



Civil Resolution Tribunal

Date Issued: October 18, 2021

File: SC-2021-001416

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Jelescu-Bodos v. ICBC*, 2021 BCCRT 1102

BETWEEN:

IORDAN JELESCU-BODOS

APPLICANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA and KEITH
NORRIS

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This small claims dispute is about insurance coverage for a third-party damage claim. The applicant, Jordan Jelescu-Bodos, was in a motor vehicle collision with the respondent, Keith Norris, on June 9, 2020 (collision).

2. Mr. Jelescu-Bodos says the other respondent, Insurance Corporation of British Columbia (ICBC), denied him third party liability insurance coverage for Mr. Norris's damage claim.
3. ICBC says it denied insurance coverage on the grounds that Mr. Jelescu-Bodos made a "false declaration" that his spouse, LJB, was the principal operator on his insurance application, contrary to section 75 of the *Insurance (Vehicle) Act (IVA)*, which forfeited his insurance coverage.
4. Mr. Jelescu-Bodos says he did not make any false statements. Mr. Jelescu-Bodos claims \$3,964.06 for Mr. Norris's damage claim, that he says ICBC requires him to pay.
5. Mr. Norris says Mr. Jelescu-Bodos is entirely responsible for the collision and disputes his claims.
6. Mr. Jelescu-Bodos is self-represented. Both ICBC and Mr. Norris are represented by an ICBC employee.

JURISDICTION AND PROCEDURE

7. 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.
8. 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.

9. 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.
10. 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.

Preliminary Issue

11. Although Mr. Norris is a named respondent in this dispute, I find that Mr. Jelescu-Bodos does not make any claims or request any remedies from Mr. Norris himself. First, while Mr. Jelescu-Bodos questions the accuracy of the vehicle repair damage in his submissions, he did not raise this issue in his Dispute Notice, and so I find it is not properly before me. Second, while Mr. Jelescu-Bodos says he did not “accept to be 100% liable” in his submissions, he does not argue that he is not responsible for the collision, or that ICBC incorrectly found him responsible. He also did not raise this issue in his Dispute Notice. So, I find Mr. Norris is not a proper party to this dispute and I dismiss Mr. Jelescu-Bodos’s claims against him.

ISSUES

12. Did Mr. Jelescu-Bodos make a wilfully false statement or knowingly misrepresent the principal operator of his vehicle under section 75 of the IVA, forfeiting his insurance coverage?
13. If not, what is the appropriate remedy, if any?

EVIDENCE AND ANALYSIS

14. Typically, in a civil claim the applicant must prove their case. However, when an insurer denies coverage, as ICBC did here, they bear the burden to prove the denial was justified. So, in this dispute, ICBC must prove on a balance of probabilities that Mr. Jelescu-Bodos forfeited his right to third-party liability coverage by breaching section 75 of the IVA. See *Boyle v. Insurance Corporation of British Columbia*, 2017 BCSC 1762, at paragraph 54. ICBC provided only brief submissions in this dispute. I have read all the parties' submissions and reviewed all the evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.
15. The following facts are undisputed. Mr. Jelescu-Bodos is the registered owner of the 2016 Subaru Outback he was driving at the time of the June 9, 2020 collision. A December 24, 2019 Owner's Certificate of Insurance and Vehicle Licence (2019 certificate) lists Mr. Jelescu-Bodos as the owner and Mr. Jelescu-Bodos's spouse, LJB, as the principal driver. Mr. Jelescu-Bodos is also listed as a secondary driver on the 2019 certificate. The 2019 certificate was the insurance in effect at the time of the collision.
16. After the collision, Mr. Jelescu-Bodos confirmed with ICBC that he was, and has been, the principal operator of the Subaru since he purchased it in 2016, contrary to what is listed on the 2019 certificate.
17. ICBC paid Mr. Norris's third party damage claim. On September 17, 2020, ICBC sent Mr. Jelescu-Bodos a letter denying his claim because he made a wilfully false statement. In the letter, ICBC sought repayment of \$3,964.06 for Mr. Norris's third party damage claim.

Did Mr. Jelescu-Bodos forfeit his insurance coverage?

18. As noted above, ICBC says that Mr. Jelescu-Bodos made a false declaration that LJB was the Subaru's principal operator in the 2019 certificate. In its September 17, 2020 letter to Mr. Jelescu-Bodos denying coverage, ICBC relies on the legal basis that Mr. Jelescu-Bodos made a wilfully false statement under section 75 of the IVA.

19. In its submissions, ICBC says Mr. Jelescu-Bodos knowingly misrepresented LJB as the principal operator in the 2019 certificate. In doing so, ICBC says that Mr. Jelescu-Bodos forfeited his insurance coverage under section 75(a)(ii) of the IVA, which I will address further below.

