



# Civil Resolution Tribunal

Date Issued: December 17, 2021

File: SC-2021-003839

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Johnson v. ICBC*, 2021 BCCRT 1323

B E T W E E N :

COREY JOHNSON

**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 an allegedly stolen vehicle.
2. The applicant, Corey Johnson, says his 2005 Honda Civic was stolen on January 22, 2021. The vehicle was undisputedly involved in a motor vehicle accident shortly before Mr. Johnson reported it stolen. The vehicle's driver at the time of the accident

was not identified. The vehicle was later recovered and declared a total loss. Mr. Johnson says his insurer, the respondent Insurance Corporation of British Columbia (ICBC), has refused to pay him for his vehicle. He claims \$5,000 for his vehicle's value.

3. ICBC says it investigated the theft claim and found Mr. Johnson's statements inconsistent. While ICBC does not allege Mr. Johnson committed fraud, it says Mr. Johnson did not prove his vehicle was stolen, so it does not have to pay out his claim.
4. Mr. Johnson is self-represented. ICBC is represented by an employee.

## **JURISDICTION AND PROCEDURE**

5. 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.
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. In some respects, both parties of this dispute call into question the credibility, or truthfulness, of the other. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 28, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in

mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.

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 Mr. Johnson's vehicle was stolen, and if so, whether he is entitled to \$5,000 in compensation under his insurance policy

## **EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, the applicant Mr. Johnson must prove his claims on a balance of probabilities, meaning "more likely than not". I have read all the parties' evidence and submissions, but I refer to the evidence and arguments only to the extent necessary to explain my decision.
11. It is undisputed that Mr. Johnson's vehicle had a valid insurance policy with ICBC that provided coverage if his vehicle was stolen. I find Mr. Johnson has the initial burden to prove his vehicle was stolen. If he proves the theft on the balance of probabilities, then ICBC bears the burden to prove any applicable defences to its obligation to pay the claim (see *Hughes v. Insurance Corp. of British Columbia*, 2010 BCPC 222, *Singh v. ICBC*, 2014 BCSC 797).
12. Mr. Johnson says he parked his vehicle outside his girlfriend's house at about 3 pm on January 21, 2021. He says he could see his vehicle from the balcony where he regularly went outside to smoke cigarettes. He says he saw his parked vehicle several

times throughout the evening on January 21. Mr. Johnson says when he woke up and went outside at about 1 am on January 22, he noticed his vehicle was missing and called the police and ICBC to report the theft.

13. It is undisputed that Mr. Johnson's vehicle was involved in a motor vehicle accident at about 12:20 am on January 22, which was before Mr. Johnson had reported the vehicle stolen. The evidence shows the driver of the other vehicle involved in the accident, CT, reported it was a hit and run, and that the driver of Mr. Johnson's vehicle left the scene without getting out of the vehicle or exchanging information.
14. The police later recovered Mr. Johnson's vehicle. It is undisputed that the vehicle sustained significant damage to the passenger side rear wheel area and rear bumper from the accident. Three of the 4 tires were also deflated. This damage is shown in the photographs of the vehicle in evidence. The vehicle was undisputedly declared a total loss.
15. Mr. Johnson completed an ICBC Proof of Loss form and statutory declaration on March 11, 2021, confirming his vehicle was stolen and declaring its value as \$5,100. However, ICBC sent Mr. Johnson an April 14, 2021 letter advising that it was holding Mr. Johnson 100% responsible for the hit and run accident and was not paying his claim because he had not proven the theft occurred. The letter also referred to section 73 of the *Insurance (Vehicle) Act*, which requires an insured party to cooperate with ICBC in the investigation of a claim and noted that Mr. Johnson had failed to provide his cell phone records as requested.
16. Mr. Johnson argues that because he paid for insurance that covers theft, ICBC should have to pay out his claim unless ICBC can prove his claim was fraudulent. However, as noted, I find Mr. Johnson must first prove his vehicle was stolen before the burden shifts to ICBC to prove fraud or any other defence to paying the claim.
17. I acknowledge that it can be difficult for a person to prove their vehicle was stolen, particularly if the thief is unknown and never identified. Here, Mr. Johnson says he discovered his car was missing and immediately reported it. He has also sworn a

statutory declaration that his vehicle was stolen. I find there is likely nothing further he can do to prove the theft, absent the police locating the thief.

