



Civil Resolution Tribunal

Date Issued: August 31, 2021

File: SC-2020-007407

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Williams v. ICBC*, 2021 BCCRT 955

BETWEEN:

KATHERINE WILLIAMS

APPLICANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about insurance coverage for a horse trailer damaged on June 8, 2020 by a fallen tree. The applicant Katherine Williams says the respondent insurer, Insurance Corporation of British Columbia (ICBC), unreasonably delayed in

approving the trailer's repairs, which were completed on October 8, 2020. Ms. Williams claims \$5,000 arising from her loss of use of the trailer.

2. ICBC says at all times it acted fairly and reasonably in handling the damage claim. ICBC also says Ms. Williams does not have loss of use coverage for her trailer, and so on that basis she is not entitled to the claimed damages.
3. Ms. Williams is self-represented. ICBC is represented by an employee, LB.

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). 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.
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. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find I can fairly hear this dispute based on the submitted evidence and through written submissions.
6. Under section 42 of the CRTA, 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, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.

8. Some of the evidence ICBC submitted references confidential settlement discussions, which is prohibited under the CRTA and CRT's rules. I have not considered any of that information in this decision.
9. In the parties' submissions, they discuss ICBC's late approval of the trailer's fender replacement, an interior cabinet mirror, and Ms. Williams' alleged damage to the interior cabinet. Ms. Williams does not specifically claim any damages for the fender, cabinet mirror, or cabinet. ICBC has reimbursed Ms. Williams for the trailer's damage, including what she paid to replace the fender. Other than specific comments about the fender's replacement discussed below, I make no findings about those things, as Ms. Williams' claim is not for policy coverage. Rather, she claims in contract for consequential losses and costs arising from ICBC's alleged wrongful act in delaying its processing of her claim.

ISSUES

10. The issues in this dispute are:
 - a. Did ICBC breach its contractual obligations in handling Ms. Williams' trailer damage claim by failing to approve repairs in a timely way?
 - b. To what extent, if any, is Ms. Williams entitled to the claimed \$5,000 for loss of use damages?

EVIDENCE AND ANALYSIS

11. In a civil claim like this one, as the applicant Ms. Williams has the burden of proving her claim, on a balance of probabilities (meaning "more likely than not"). I have only referenced below what I find is necessary to give context to my decision.
12. I begin with the undisputed background facts. In June 2020, a tree fell on the roof of Ms. Williams' horse trailer, damaging it. On June 6, 2020, Ms. Williams made a claim to ICBC for the trailer's damage. In October 2020, ICBC paid \$2,986.57 for

the trailer's repairs, under the applicable policy coverage. Ms. Williams picked up the horse trailer on October 8, 2020, after the repairs were completed.

13. I turn to the relevant detail. The evidence shows Ms. Williams delivered the trailer to a repair facility, Gilmay RV, on June 26, 2020. Contrary to Ms. Williams' apparent assertion, I find it was not ICBC's responsibility to obtain the estimate for her.
14. The evidence further shows that on July 15, 2020 Gilmay RV gave ICBC its \$3,285.47 estimate for the repair, which among other things did not include a replacement fender.
15. Contrary to ICBC's assertion in a filed statement of facts, I find it did not authorize the trailer's repairs on July 28, 2020. I say this because in evidence is ICBC's December 17, 2020 Material Damage Manager's note. That note said that while Gilmay RV sent ICBC its estimate on July 15, 2020, that estimate did not get "looked at or approved" by ICBC until September 9, 2020. The note said that this delay "was on us", and was unfortunately due to a period of high claim volume while staff was away during the summer. I find the repairs were not authorized until September 9, 2020, 8 weeks after receipt of the estimate on July 15.
16. Ms. Williams complains that she was "shuffled from person to person", and was promised answers but then only given different names and numbers to call. I accept that there were different people involved in handling her claim, which I find was likely inconvenient but not unreasonable on the evidence before me. I discuss below the 8 week period between when ICBC received the estimate and approved repairs, and whether Ms. Williams is entitled to any compensation for the delay.

Liability

17. To succeed against ICBC, Ms. Williams must prove on a balance of probabilities that ICBC breached its contract of insurance. The issue is whether ICBC acted "properly or reasonably" in its handling of Ms. Williams' claim (see *Singh v. McHatten*, 2012 BCCA 286, referring to *Innes v. Bui*, 2010 BCCA 322).

