr. Bennett's applicable \$500 deductible. It appears Mr. Bennett has not accepted this offer.
4. The respondents, The Owners, Strata Plan LMS 1847 (LMS 1847) and The Owners, Strata Plan BCS 1348 (BCS 1348), allegedly own or operate the property where the damage occurred. They say the parking gate was operating normally and deny owing Mr. Bennett any money.
5. The respondent, Advanced Parking Systems Ltd. dba Reef Parking (Reef Parking), allegedly operates the parking garage. Reef Parking did not file a Dispute Response and is in default.
6. Mr. Bennett is self-represented. ICBC is represented by an employee. LMS 1847 and BCS 1348 are each represented by a person I infer is an employee or other strata contact.

## **JURISDICTION AND PROCEDURE**

7. 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.
8. 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. Some of the evidence in this dispute amounts to a “he said, they said” scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT’s process and found that oral hearings are not necessarily required where credibility is an issue.

9. 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.
10. 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, and
  - c. Order any other terms or conditions the CRT considers appropriate.

## **ISSUE**

11. The issue in this dispute is whether any of the respondents are responsible to compensate Mr. Bennett \$5,000 for his vehicle’s damage.

## EVIDENCE AND ANALYSIS

12. In a civil claim such as this, the applicant Mr. Bennett 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. As noted above, Reef Parking failed to file a Dispute Response in this proceeding, and therefore is in default. I will discuss this default status below.
13. Mr. Bennett says that on November 20, 2019, as he was exiting a parking area of the Pan Pacific hotel in Whistler, British Columbia, the parking gate lowered onto the roof of his vehicle as he was still driving through. Mr. Bennett alleges the parking gate's sensor must have been faulty, causing the gate to lower onto his vehicle. He seeks \$5,000 for "vehicle damage", though I note the repair estimate in evidence is for \$4,055.03. Mr. Bennett does not explain this difference.
14. Despite naming several parties, it is unclear to me which respondent might be responsible for the parking gate that allegedly damaged Mr. Bennett's vehicle. BCS 1348 says it does not own or manage the parking lot. LMS 1847 merely says the parking door closure was working properly with no reported issues, and submitted a December 12, 2019 invoice from Diamondhead Door Co. Ltd. that stated a gate inspection was completed and noted "all safeties [were] functional" and the door was "operating as it should". I find there is insufficient evidence before me that either LMS 1847 or BCS 1348 were responsible for the gate's operation or maintenance. As a result, I dismiss Mr. Bennett's claims against those two respondents.
15. Mr. Bennett also named his insurer ICBC as a party to this claim. ICBC says it offered to cover Mr. Bennett's vehicle damage, subject to his applicable \$500 deductible. Mr. Bennett has not explained why ICBC would be responsible for his vehicle's damage, other than saying ICBC "refused" to hold the other respondents "accountable" for the damage.

16. To the extent Mr. Bennett alleges ICBC breached its statutory obligations or its contract of insurance, Mr. Bennett has not provided any evidence of this. I find Mr. Bennett has not put forward any legal basis for a claim against ICBC, and so I dismiss his claims as against ICBC.
17. So what about the claim against Reef Parking? Reef Parking was served in accordance with the CRT's rules but, as noted above, it failed to file a Dispute Response in this proceeding as required. Therefore, it is in default. Liability is generally assumed in defaults, meaning Mr. Bennett's position is assumed to be correct. While there is some evidence that indicates Reef Parking does not own or operate the parking garage, but rather is a renter of space in the parking garage, significantly there is no evidence or explanation before me from Reef Parking about its alleged responsibility over the parking gate, or about whether the parking gate was in fact defective.
18. For these reasons, I find Reef Parking is liable for Mr. Bennett's vehicle damage. I make this finding against Reef Parking given the assumption of liability arising from Reef Parking's default status. However, I find Mr. Bennett is only entitled to \$4,055.03 as indicated in the repair estimate, not the claimed \$5,000.
19. The *Court Order Interest Act* applies to the CRT. However, because Mr. Bennett has admittedly not yet paid for his vehicle repairs, I find he is not entitled to pre-judgment interest on the award.
20. 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. Bennett was successful, I find Reef Parking must reimburse the \$125 he paid in tribunal fees.

## ORDER

21. Within 21 days of the date of this decision, I order the respondent, Advanced Parking Systems Ltd. Dba. Reef Parking (Reef Parking), to pay the applicant, Gareth Bennett, a total of \$4,180.03, broken down as follows:
  - a. \$4,055.03 in debt for vehicle damage, and
  - b. \$125 in tribunal fees.
22. Mr. Bennett is also entitled to post-judgment interest on this amount, as applicable under the *Court Order Interest Act*.
23. Mr. Bennett's claims against the remaining respondents are dismissed.
24. 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. However, under section 56.1(2.1) of the CRTA, a party in default (here, Reef Parking) has no right to make a notice of objection.
25. 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.

26. 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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Andrea Ritchie, Vice Chair