Wilfully false statement

20. Section 75(c) says that an insured's right to claim under their policy is forfeited if the insured makes a wilfully false statement with respect to a claim. ICBC must prove 2 things to succeed: first, that Mr. Jelescu-Bodos made a wilfully false statement, and second, that the statement was material. See *Boyle* at paragraphs 71-74.

21. It undisputed that Mr. Jelescu-Bodos's spouse was listed as the Subaru's principal operator on the 2019 certificate. It is also undisputed that after the collision, Mr. Jelescu-Bodos advised ICBC that he was the Subaru's principal operator. However, ICBC did not provide any submissions about how this amounts to a wilfully false statement with respect to a claim under section 75(c) of the IVA. Rather, in its submissions, ICBC says that it denied coverage because Mr. Jelescu-Bodos had a "misdeclaration on his insurance policy" and relies on section 75(a)(ii) of the IVA, which I will address further below.

22. It is unclear on what basis ICBC could have denied Mr. Jelescu-Bodos's insurance coverage because of a wilfully false statement about this June 9, 2020 collision claim or any other claim. I find that ICBC's evidence and submissions do not prove that Mr. Jelescu-Bodos made a wilfully false statement or that any such statement was with respect to a claim, as required under section 75(c) of the IVA. So, I find that Mr. Jelescu-Bodos did not forfeit his insurance coverage on that basis.

23. I now turn to consider whether Mr. Jelescu-Bodos forfeited his insurance coverage by knowingly misrepresenting a fact required in the insurance application, contrary to section 75(a)(ii) of the IVA.

Knowingly misrepresenting a fact in the insurance application

24. As noted above, ICBC says Mr. Jelescu-Bodos knowingly misrepresented LJB as the principal operator in the 2019 certificate. ICBC relies on section 75(a)(ii) of the IVA to say that in doing so, Mr. Jelescu-Bodos forfeited his insurance coverage.
25. Section 75(a)(ii) of the IVA says that an insured's right to claim under their policy is forfeited if the applicant for coverage knowingly misrepresents a fact required to be stated in the application. The identity of the principal operator is a fact that must be stated in an application for coverage. See *Thornton v. Insurance Corporation of British Columbia*, 2013 BCSC 679 at paragraph 9.
26. A principal operator of a vehicle is the person who will operate it for the majority of time it is operated. See section 1 of the *Insurance (Vehicle) Regulation*.
27. Knowingly making a misrepresentation is a form of fraud. In order to find that an applicant for insurance knowingly misrepresented the principal operator, ICBC must prove on a balance of probabilities that the applicant was, at the time the insurance application was made, in possession of information that what was stated in the insurance contract was untrue or did not disclose the truth (see *Lexis Holdings Int'l Ltd. v. Insurance Corporation of British Columbia*, 2009 BCSC 344, at paragraphs 16-27).
28. Mere speculation of fraud will not be sufficient (see *Lexis* at paragraph 27, citing *Swales v. I.C.B.C.*, 1999 BCCA 767).

Analysis

29. Mr. Jelescu-Bodos does not dispute that LJB was listed as the principal operator in the 2019 certificate. However, he says that LJB was listed as the principal operator by mistake. He says that he told his insurance broker to list LJB as a secondary driver to the 2019 certificate, but his insurance broker mistakenly listed LJB as the Subaru's principal operator instead.

30. Mr. Jelescu-Bodos says that he has always been, and always intended to be, the Subaru's principal operator. In support of this position, Mr. Jelescu-Bodos submitted his Subaru's insurance certificates for 2 years prior to the collision. Both certificates list Mr. Jelescu-Bodos as the Subaru's principal operator.
31. Mr. Jelescu-Bodos says it does not make any sense for him to list his spouse, LJB, as the Subaru's principal operator. He says LJB has their own vehicle that they are the principal operator for. In support of this, Mr. Jelescu-Bodos submitted LJB's vehicle's insurance certificates that list LJB as the principal operator of another vehicle. However, these insurance certificates do not cover the time leading up to and including the collision. There is no evidence that LJB was listed as the principal operator on another vehicle at the time of the collision, and so I place little weight on this submission.
32. ICBC says Mr. Jelescu-Bodos's insurance broker stated that there was no mistake in completing the paperwork. ICBC provided an email statement from the broker, JH. In their statement, JH said they did not recall the specifics of the transaction with Mr. Jelescu-Bodos. JH said "as an experienced agent" they would have discussed who the main and secondary drivers were. JH says that given Mr. Jelescu-Bodos acknowledged the principal operator with his initials and signatures, they would have made it "very clear". JH's branch manager provided ICBC with a copy of the 2019 certificate, which shows initials beside the listed principal operator, LJB. The branch manager also confirmed that the 2019 certificate was the first time Mr. Jelescu-Bodos had renewed his insurance at JH's branch.
33. Mr. Jelescu-Bodos does not dispute that he signed and initialed the 2019 certificate. However, he says the broker rushed him to sign and initial the certificate and just put the documents in front of him and told him to sign "there and there and initial there and there". He says it is not possible to see the entire policy in that time. I infer from Mr. Jelescu-Bodos's submissions that he says he did not read the 2019 certificate before signing and initialing it, and so did not notice that LJB was listed as the principal operator instead of himself.

