



Civil Resolution Tribunal

Date Issued: March 22, 2022

File: SC-2021-006437

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Sallis v. Mario's Towing Ltd.*, 2022 BCCRT 315

BETWEEN:

MATTHEW SALLIS

APPLICANT

AND:

MARIO'S TOWING LTD. and INSURANCE
CORPORATION OF BRITISH COLUMBIA

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about alleged theft from a car. Following a crash, the respondent, Mario's Towing Ltd. (MTL), stored on its premises a 2008 Honda Civic owned by the applicant, Matthew Sallis. The respondent, Insurance Corporation of British Columbia (ICBC), insured the car. Mr. Sallis says several personal items and

installed electronic devices were stolen from the car while it was on MTL's premises. He claims \$4,300 for those items, which his submissions refine as \$1,000 from ICBC under his insurance contract and \$3,300 from MTL for failure to safeguard the car.

2. MTL says it is not responsible for personal items in the car, and ICBC says the insurance policy does not cover such items. The respondents say that only some of the other claimed items were actually installed in the car, and they formed part of the car, which ICBC "wrote off" as a total loss because of the crash damage. The respondents say ICBC provided Mr. Sallis with a settlement amount equal to the car's true market value including the installed items. So, they say Mr. Sallis has been fully compensated and they owe nothing more.
3. Mr. Sallis is self-represented in this dispute. MTL and ICBC are each represented by an employee.
4. For the following reasons, I dismiss Mr. Sallis' claims against MTL. I also dismiss the claims against ICBC for personal items left in the car. I refuse to resolve the claims against ICBC for the items installed in the car, as they are more appropriate for another dispute resolution process, namely mandatory arbitration.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT), which 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. Although the parties' submissions each call into question the credibility of the other party to some extent, I find I can properly assess and weigh the written evidence and submissions before me, and that an oral hearing is not necessary in the interests of justice. In the decision *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always needed where credibility is in issue. Keeping in mind that the CRT's mandate includes proportional and speedy dispute resolution, I find I can fairly 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 the respondents are responsible for the items allegedly missing from Mr. Sallis' car, and if so, do they owe him \$4,300 or another amount?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, as the applicant Mr. Sallis must prove his claims on a balance of probabilities, meaning "more likely than not." I have read all the parties' submissions but refer only to the evidence and arguments that I find relevant to provide context for my decision.
11. The following facts are undisputed:
 - a. Mr. Sallis' car was damaged in a crash on June 17, 2021. The value of the accident damage exceeded the car's value, so ICBC wrote it off.

- b. ICBC paid MTL to tow Mr. Sallis' car to its premises and store it. Mr. Sallis did not object MTL storing the car. He visited the car multiple times.
 - c. Mr. Sallis says he discovered on July 19, 2021 that items had been stolen from the car since his last visit, including personal items and car stereo equipment.
 - d. Under section 5.11(b)(vi) of Mr. Sallis' ICBC Autoplan Optional insurance policy, coverage was provided for sound and communication equipment that was permanently attached to the car, or attached by a shuttle mount, to a maximum aggregate value of \$1,000.
 - e. ICBC offered Mr. Sallis \$2,718.90 for the car's value after a \$300 deductible. This included \$205 for an in-dash DVD player with a screen.
 - f. Mr. Sallis says the offered settlement amount does not properly account for the value of the allegedly stolen items. He claims the cost of new replacement items and installation charges from the respondents.
12. Given that Mr. Sallis did not object to the car being stored at MTL, at least until after the alleged theft, I find he authorized MTL to store the car and that it was in MTL's possession. I find ICBC did not possess the car.

Unattached Items

13. Mr. Sallis says that several personal items were stolen from the car, including wrenches, a socket set, other tools, a first aid kit, and a self defence baton. He also says a dash camera was stolen. A photo of the car immediately following the crash shows what I find is likely a dash camera attached to the upper portion of the windshield by a suction cup. So, I find the dash camera was not attached permanently or by a shuttle mount and was instead part of the car's contents. Further, in his submissions, Mr. Sallis also mentioned that a portable jump starter machine was also stolen. I will call all of these items the "unattached items."