18. ICBC points to several alleged inconsistencies in the information Mr. Johnson provided during its investigation. I infer it is ICBC's position that the inconsistencies cast doubt on Mr. Johnson's credibility.
19. One of the alleged inconsistencies is about Mr. Johnson's reported activities before he parked his car at his girlfriend's house in Langley on January 21. ICBC says in Mr. Johnson's initial report about the stolen vehicle, he stated he drove to his girlfriend's that morning, but then stated he left Abbotsford (where he lives) at about 2 pm. Mr. Johnson later told his adjuster he had been at a friend's house in Cloverdale for 3 to 4 hours before driving to his girlfriend's house.
20. There was an ICBC special investigation unit (SIU) investigation into Mr. Johnson's claim. I find the SIU report in evidence shows Mr. Johnson's initial report to ICBC was at 1:18 am. I find this is just after Mr. Johnson says he woke up and discovered his vehicle was missing. Mr. Johnson says he was groggy at the time and he did not intend to be misleading about his whereabouts the day before the theft. I find the file notes of Mr. Johnson's report show he almost immediately corrected himself when he initially said he drove to his girlfriend's house in the morning. I find he was likely trying to recall what time he had parked his vehicle and was not focused on accurately reporting where he had been in the hours before parking it.
21. I also find Mr. Johnson's evidence that he parked his vehicle at about 3 pm, has been consistent throughout his various statements. Overall, I find any inconsistencies in Mr. Johnson's evidence about the largely immaterial issue of where he was on the afternoon of January 21, were minor and unintentional.
22. ICBC also says Mr. Johnson provided inconsistent information about his car keys and whether he had locked his vehicle. ICBC says Mr. Johnson reported he is in the habit of locking his vehicle and is sure he locked it when he parked it. ICBC notes that he

reported leaving one set of keys in his glove box, but that he did not tell the police he had left any keys in the vehicle.

23. Mr. Johnson argues that he did not tell the police he left a key in the glove box because he was not asked. I note, again, he reported his vehicle missing to the police in the middle of the night. The police summary of Mr. Johnson's report in evidence says that Mr. Johnson stated his keys were "accounted for". I find that Mr. Johnson was likely referring to the keys he used, not the keys he left in the vehicle. The police summary is very brief and there is no suggestion that he was specifically asked whether there were multiple sets of keys or whether any were left in the vehicle.
24. I also find the evidence shows Mr. Johnson did not definitively report that he locked his vehicle when he parked it. Rather, I find the notes of his initial report to ICBC say he stated he was "pretty sure" his car was locked. A transcript of a later interview with an adjuster shows he stated he usually locks his vehicle, but he uses a fob and there have been times when the fob did not work. Overall, I do not agree that Mr. Johnson was inconsistent in his reports about whether he locked his vehicle or left keys in the car.
25. Finally, ICBC refers to alleged inconsistencies about the time Mr. Johnson said he last saw his vehicle. ICBC says he told his adjuster he saw his vehicle multiple times while on the balcony, but that he told the SIU investigator he last saw the car at about 8 or 9 pm, though he was not really looking and did not notice if his car was missing earlier.
26. Mr. Johnson argues that his statements on this point were not inconsistent. He admits he was not paying attention to the time or to his car every time he went out for a cigarette. He maintains that he did notice his car several times that evening, but he cannot say for sure that it was still there the last time he went outside before he noticed it was missing.
27. I agree with Mr. Johnson that his statements were generally consistent about when he last saw his vehicle. I find he never stated he was certain about the last time he

saw his parked car. I also find it is credible that he would not be sure about the last time he saw it or the last time he went outside before falling asleep. On balance, I find the alleged inconsistencies in Mr. Johnson's statements do not negatively impact his credibility to the point that his evidence about his vehicle being stolen should not be believed.

