



# Civil Resolution Tribunal

Date Issued: April 26, 2021

File: SC-2020-008611

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Cheng v. The Mutual Fire Insurance Company of British Columbia*,  
2021 BCCRT 426

B E T W E E N :

IAN CHUN-YIN CHENG

**APPLICANT**

A N D :

THE MUTUAL FIRE INSURANCE COMPANY OF BRITISH COLUMBIA

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kristin Gardner

## INTRODUCTION

1. This dispute is about an insurance payout for personal property damage.
2. The applicant, Ian Chun-Yin Cheng purchased an insurance policy from the respondent, The Mutual Fire Insurance Company of British Columbia (Mutual), which

insured his personal property to a limit of \$30,000. Mr. Cheng says a fire in his building caused personal property damage over the policy's limit. Mr. Cheng says Mutual paid him only \$24,193.25 for his personal property damage after improperly applying the deductible and adjusting expenses to the policy limit. Mr. Cheng claims the \$5,806.75 balance of his policy limits. He expressly abandoned the amount of his claim over \$5,000, which is the Civil Resolution Tribunal (CRT) small claims monetary limit.

3. Mutual says it made the appropriate deductions to Mr. Cheng's payout, as provided in the insurance policy. Mutual says it does not owe Mr. Cheng anything.
4. Mr. Cheng is self-represented. Mutual is represented by an employee.

## **JURISDICTION AND PROCEDURE**

5. These are the CRT's formal written reasons. 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, and I find that there are no significant issues of credibility or other reasons that might require an oral hearing. 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.

## **ISSUE**

9. The issue in this dispute is whether Mutual was entitled to reduce Mr. Cheng's policy limit payout by the deductible amount and additional expenses.

## **EVIDENCE AND ANALYSIS**

10. As the applicant in this civil proceeding, Mr. Cheng must prove his claims 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. It is undisputed that Mr. Cheng used an online broker, SOI, to purchase a home insurance policy. The policy provided Mr. Cheng with coverage for personal property, additional living expenses, personal liability, and premises liability. Mutual was the underwriter of Mr. Cheng's policy, and was ultimately responsible for paying out any claims.
12. There was a fire in Mr. Cheng's apartment building on April 18, 2020, which caused smoke and soot damage in Mr. Cheng's apartment. SOI hired an independent insurance adjuster, APC, to investigate and handle Mr. Cheng's claims for personal property damage and additional living expenses. The evidence shows that Mutual paid Mr. Cheng's \$684.99 claim for additional living expenses, and there is no dispute about this payout.
13. As for Mr. Cheng's personal property damage, APC hired a restoration company, PR. PR was hired to pack up, clean, remove, and store the salvageable contents of Mr.

Cheng's apartment until the apartment building was repaired or Mr. Cheng found a new place to live. The evidence shows that PR's initial estimate to complete this work was over \$11,000.

14. The evidence shows that Mr. Cheng signed a "Work Authorization and Agreement", which authorized PR to perform all necessary repairs and restoration work, including cleaning and restoration of his apartment's contents. The agreement included a term that PR would direct its invoices to the appropriate insurance representative for payment and that if, for any reason, the insurance company denied payment, Mr. Cheng would be responsible for paying PR's invoices.
15. A few days after PR started working in Mr. Cheng's apartment, testing confirmed the building contained asbestos which had contaminated Mr. Cheng's apartment during the fire. APC determined that the presence of asbestos meant it may not be cost effective to try to salvage Mr. Cheng's belongings, so it recommended PR stop work. It is undisputed that PR submitted a May 21, 2020 invoice for \$3,306.75, for the work it had performed and the asbestos testing fees, which APC paid.
16. In the end, Mutual paid Mr. Cheng the \$30,000 policy limits for his personal property damage, less a \$2,500 deductible and PR's \$3,306.75 invoice, for a total of \$24,193.25. Mr. Cheng says the policy's wording does not permit the deductible and PR's expenses to be deducted when the claim exceeds the policy limits.
17. I turn first to consider the deductible.