14. As noted by ICBC, section 5.9(b)(iv) of Mr. Sallis' policy says that ICBC is not liable for loss or damage to any contents of motor vehicles, except as provided in section 5.7(b), 5.11 or 5.12. I find those other policy sections do not provide coverage for any of the unattached items. Mr. Sallis does not directly dispute this exclusion, although he claims unspecified amounts for the unattached items. I find ICBC is not liable for the allegedly missing unattached items under the insurance contract.
15. Turning to MTL, it says it is not responsible for the unattached items, as set out in a notice at the entrance to its premises. It also says Mr. Sallis had many opportunities to remove any items in the 1 month MTL stored the car before the alleged theft.
16. I find that according to MTL's submissions and a photo and video in evidence, entering MTL's storage area involves customers first entering a locked room with a customer service counter featuring a security window. Customers must speak with an employee through a hole in the window to have the door to the vehicle storage area unlocked. I find there was a prominent notice posted a few inches from this hole, dated September 2, 2020. In yellow-highlighted, bold, underlined font, the notice says MTL is, "NOT responsible for loss of Personal Items Or Valuables Left In Vehicle that is in our Possession" (reproduced as written).
17. Mr. Sallis undisputedly visited his car at MTL multiple times before the alleged theft. He says he did not see the notice, and that MTL must have put it up later. I find that is speculative, unsupported by any evidence, and inconsistent with the notice's September 2, 2020 date. Further, Mr. Sallis says a witness who accompanied him to MTL, AG, also did not see the sign. However, AG's witness statement does not say whether she noticed a sign or not.
18. On balance, I find the notice was posted during each of Mr. Sallis' visits to MTL. I find he would have, or should have, seen the prominent notice when visiting. I also note that Mr. Sallis visited MTL in 2021 a few months before the June 17, 2021 crash, to visit a different car he owned that had been towed there. I find that by continuing to store his car at MTL, Mr. Sallis accepted the posted disclaimer. So, through his actions, I find Mr. Sallis agreed that MTL was not responsible for the

unattached items. However, I find the posted notice does not apply to items permanently attached to the car so that they form part of it, because I find those are not personal items or valuables.

19. I dismiss Mr. Sallis' claims against each respondent for the unattached items.

ICBC Payout for the Car and Installed Items

20. Mr. Sallis says the stolen items included an Alpine brand car stereo with a large colour display, a subwoofer, and two Hertz brand amplifiers that were installed in the car at the time of the accident. MTL and ICBC question whether some or all of those items were installed in the car at the time of the alleged theft. Mr. Sallis submitted purchase receipts for the claimed items, some dating back more than 10 years. However, I find the evidence before me does not show that the claimed items were installed in the car at the time of the alleged theft. Further, Mr. Sallis submitted a photo of the allegedly stolen subwoofer, but it is a different brand than the subwoofer highlighted on a receipt Mr. Sallis submitted. This insufficient installation proof is relevant to my reasons below in this decision.

21. As noted, Mr. Sallis claims the full, new replacement value of the claimed items, plus installation costs. However, I find that an installed stereo, subwoofer, and amplifiers would have been part of the car when the crash occurred before the theft, and the car was undisputedly a total loss from crash damage. So, under his ICBC insurance policy, I find Mr. Sallis is likely entitled to the market value of the car with its installed equipment just before the crash, and not the separate value of the stereo equipment components and installation.

22. I find Mr. Sallis claims, essentially, that ICBC's valuation of the car was too low, and should be increased to account for the installed stereo equipment. I find this is a coverage dispute as described in section 176(1)(b) of the *Insurance (Vehicle) Regulation*. Section 176(2) says that unless resolved voluntarily by the parties to it, a coverage dispute must be resolved by arbitration under section 177.

