



# Civil Resolution Tribunal

Date Issued: June 10, 2021

File: SC-2021-000257

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Bernardin v. ICBC*, 2021 BCCRT 638

B E T W E E N :

GARRY BERNARDIN

**APPLICANT**

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kristin Gardner

## INTRODUCTION

1. This small claims dispute is about insurance coverage for alleged hit and run vehicle damage. The applicant, Garry Bernardin, says the respondent insurer, Insurance Corporation of British Columbia (ICBC), incorrectly determined that his vehicle

damage was not from a hit and run accident. Mr. Bernardin initially claimed \$3,000 for vehicle repairs, but in his submissions reduced his claim to the vehicle repair estimate amount, which is \$2,272.20.

2. ICBC says the vehicle damage is inconsistent with vehicle to vehicle contact, which is required for a hit and run claim. ICBC alleges that Mr. Bernardin made a willfully false statement that his truck's damage was from a hit and run, which Mr. Bernardin denies. ICBC also says Mr. Bernardin's vehicle had unrepaired damage in the same area, so ICBC suggests Mr. Bernardin may be claiming old damage as new damage.
3. Mr. Bernardin is self-represented. ICBC is represented by an employee.

## **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 the damage to Mr. Bernardin's vehicle was caused by another vehicle, such that he would be entitled to hit and run coverage from ICBC.

## **EVIDENCE AND ANALYSIS**

9. In a civil proceeding like this one, the applicant Mr. Bernardin must prove his claims on a balance of probabilities. I have read all the parties' evidence and submissions, but I refer only to the evidence and arguments that I find relevant to provide context for my decision.
10. This dispute is about whether Mr. Bernardin's vehicle damage should be covered under section 24 of the *Insurance Vehicle Act (IVA)*. Section 24 describes remedies available for hit and run accidents. Applied to this dispute, section 24 allows Mr. Bernardin to claim against ICBC if an unknown vehicle damaged his truck.
11. According to Mr. Bernardin, he first noticed damage on the passenger side of his pickup truck on February 9, 2020, when it was parked in his driveway. He says it is impossible to get beside his truck to damage it while it is in his driveway, so he believes the damage must have occurred when he was parked in a public arena parking lot the previous day. After noticing the damage on February 9, Mr. Bernardin contacted ICBC to report it. He says he also contacted the police, though he did not file any evidence of his police report.
12. There are photographs of the vehicle damage in evidence, which I infer were taken by a repair shop. The photographs show denting along the passenger side of the truck's box, between the door and the rear wheel. There are also scratches starting

about mid-way along the passenger side of the truck's box, extending around the rear wheel well, but which appear to stop at the back of the rear wheel well. The scratches appear mostly white in colour, with spots of blue and yellow.

13. The photographs of Mr. Bernardin's vehicle damage were reviewed by 3 ICBC employees, including:
  - a. Gurdish Gill, Estimator, on February 18, 2020,
  - b. Henry Chan, Material Damage Supervisor, on February 18, 2020,
  - c. Wade Adams, Material Damage Operations Manager, on January 13, 2021.
14. Mr. Gill noted the truck's damage was to the entire right side of the box, with a straight vertical impact in front of the rear wheel and scraping along the entire box side, with yellow and bluish-green paint transfer. While Mr. Gill did not specifically state it was his opinion the damage was inconsistent with vehicle to vehicle contact, I infer that this was why he referred of the claim to Mr. Chan for further review the same day.
15. Mr. Chan noted he observed non-automotive paint transfer with a vertical stop marking against a straight vertical object, then starting again, and he concluded the damage was not from a hit and run. Mr. Adams simply stated he agreed with both Mr. Chan and Mr. Gill's determination that the damage was not consistent with vehicle to vehicle contact.
16. As part of its submissions, ICBC provided information about each of Mr. Gill's, Mr. Chan's, and Mr. Adams' educational background, training, and experience working in vehicle damage repair and estimating. I infer it is ICBC's position that their notes about the truck's damage should be admitted as expert opinion evidence. I accept on the information ICBC provided that all 3 ICBC employees have the necessary qualifications to provide expert evidence on the likely cause of vehicle damage, and I admit the notes as expert opinion evidence. However, for the following reasons, I do not place much weight on any of their opinions.