### ***Insurance Deductible***

18. It is undisputed that the policy provided for a \$2,500 "standard deductible".
19. Mr. Cheng argues that the deductible should be applied to the total loss amount, not to the policy limits. Mr. Cheng says that his personal property loss totaled \$38,580.41, which Mutual did not dispute. So, Mr. Cheng says the \$2,500 deductible should be applied to the \$38,580.41 loss, reducing his loss to \$36,080.41. Given his loss is over the policy limits, he says he should be paid out the full \$30,000.

20. A copy of Mr. Cheng's insurance policy was filed in evidence. Under clause 8 of the Policy Wordings section, it states (my bold emphasis added):

#### 8 Policy Deductibles

This section describes how deductibles apply to loss or damage insured under this Policy. It is important to note that each Occurrence is subject to one of the deductibles described below. The deductible amounts are specified on your Policy Declaration. **Payment for loss or damage insured under your Policy will be reduced by the applicable deductible amount.**

##### 8.1 Standard Deductible

For loss or damage insured under this Policy due to loss types not described elsewhere in this Section, the Standard Deductible as specified on your Policy Declaration applies per Occurrence.

21. Mr. Cheng argues that there is no reference in the policy to the deductible being applied to the policy limits where the damage exceeds the limits. He says that if Mutual intended to apply the deductible to the policy limits, it should have clearly stated that in the policy. Mr. Cheng also argues that clause 8 of the Policy Wordings set out above is ambiguous.
22. I do not accept Mr. Cheng's submissions on the interpretation of the policy's wording. I find that clause 8 clearly states that payment under the policy will be reduced by the deductible amount. I find that means even if the payment is the policy limits, the deductible will be applied. When the language of an insurance policy is unambiguous, the court (or tribunal) should give effect to clear language, reading the contract as a whole (see *Progressive Homes Ltd. v. Lombard General Insurance Co. of Canada*, 2010 SCC 33). I find there is no ambiguity in Mr. Cheng's policy about the deductible.
23. Further, Mutual filed an information sheet it says is provided with its policies called "A guide to understanding home insurance claims", which Mr. Cheng did not deny receiving. This information sheet explains that a deductible is the amount an insured

must pay out-of-pocket before the policy will pay any remaining claims costs. It also clearly states that a deductible applies to every claim. I find this information sheet further clarifies that the full limits of the insurance policy will not be paid out, and the deductible must be paid even on claims that exceed the policy limit.

24. I note that Mr. Cheng made submissions and provided evidence about how insurance adjusters are trained to interpret insurance policies and adjust claims, particularly with respect to applying deductibles when claims exceed the policy limits. For instance, he provided an excerpt from *Essentials of Loss Adjusting*, prepared for The Insurance Institute of Canada, which provided examples showing no deductible was paid for losses exceeding the policy limits. Mr. Cheng also provided evidence about training provided to insurance adjusters in the United States, which he argues provides similar instructions about applying a deductible to a total loss and not the policy limits. However, I find the evidence provided does not prove this practice applies in all cases or to all insurance policies. Therefore, I place no weight on it.
25. I acknowledge that there may be some insurance policies that provide a deductible is not payable, or is subsumed, when the loss exceeds the policy limits. However, I find that is not the case here. I find under the policy's terms, Mutual was entitled to reduce Mr. Cheng's policy limits payout by the \$2,500 deductible amount.
26. I turn now to the additional expenses deducted.