18. ICBC owes Ms. Williams a duty of utmost good faith, which requires ICBC to act fairly, both in how it investigates and assesses the claim, and in its decision about whether to pay the claim (see: *Bhasin v. Hrynew*, 2014 SCC 71 at paragraphs 22, 55 and 93). This includes an obligation to act promptly and fairly when assessing a claim. I note ICBC denies damages are payable because Ms. Williams did not have loss of use policy coverage. I disagree. I find that if ICBC breached its contractual obligations to handle the claim in a timely way, then Ms. Williams is entitled to compensation for proven losses caused by that breach (see *Surespan Structures Ltd. v. Lloyds Underwriters*, 2020 BCSC 27 citing *Ferme Gerald Laplante & Fils Ltee. v. Grenville Patron Mutual Fire Insurance Co.*, 2002 CanLii 45070 (ON CA), at paragraphs 164 and 165). In short, the standard is reasonableness, not perfection.
19. On the material before me, contrary to Ms. Williams' assertion I find no evidence that ICBC acted in bad faith. Rather, through either backlog or internal oversight I find ICBC simply failed to deal with Ms. Williams' repair approval in a timely way. Overall, I find this was contrary to its obligations.
20. So, the question then is to what extent the 8 week period identified above was unreasonable in the circumstances.
21. Here, I find it would reasonably take ICBC some time to review the estimate, inspect the trailer, and approve the repairs. Notably, I have no evidence before me about the expected standard in terms of estimate approval timing. The case law shows that what is reasonable is fact-specific and dependent on the circumstances (see *MacDonald v. Insurance Corporation of British Columbia*, 2012 BCSC 283 at paragraph 188).
22. On a judgment basis, I find ICBC unreasonably delayed the claims process by 4 weeks. I say this because in the absence of evidence about the expected standard, I find it is within ordinary knowledge that ICBC should have been able to complete the review and approval within at least 4 weeks.

Damages

23. For the most part, I find Ms. Williams' claimed damages unproven. I note Ms. Williams did not provide a specific breakdown of the \$5,000 claimed. As noted, I have found above ICBC's unreasonably delayed the claims process by 4 weeks.
24. In the Dispute Notice filed at the outset of this proceeding, Ms. Williams said the delay caused her to incur trailer rental costs and boarding fees, which she says was required for transportation of the horses to veterinary appointments and breeding facility. Yet, Ms. Williams submitted no receipts for trailer rental and there is no evidence before me that she ever rented one.
25. ICBC suggests that Ms. Williams should have rented a trailer to mitigate her losses. Ms. Williams does not directly explain why she did not rent a trailer, although the evidence shows she repeatedly asked ICBC between July and September 2020 about when her trailer's repairs would be completed. ICBC undisputedly told Ms. Williams in early August 2020 that she could expect her trailer back by the end of that month. Yet, while ICBC had the estimate on July 15, 2020, it advised Ms. Williams at the end of July it was outstanding and then did not deal with it until September 9, 2020. On balance, I find it likely Ms. Williams did not rent a trailer because she expected ICBC to ensure the repairs would be completed long before they were. So, I do not fault Ms. Williams for not renting a trailer.
26. Ms. Williams submitted evidence that I find shows she paid 3 months of board fees for July to September 2020, at \$675 per month. She added a handwritten note to the boarding invoice to show she paid a 4th month for October. The total is \$2,700, which on balance I accept she paid as boarding fees.
27. Ms. Williams also submitted 3 handwritten receipts, dated between July 8 and August 1, 2020, indicating she paid \$265 for "Westworld", \$129 for "vet", and \$417 for "Delta". Ms. Williams submitted a separate July 20, 2020 veterinary receipt for \$250.53. These receipts together total \$1,061.53. It is not entirely clear what each of these receipts is for or that Ms. Williams intends to claim their reimbursement

rather than rely on them to show she was transporting her horses somehow. In any event, I find these receipts do not prove Ms. Williams' loss of use of the trailer caused her to incur these expenses.

28. However, I accept the unreasonable delay caused Ms. Williams the expense of 1 month's board at \$675, based on the 4 weeks' delay I have found above. I allow the \$675 and dismiss the balance of Ms. Williams' \$5,000 claim.

Interest, fees and expenses

29. The *Court Order Interest Act* applies to the CRT. I find Ms. Williams is entitled to pre-judgment interest on the \$675. Calculated from September 1, 2020 (a date I find reasonable) to the date of this decision, this equals \$3.03.

30. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. Ms. Williams was partially successful and so I order ICBC to reimburse her half the \$175 paid in CRT fees, or \$87.50. Neither party claimed dispute-related expenses, so I order none.

ORDERS

31. Within 30 days of this decision, I order ICBC to pay Ms. Williams a total of \$765.53, broken down as follows:

- a. \$675 in damages,
- b. \$3.03 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$87.50 for reimbursement of paid CRT fees.

32. Ms. Williams is entitled to post-judgment interest, as applicable.

33. 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. The Province of BC 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 in effect until 90 days after June 30, 2021, which is the date of the end of the state of emergency declared on March 18, 2020, 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.

34. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of BC. 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 BC.

Shelley Lopez, Vice Chair