



Civil Resolution Tribunal

Date Issued: March 9, 2021

File: SC-2020-007481

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Martin v. ICBC*, 2021 BCCRT 261

B E T W E E N :

ANIKO MARTIN

APPLICANT

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. The applicant, Aniko Martin, is the owner of a vehicle that was involved in a collision while being driven by another person, DM. DM is not a party to this dispute. The respondent, Insurance Corporation of British Columbia (ICBC), determined that Miss Martin had breached her contract of insurance by allowing DM to drive her vehicle and that it would not provide coverage to her. Miss Martin asks for an order that ICBC

reimburse her for the \$2,173.52 she has paid in damages. ICBC says that Miss Martin is not entitled to the reimbursement she claims.

2. Miss Martin is self-represented. ICBC is represented by an employee.

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

ISSUE

7. The issue in this dispute is whether Miss Martin is entitled to the reimbursement of the \$2,173.52 she paid to ICBC.

EVIDENCE AND ANALYSIS

8. In a civil proceeding like this, an applicant must prove their claims on a balance of probabilities. Both parties provided evidence and Miss Martin provided submissions. ICBC chose not to provide submissions despite having an opportunity to do so. I have read all the information provided by the parties, but will refer to only what I find relevant and necessary to provide context for my decision.
9. Miss Martin admits that, on September 17, 2019, she allowed DM to use her car to run an errand. DM did not have a British Columbia driver's licence despite having lived in the province for at least 10 months, although he did hold a licence from another province. During that trip, DM collided with a third party's vehicle. The collision resulted in damages to both vehicles.
10. ICBC internally found that DM was at fault for the collision. Based on its investigation, ICBC also determined that Miss Martin was aware that DM did not have a valid British Columbia driver's licence and that she knew about the requirement that a person get a British Columbia driver's licence within 90 days of moving to the province. Based on this information, ICBC determined that Miss Martin had breached her insurance contract by allowing DM to drive her vehicle.
11. In letters dated January 15 and 28, 2020, ICBC notified Miss Martin that it would not cover repairs to her vehicle and that she would be required to repay ICBC for all claims related to the collision.
12. In a July 2, 2020 letter, ICBC advised Miss Martin of the amount of the property damage claims that it had paid out. On September 21, 2020, Miss Martin reimbursed ICBC \$2,173.52 for claim-related property damage.

13. Miss Martin says that it was not fair for ICBC to hold her responsible for the costs of the collision as she had valid insurance and a good driving history. She submits that she should not have to pay for something she thought her insurance would cover. ICBC's position, as set out in its Dispute Response, is that Miss Martin breached the terms of her insurance contract by giving DM consent to drive her vehicle when she was aware that he did not hold a valid British Columbia driver's licence. Claim file notes in ICBC's evidence indicate that it considered Miss Martin to have breached Prescribed Condition 3(7) from her insurance contract as well as section 55 of the *Insurance (Vehicle) Regulation (IVR)*.
14. There are 9 divisions of Prescribed Conditions which form part of each contract of insurance, including Miss Martin's. Prescribed condition 3(2) says that an insured must not operate the vehicle described in the contract if the insured is not authorized and qualified by law to operate it. Prescribed condition 3(7) extends that obligation, and says that an insured must not permit the vehicle described in this contract to be operated by a person or for a purpose that breaches this condition or a subcondition of this condition.
15. Section 55(3) of the IVR contains similar provisions that prohibit an insured from operating an insured vehicle if the insured is not authorized and qualified by law to operate the vehicle. Section 55(5) says that an insured must not permit the insured vehicle to be operated by a person that breaches a condition of the section.
16. The *Motor Vehicle Act (MVA)* addresses requirements for driver's licences. Section 24 of the MVA says that a person must not drive or operate a motor vehicle on a highway unless the person holds a driver's licence issued to them under the MVA. Section 34 of the MVA provides limited exemptions to the requirement to have a driver's licence issued under the MVA, including for new residents. According to section 34(1.1) of the MVA, a person who has become ordinarily resident in British Columbia and who has a validly issued driver's licence from another jurisdiction is exempt from the requirement to hold a British Columbia driver's licence for 90 days after they became ordinarily resident in this province.

17. I find that, after the expiry of the 90-day exemption period, a person who does not obtain a British Columbia driver's licence is not authorized to drive in British Columbia. This finding is supported by the British Columbia Supreme Court's decision in *ICBC v. Chaytor et al*, 2005 BCSC 1543, which contains a determination that a person who resides in British Columbia but does not have a valid British Columbia driver's licence is not "authorized and qualified" to drive as contemplated by section 55 of the IVR, even if that person is qualified to drive in another jurisdiction (see paragraphs 39 to 42).
18. Therefore, an ICBC insured who permits someone to drive their vehicle who has been a British Columbia resident for more than 90 days but does not have a British Columbia driver's licence violates both the Prescribed Conditions and section 55 of the IVR.
19. Because ICBC seeks to deny Miss Martin coverage under her insurance policy, it bears the burden of proof, on a balance of probabilities, to establish that Miss Martin permitted DM to drive her vehicle and that she knew he did not have a valid driver's licence (see *Sherrell v. Insurance Corporation of British Columbia*, 2019 BCSC 103 at paragraph 48).
20. There is no dispute that DM had Miss Martin's permission to drive her vehicle. She admitted this fact to ICBC during its investigation and repeated it in her submissions.
21. The second question concerns DM's driver's licence. In her submissions, Miss Martin says that she was not aware of the requirement that a person get a British Columbia driver's licence when they move to the province. However, during an interview with an independent adjuster during ICBC's investigation process, Miss Martin said something different. According to the interview transcript, Miss Martin told the adjuster that she knew that DM had a driver's licence from another province, that he had lived in British Columbia since at least November of 2018, and that she knew about the requirement to obtain a British Columbia driver's licence when moving to this province. She commented that DM's failure to update his driver's licence was "on him".

22. Miss Martin did not explain the discrepancy between the contents of her submissions and her statement to the adjuster. Significantly, she did not deny that she made this statement to the adjuster. I find that her conversation with the adjuster occurred as documented in the transcript. Based on the available information, I find that ICBC has established that Miss Martin knew that DM did not have a valid driver's licence.
23. Having made inquiries on the matter and knowing that DM did not have a valid British Columbia driver's licence, I find that Miss Martin allowing DM to drive her vehicle amounted to a violation of the Prescribed Conditions of her insurance contract and section 55 of the IVR. Accordingly, ICBC was entitled to find Miss Martin in breach of her insurance contract.
24. I acknowledge Miss Martin's submission that text on ICBC's website says that an insured "may" (not must) be denied coverage in the event of a breach. However, both Prescribed Condition 3(1) and section 55(1.1) of the IVR state that ICBC "is not liable" to an insured who breaches conditions of those sections. Based on the wording of the contract and the IVR, I find that ICBC is not required to provide coverage to Miss Martin in these circumstances.
25. I find that Miss Martin is not entitled to reimbursement of the \$2,173.52 she has paid to ICBC, and I dismiss her claim.
26. I cannot make orders about non-parties and, as noted, DM is not a party to this dispute. So, I make no findings about whether DM is liable to either ICBC or Miss Martin for any costs associated with the collision.
27. 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. As Miss Martin was not successful, I dismiss her claim for reimbursement of dispute-related expenses.

ORDER

28. I dismiss Miss Martin's claims and this dispute.

Lynn Scrivener, Tribunal Member