### ***Additional Expenses***

27. As noted, Mutual deducted PR's \$3,306.75 invoice from Mr. Cheng's policy limits payout. Mr. Cheng says this is a loss adjusting expense, which should not be deducted from what Mutual must pay for his personal property loss. He argues the policy's wording does not allow Mutual to deduct adjusting expenses from the policy limit coverage.
28. While I agree that adjusting expenses are not likely deductible, I find that PR's invoice was not an "adjusting expense". It is undisputed that all of Mr. Cheng's belongings had to be removed from his apartment to facilitate building repairs. APC's April 22,

2020 preliminary report to SOI stated that the adjuster arranged for 2 restoration companies to inspect and provide estimates for handling Mr. Cheng's belongings, one of which was PR. Mutual submits that by signing PR's work authorization, Mr. Cheng consented to hiring PR to handle his personal property.

29. I find that PR's costs to box up, remove, clean, and store Mr. Cheng's belongings, were considered part of Mr. Cheng's personal property loss. This is supported by APC's May 26, 2020 report to SOI, which shows that PR's invoice was included under personal property coverage, not adjusting expenses.

30. I note that clause 3.5.4 of the Policy Wordings section states:

3.5.4 Loss or damage insured.

This coverage insures, subject to the limitations and exclusions of this Policy:

(a) all types of direct physical loss or damage to your Personal Property;

(b) reasonable expenses incurred:

(1) to protect your Personal Property from further damage following a loss;

(2) to remove your Personal Property from your Premises to protect it from further damage following a loss; ...

31. I find PR's invoice falls under clause 3.5.4(b), as a reasonable expense incurred to remove Mr. Cheng's personal property from his apartment and protect it while the building was being repaired. While a portion of PR's invoice was payment for the asbestos testing, I infer that PR was obligated to undertake this testing once asbestos was found in the building after the fire. I find this expense was also reasonable, as the presence or absence of asbestos likely determines how personal property must be removed and protected.

32. Under clause 3.5.4(b), I find PR's invoice was insured under Mr. Cheng's policy, which means it was payable as part of Mr. Cheng's personal property loss. Mutual

(via APC) paid for PR's invoice. However, I find Mr. Cheng's \$30,000 policy limit was the extent of Mutual's exposure (including the deductible). This means that Mutual did not have to pay the policy limits to Mr. Cheng (less the deductible), plus pay the expenses it incurred to remove and protect Mr. Cheng's personal property. Rather, I find Mr. Cheng's policy limits included payment of any reasonable expenses under clause 3.5.4(b), whether Mutual paid the expenses or Mr. Cheng had paid them.

33. Put another way, if Mr. Cheng had paid PR directly, the expense would have been added to Mr. Cheng's loss total, and Mutual would have paid him \$27,500 (policy limits, less the deductible). The result to Mr. Cheng would have been the same. As another example, if Mr. Cheng's personal property loss had totaled only \$20,000, Mutual likely would have paid PR's invoice as part of the loss and paid Mr. Cheng \$17,500 (his \$20,000 loss, less the \$2,500 deductible) because the cumulative loss would have been within the \$30,000 policy limit.
34. The problem here is that Mr. Cheng was underinsured. Mr. Cheng admits he did not carefully assess the replacement value of his personal property. I find Mr. Cheng also did not consider that there may be costs associated with removing and storing belongings that can be salvaged, which all must fall within the policy limit. I find Mutual bears no responsibility for Mr. Cheng being underinsured. Because Mutual paid PR's invoice, I find it was properly subtracted from the policy limit, along with the deductible.
35. I note that Mr. Cheng argues that PR overcharged for certain items on its invoice. However, PR is not a party to this dispute and had no opportunity to provide submissions or evidence. In any event, Mr. Cheng provided no supporting evidence that PR overcharged Mutual, so I find the allegation is unproven.
36. In summary, I find Mutual was entitled to reduce Mr. Cheng's policy limit payout by the amount of the deductible and PR's invoice. I dismiss Mr. Cheng's claims.
37. 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. Mr. Cheng was unsuccessful and so I dismiss his claim for CRT fees and dispute-related expenses. Mutual did not pay any fees or claim and expenses, so I make no order.

## **ORDER**

38. I dismiss Mr. Cheng's claims and this dispute.

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Kristin Gardner, Tribunal Member