17. First, it is undisputed that none of the ICBC employees personally inspected Mr. Bernardin's truck, as all in-person estimating appointments were put on hold due to the COVID-19 pandemic. As Mr. Bernardin submits, I accept it is possible that the photographs may not depict everything relevant to accurately determine the cause of the truck's damage. Second, there is no explanation for how the employees determined from the photographs alone that the yellow and blue spots in the damage were non-automotive paint transfer. Finally, CRT rule 8.3(7) says the role of an expert is to assist the tribunal and not to advocate for any party in a dispute. The notes were not created for the purpose of this dispute but were made for ICBC's internal investigation of the accident. Further, given the authors are all employed by the respondent, their notes do not constitute truly independent or impartial expert opinions. I find these factors negatively impact the weight that should be given to the opinions. That said, I acknowledge that the opinions are consistent that the damage does not appear to be from contact with another vehicle, as required for hit and run coverage.
18. ICBC also alleges the damage claimed in this dispute could have been caused by an accident Mr. Bernardin reported to ICBC in 2019. ICBC provided its notes showing Mr. Bernardin reported his truck's rear right quarter panel was damaged on February 12, 2019 when his wife hit a post in an underground parking lot. Mr. Bernardin does not dispute that this damage occurred, or that he chose not to repair it. He says the damage consisted of only some paint scraping near and on the taillight, and it was not worth the cost of his deductible to repair.
19. Mr. Bernardin also argues that the photographs of the damage from the current claim do not show the area of old damage, which he says would have been readily apparent if ICBC had inspected his truck in-person. I note there is no evidence before me that the repair shop that inspected Mr. Bernardin's truck for the current claim, suggested the claimed damage was old damage. Also, the ICBC employees who reviewed the photographs did not note that any of the claimed damage appeared to be old damage. I find there is insufficient evidence to support ICBC's suggestion that Mr. Bernardin is

attempting to claim old damage as new damage in this dispute, and I place no weight on it.

20. As for the alleged willfully false statement, ICBC says that despite being advised that the damage was inconsistent with vehicle to vehicle contact, Mr. Bernardin provided a signed statement maintaining that the damage was from a hit and run. I infer that ICBC found Mr. Bernardin's statement was willfully false because it had determined the damage was caused by the truck's driver hitting a stationary object. However, Mr. Bernardin's statement said only that he did not cause the damage himself and that when he asked his family about it, they told him they were not responsible for it. I find there is no evidence before me that those statements are untrue. So, I find ICBC has not proven Mr. Bernardin made a willfully false statement.
21. However, as noted above, it is Mr. Bernardin who bears the burden of proving that his truck's damage was caused by vehicle to vehicle contact. He specifically submits that he has "no idea what caused the damage". He filed a collection of photographs of large vehicles, including commercial trucks and motorhomes, that he says could have been responsible for his truck's damage. I find his evidence is speculative and insufficient to prove his truck's damage likely came from contact with another vehicle.
22. Mr. Bernardin also disputes that there was any non-automotive paint transfer in the damage. He says the yellow spots could be residue from a tree that overhangs his parking spot, and the blue spots are primer paint from the factory where the truck was manufactured. I find these issues raised by Mr. Bernardin are subjects outside ordinary knowledge that require expert evidence: *Bergen v. Guliker*, 2015 BCCA 283. Mr. Bernardin provided no such expert evidence.
23. Mr. Bernardin says he did not get his own expert opinion about what caused the damage due to the expected expense. However, there is no evidence before me that Mr. Bernardin took any steps to determine the cost of obtaining an expert report. Also, a successful party in a CRT dispute can recover reasonable dispute-related expenses, including expert reports, from an unsuccessful party. I find Mr. Bernardin's explanation for failing to get expert evidence is insufficient.

24. While I accept Mr. Bernardin's statement that he discovered new damage to his truck on February 9, 2020, that he did not cause, this does not necessarily mean another vehicle hit his truck. On balance, I find that Mr. Bernardin has not met his burden to prove that his truck's damage was caused by another vehicle, which is a requirement for section 24 IVA coverage. I find that I must dismiss his claims.
25. 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. Bernardin was unsuccessful and so I dismiss his claim for CRT fees. ICBC did not pay any fees or claim dispute-related expenses.

## **ORDER**

26. I dismiss Mr. Bernardin's claims and this dispute.

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Kristin Gardner, Tribunal Member