23. Given the mandatory nature of section 176, I find it is unnecessary to seek further submissions from the parties on this issue. Under CRTA section 11(1)(a)(i), I refuse to resolve Mr. Sallis' coverage dispute claims against ICBC for the Alpine stereo, subwoofer, and 2 amplifiers, because I find those claims are more appropriate for mandatory arbitration under *Insurance (Vehicle) Regulation* sections 176 and 177.

Does MTL Owe Anything for the Installed Items?

24. Mr. Sallis alleges, essentially, that MTL was negligent in caring for his car. I find MTL would be negligent if it failed to meet the applicable standard of care, and that resulted in reasonably foreseeable damage to Mr. Sallis (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27).

25. Given that Mr. Sallis authorized MTL to store his car, I find MTL was a voluntary bailee for reward, meaning someone who agrees to receive goods as part of a transaction in which the bailee receives payment. In caring for Mr. Sallis' car as bailee, I find MTL was required to exercise reasonable care in all the circumstances (see *Harris v. Maltman and KBM Autoworks*, 2017 BCPC 273 and *Pearson v. North River Towing (2004) Ltd.*, 2018 BCPC 229).

26. Did MTL reasonably care for the car? MTL says its records show Mr. Sallis visited its premises twice on the June 17, 2021 accident date, and 7 more times after that. Those records say Mr. Sallis visited 3 more times between June 28, 2021, the date he says he visited the yard with AG, and July 19, 2021, the date he discovered the alleged theft. Mr. Sallis says MTL's records are not accurate. However, I find MTL's business records of Mr. Sallis' visits are reliable, as they included details such as the name of the employee who let Mr. Sallis into the yard each time. The visit dates given by Mr. Sallis and AG are based only on their recollections of events months before, which I find are likely less reliable. I find Mr. Sallis likely visited the car multiple times between the June 28, 2021 visit with AG and July 19, 2021.

27. I find there is no evidence before me showing that anyone else accessed the car between June 28, 2021 and July 19, 2021, or that there were other signs of a break-

in, or other thefts or damage at MTL around the same time. Mr. Sallis does not directly dispute MTL's submission that its premises are a secure compound, fenced with security wire, and only accessible through its locked office building. Although Mr. Sallis questions the absence of surveillance video in evidence, he admits that MTL told the police it had no video of a break-in, which I find supports that there was no other evidence of a break-in.

28. On balance, I find the evidence shows MTL took reasonable steps to safeguard Mr. Sallis' car in the circumstances, and was not negligent. I also find that Mr. Sallis has not met his burden of proving that the car stereo equipment he claims in this dispute was installed in the car, or that it was stolen, while the car was in MTL's possession, bearing in mind that Mr. Sallis visited the car multiple times without AG before discovering the alleged theft. This means that nothing turns on whether ICBC will, following any arbitration, pay Mr. Sallis more for the value of the car with the installed stereo equipment.

29. So, I find MTL is not responsible for the value of the installed stereo equipment. I dismiss Mr. Sallis' claim against MTL for the car stereo, subwoofer, and 2 amplifiers.

CRT Fees and Expenses

30. Under section 49 of the CRTA, and the 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. Although I refused to resolve some aspects of Mr. Sallis' claims against ICBC, he was unsuccessful in all other aspects of his claims against both parties, so I find he was substantially unsuccessful. Neither respondent paid any CRT fees, and no party claimed dispute-related expenses. So, I order no reimbursements.

ORDERS

31. I dismiss all of Mr. Sallis' claims against MTL.

32. I dismiss Mr. Sallis' claims against ICBC for the value of missing wrenches, a socket set, other tools, a first aid kit, a self defence baton, a dash camera, and a portable jump starter machine.
33. Under CRT section 11(1)(a)(i), I refuse to resolve Mr. Sallis' remaining claims against ICBC for an installed car stereo, subwoofer, and 2 amplifiers.

Chad McCarthy, Tribunal Member