28. ICBC also says that after the hit and run accident, the driver of Mr. Johnson's vehicle drove 4 kilometres from the accident scene before abandoning the vehicle. ICBC submits it is "surprising" the vehicle was driven that far given the extent of the damage, and that "typically" a car thief will abandon a vehicle immediately if it is not drivable. ICBC also notes that CT's description of the driver of Mr. Johnson's vehicle "roughly matches" the description of Mr. Johnson.
29. I infer it is ICBC's position that these factors suggest Mr. Johnson was driving his vehicle at the time of the hit and run. However, I find ICBC's submission about a "typical" car theft scenario is speculative and unproven. Further, the vehicle was clearly drivable to some extent, given where it was recovered, and it is unclear how continuing to drive the vehicle after the accident indicates Mr. Johnson may have been the driver. I also find CT's description of the driver of Mr. Johnson's vehicle, as a "bigger male" with short hair and approximately 35 to 45 years old, is so vague that it is of little assistance. Overall, I find the circumstances of the hit and run do not suggest Mr. Johnson lied about his vehicle being stolen.
30. On balance, I accept that Mr. Johnson discovered his vehicle missing at 1 am on January 22 and find that it was likely stolen before it was involved in the hit and run accident.
31. As noted, ICBC has not expressly alleged Mr. Johnson fraudulently reported his vehicle stolen. Further, while ICBC's April 14, 2021 letter referred to Mr. Johnson's failure to cooperate with its investigation by not providing his phone records, ICBC did not pursue that allegation in this dispute, other than to submit the records may have assisted in clearing up the alleged timeline inconsistencies. As noted, I find those alleged inconsistencies are not material to the issue of whether Mr. Johnson

has proven his vehicle was stolen. Further, I find ICBC has provided insufficient evidence of its requests for the records and Mr. Johnson's failure to provide them to conclude Mr. Johnson breached his insurance contract. On balance, I find ICBC has not shown any basis to deny Mr. Johnson's vehicle theft claim.

32. So, what is the appropriate remedy? The parties provided limited evidence on the value of Mr. Johnson's vehicle. As noted, Mr. Johnson declared its value as \$5,100. In contrast, ICBC provided a Vehicle Valuation Report that compared the price of similar vehicles, and after accounting for Mr. Johnson's applicable \$300 deductible, concluded an appropriate settlement value was \$3,005.64.
33. I infer that had ICBC accepted Mr. Johnson's theft claim, it would have offered him \$3,005.64 as a settlement for his vehicle's loss. While Mr. Johnson may have been able to negotiate a higher payout, he did not provide any evidence to show a higher settlement value is appropriate. Overall, I find the Vehicle Valuation Report is more persuasive evidence than Mr. Johnson's bare assertion about the vehicle's value. So, I find \$3,005.64 represents appropriate compensation for Mr. Johnson's vehicle and I order ICBC to pay him that amount.
34. The *Court Order Interest Act* applies to the CRT. Mr. Johnson is entitled to pre-judgement interest on the \$3,005.64 from April 14, 2021, the date of ICBC's letter denying Mr. Johnson's claim, to the date of this decision. This equals \$9.16.
35. 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 find Mr. Johnson was substantially successful and is entitled to reimbursement of \$175 in CRT fees. He did not claim any dispute-related expenses.

## **ORDERS**

36. Within 30 days of the date of this decision, I order ICBC to pay Mr. Johnson a total of \$3,189.80, broken down as follows:



- a. \$3,005.64 as compensation for his vehicle,
- b. \$9.16 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$175 in CRT fees.

37. Mr. Johnson is entitled to post-judgment interest, as applicable.

38. 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.

39. 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.

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Kristin Gardner, Tribunal Member