34. JH admittedly had no specific recollection of the transaction and was unable to specifically address whether they could have mistakenly listed JLB as the principal operator instead of as a secondary driver. While I do not question JH's evidence as to their general practice when completing certificates and confirming the principal operator, here, I prefer Mr. Jelescu-Bodos's specific evidence that he told JH to add JLB as a secondary driver, not as the principal operator.
35. I say this primarily because Mr. Jelescu-Bodos readily and consistently confirmed with ICBC that he was, and always had been, the Subaru's principal operator. Mr. Jelescu-Bodos was also listed as the principal operator for two years before the 2019 certificate was issued. I find this evidence supports a finding that he intended to list himself as the principal operator and told his broker to list JLB as a secondary driver.
36. Given my conclusion that Mr. Jelescu-Bodos told his broker to put him as the principal operator on the 2019 certificate, ICBC must prove that despite this verbal representation, Mr. Jelescu-Bodos fraudulently misrepresented who the principal operator would be when he initialed and signed the 2019 certificate.
37. I infer that ICBC relies on the fact that Mr. Jelescu-Bodos initialed and signed the 2019 certificate as proof that he knew JLB was listed as the principal operator on December 24, 2019. However, given my finding that Mr. Jelescu-Bodos told his broker to list JLB as a secondary driver, I find it highly unlikely that he would have failed to correct the principal operator designation if he had noticed. So, I accept that Mr. Jelescu-Bodos did not see that JLB was listed as the principal operator on the 2019 certificate prior to initialing and signing it.
38. Mr. Jelescu-Bodos was undisputedly careless in failing to review the 2019 certificate to ensure the principal operator listed in the certificate matched the instructions he gave to his broker. However, I find this does not amount to him knowingly, or recklessly, misrepresenting LJB as the principal operator.
39. ICBC also provided evidence that the premiums with JLB as the principal operator would be lower than the premiums with Mr. Jelescu-Bodos as the principal operator,

by around \$140. The premium difference is a factor to be considered when assessing the insurance applicant's credibility (here, Mr. Jelescu-Bodos). See, for example, *Thornton* at paragraphs 57 to 62. However, in the circumstances of this dispute, I find the premium difference is not sufficient to show that Mr. Jelescu-Bodos knowingly misrepresented JLB as the principal operator in order to reduce the premium payment.

40. While it is undisputed that Mr. Jelescu-Bodos misrepresented JLB as the principal operator in the 2019 certificate, I find that ICBC has not met its burden of proving that Mr. Jelescu-Bodos knowingly did so. So, I find Mr. Jelescu-Bodos did not forfeit his insurance under section 75 of the IVA, and is entitled to indemnity for Mr. Norris's damage claim.

What is the appropriate remedy, if any?

41. Although Mr. Jelescu-Bodos's requested remedy is \$3,964.06 for "the total claim against" him, Mr. Jelescu-Bodos did not provide any evidence indicating that he has paid this amount to ICBC. He did provide an April 9, 2021 ICBC statement of account that indicates he paid ICBC \$100 and that \$3,864.06 remains outstanding for Mr. Norris's damage claim. ICBC did not include any submissions on this issue. Given the available evidence, I find the appropriate remedy is for ICBC to refund Mr. Jelescu-Bodos his \$100 payment.
42. The CRT does not have jurisdiction to make declaratory orders under its small claims jurisdiction. So, I find I cannot make a declaratory order that Mr. Jelescu-Bodos is entitled to indemnity from ICBC for any outstanding amount owing for Mr. Norris's damage claim.

Interest, CRT fees and expenses

43. The *Court Order Interest Act* applies to the CRT. Mr. Jelescu-Bodos is entitled to pre-judgment interest on the \$100 payment from April 9, 2021, the date of the statement of account, to the date of this decision. This equals \$0.23.

44. 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. I find Mr. Jelescu-Bodos is entitled to reimbursement of \$175 in CRT fees. Mr. Jelescu-Bodos did not claim any dispute-related expenses and so I award none.

ORDERS

45. Within 30 days of the date of this order, I order ICBC to pay Mr. Jelescu-Bodos a total of \$275.23, broken down as follows:

- a. \$100 refund for Mr. Jelescu-Bodos's payment to ICBC,
- b. \$0.23 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$175 in CRT fees.

46. Mr. Jelescu-Bodos is entitled to post-judgment interest, as applicable.

47. I dismiss Mr. Jelescu-Bodos's claims against Mr. Norris.

48. 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.

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

Leah Volkers, Tribunal Member