



Civil Resolution Tribunal

Date Issued: June 2, 2021

File: SC-2020-009984

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Buchanan v. Intact Insurance Company and, in French, Intact Compagnie D'Assurance*, 2021 BCCRT 602

B E T W E E N :

GARY BUCHANAN

APPLICANT

A N D :

INTACT INSURANCE COMPANY AND, IN FRENCH, INTACT
COMPAGNIE D'ASSURANCE

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. This is a dispute about an insurance claim. The applicant, Gary Buchanan, has a personal property insurance policy with the respondent, Intact Insurance Company

and, in French, Intact Compagnie D'Assurance (Intact). Mr. Buchanan jointly holds the insurance policy with HL, who is not a party to this dispute. Mr. Buchanan made a claim with Intact for personal property damaged in a flood in his home. He says Intact refuses to write a cheque solely in his name despite knowing that the damaged items belong solely to him. He wants an order for Intact to pay him \$3,065 for the value of his damaged personal property and related storage fees.

2. Intact says its policy is to issue a co-payable cheque to both policy holders when paying out a claim. It says it issued a co-payable cheque to Mr. Buchanan and HL for the damaged personal property which settled the insurance claim, so it does not owe Mr. Buchanan anything.
3. Mr. Buchanan is self-represented and Intact is represented by its in-house counsel, Tariq Teja.

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 the dispute's parties that will likely continue after the CRT process has ended.
5. 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.

6. 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.
7. 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

8. The issue in this dispute is whether Intact is required to pay Mr. Buchanan, in his name only, \$3,065 for the value of his insurance claim.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, as the applicant Mr. Buchanan must prove his claims on a balance of probabilities. I have read all the parties' evidence and submissions but refer only to what I find relevant to explain my decision. For the following reasons, I dismiss Mr. Buchanan's claims.
10. Throughout the evidence the parties refer to M, who I infer from the context of the communications is HL. For clarity, and meaning no disrespect, I refer to M as HL in this decision.
11. It is undisputed that at some point in 2020 Mr. Buchanan and HL made an insurance claim with Intact after a flood damaged their home. Part of the insurance claim was for damage to Mr. Buchanan's personal property. Mr. Buchanan did not submit the insurance claim as evidence, but in this dispute he claims the replacement cost of a damaged phone, video camera, and 3 memory cards for the video camera.

12. The evidence shows that in October 2020 Intact issued a co-payable cheque to Mr. Buchanan and HL for \$1,737.77, which it subsequently cancelled at Mr. Buchanan's request. In an October 23, 2020 email to Mr. Buchanan, an Intact representative FL wrote, "I've placed a stop payment on the cheque. Please work it out with [HL] which contents are to be paid only to you, and which contents are to be paid only to her. I will also be contacting [HL] regarding this to be sure everyone is on the same page...Future payment options only in your name can be via email transfer, electronic funds transfer, or I can mail a cheque." On November 2, 2020, FL wrote in an email, "I know now there should not be a co-payable cheque sent, as long as everyone is in agreement in regards to which contents are theirs, then I can issue separate the payments" (reproduced as written). In a November 19, 2020 email FL told Mr. Buchanan that the total settlement amount was \$1,763.77 and asked if he would like an email transfer. It is unclear from the evidence why this amount was higher than the \$1,737.77 cheque issued in October. It is also unclear whether Mr. Buchanan responded to the November 19, 2020 email.
13. It is undisputed that in January 2021, Intact mailed a co-payable cheque to Mr. Buchanan and HL at their shared home address, and HL cashed it. It is unclear from the evidence whether there was any communication amongst the parties between November 19, 2020 and the date Intact issued this cheque. The amount of the cheque is unclear from the evidence before me, but I infer that it was for the settlement amount of \$1,763.77 as indicated in the November 19, 2020 email.

Is Intact required to pay Mr. Buchanan \$3,065 for the value of his insurance claim?

14. Intact says it is a clear term of Mr. Buchanan's insurance policy that when paying out a claim it will issue a co-payable cheque to both policy holders, which it did in this case. It says that under no circumstances is an Intact insurance adjuster permitted to issue a cheque to only 1 of 2 policy holders. Mr. Buchanan says Intact has never proven this policy, and even if it does have such a policy, it does not follow it. He says Intact issued a cheque solely to HL for out of pocket flooring installation expenses

related to the insurance claim. However, the emails he submitted show only that a restoration contractor agreed to directly reimburse HL. There is no evidence the contractor actually reimbursed HL, or that Intact agreed to the arrangement.

15. I agree that Intact provided no documentary evidence of its co-payment policy, and I find the emails from FL in evidence indicate that they were willing to pay Mr. Buchanan directly for the value of his personal property claim. However, I find nothing turns on this policy because Mr. Buchanan has not established that he is entitled to payment from Intact. He says FL failed to follow through on their promise that Intact would pay him directly for his claim by e-transfer. However, I find FL's statement about direct payment to Mr. Buchanan was conditional on receiving HL's agreement, and there is no evidence before me that HL agreed to the proposed arrangement.
16. Mr. Buchanan says Intact never notified him that it was sending the co-payable cheque and he never received it. However, he does not dispute that Intact sent the cheque to the address for the home under the insurance policy. While Mr. Buchanan may have preferred to receive an individual cheque made out only to him, I find he has not established that Intact was required to pay him directly or that the co-payable cheque was paid improperly under the policy.
17. Even if Mr. Buchanan could establish that Intact was required to pay him separately from HL, I find he has not established he is entitled to any amount claimed. As noted, he did not submit the insurance claim or evidence of exactly what items he says were damaged. Based on the receipts he provided as evidence, I find he spent \$1,432.84 to replace the phone, video camera, and memory cards, which is less than the amount of the co-payable cheque. He does not explain the discrepancy between this amount and the \$3,065 claimed, nor does he provide any details or evidence about the claimed storage fees. For all of these reasons, I dismiss Mr. Buchanan's claims.
18. 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. I see no reason in this case not to follow that general rule.

Since Mr. Buchanan was unsuccessful, I find he is not entitled to reimbursement of CRT fees. He did not claim any dispute-related expenses.

ORDER

19. I dismiss Mr. Buchanan's claims and this dispute.

Sarah Orr, Tribunal Member