



Civil Resolution Tribunal

Date Issued: August 12, 2022

File: SC-2022-000253

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Keating v. ICBC*, 2022 BCCRT 915

BETWEEN:

KEVIN KEATING

APPLICANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about motor vehicle insurance premiums. The applicant, Kevin Keating, was involved in 2 single-vehicle collisions in 2018 and 2019. Mr. Keating alleges that the respondent insurer, Insurance Corporation of British Columbia (ICBC), misrepresented that those 2 collisions would never affect his insurance

premiums. Mr. Keating says in 2020, he discovered the insurance premiums on all 3 of his vehicles increased because of the previous collisions. Mr. Keating says he wants ICBC to correct his insurance premiums and he claims \$3,000 as a refund of the extra premiums he says he has paid.

2. ICBC says that its representations to Mr. Keating about the impact of the 2018 and 2019 collisions on his insurance premiums were accurate at the time. ICBC says that it is bound by the new Insurance Rating Model (IRM) introduced as of September 1, 2019, which changed how premiums are calculated. ICBC says Mr. Keating's insurance premiums have been properly calculated according to the IRM and no refund is owing.
3. Mr. Keating 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.
8. I find that I do not have jurisdiction under section 118 of the CRTA to order ICBC to “correct” Mr. Keating’s insurance premiums. That would be an order for injunctive relief, unrelated to the recovery of personal property or specific performance of an agreement relating to personal property or services, as set out in section 118 of the CRTA. So, I decline to address that requested remedy.

ISSUE

9. The issue in this dispute is whether ICBC misrepresented the effect of 2 prior collisions on Mr. Keating’s future insurance premiums, such that Mr. Keating is entitled to a refund of allegedly overpaid insurance premiums.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant Mr. Keating must prove his claims on a balance of probabilities (meaning “more likely than not”). I note that Mr. Keating did not file any documentary evidence or provide any final reply submissions, despite having the opportunity to do so. I have read all of the parties’ submissions and ICBC’s evidence, but I refer only to what I find is necessary to explain my decision.
11. It is undisputed that during a rainstorm on September 7, 2018, a dirt road washed out and Mr. Keating’s vehicle slid backwards into a fallen tree while he was driving, damaging his rear hatch door and breaking the rear window. Mr. Keating says that when he reported the incident, ICBC told him that because he had a 43% discount on his insurance premiums, he was allowed a “free accident”. Mr. Keating says that he could have done the repair work himself, but he says he was convinced to take

his vehicle to a repair shop because ICBC assured him on 3 separate occasions that his insurance premiums would not be affected.

12. Mr. Keating's second collision occurred on January 17, 2019, when he drove over a fallen rock and his vehicle was pushed into a stone wall during another storm. Mr. Keating says his vehicle was written off and ICBC paid him for it, which ICBC does not dispute. Mr. Keating did not provide any specific evidence about what ICBC told him about how this collision would affect his insurance. He says only that from his conversations with ICBC, he was led to believe that it would not impact his premiums.
13. To establish negligent misrepresentation, Mr. Keating must prove that 1) ICBC owed him a duty of care, 2) ICBC's representations were untrue, inaccurate, or misleading, 3) ICBC acted negligently in making the representations, 4) Mr. Keating reasonably relied on the negligent misrepresentations, and 5) Mr. Keating's reliance caused him damage or loss (see *Queen v. Cognos Inc.*, 1993 CanLII 146 (SCC)).
14. I accept that ICBC owed Mr. Keating a duty of care as his insurance provider. So, I turn to whether ICBC made any representations that were untrue, inaccurate, or misleading.
15. ICBC did not provide any evidence about exactly what it told Mr. Keating about his insurance premiums after the first and second collisions, such as any file notes or documentation about its conversations with Mr. Keating. ICBC does however acknowledge that under the claim-rated scale insurance model in place at that time, a person with the maximum 43% discount on their insurance premium could have 3 chargeable claims before they lost that discount. Given that Mr. Keating undisputedly had a 43% discount, I find it is likely that ICBC told Mr. Keating he would not lose his discount if ICBC paid out his claims for the first and second collisions. I find that representation was generally true, accurate, and not misleading under the existing insurance model.
16. However, I find Mr. Keating's evidence falls short of establishing that ICBC represented the collisions would never impact his insurance rates, as he alleges. The

evidence shows ICBC sent Mr. Keating a September 8, 2018 letter after the first collision, and a January 17, 2019 letter after the second collision, which both state that claim payment history is one of many factors that can affect future insurance premiums. The letters also state that any impact of these claims on future insurance premiums will be determined at the time of renewal or when a new policy is purchased. Neither letter makes any guarantee about Mr. Keating's future insurance premiums or that the collisions would not impact his future premiums.

17. It is undisputed that on September 1, 2019, the IRM replaced ICBC's claim-rated scale insurance model. The changes are set out in the ICBC Basic Insurance Tariff, which is set by the BC Utilities Commission. Under section 44 of the *Insurance Corporation Act* and section 63 of the *Utilities Commission Act*, ICBC is required to charge premiums as set out in the Basic Insurance Tariff.
18. The IRM changed the way insurance premiums are determined by linking accidents to the driver involved rather than the vehicle involved. Under the IRM, driving experience and claims history are both considered in determining a driver's insurance premiums. Any chargeable claim payments made by ICBC after March 1, 2017 on at-fault claims will impact a person's individual driver factor.
19. Mr. Keating says that after the IRM came into effect, his insurance premiums increased significantly. ICBC acknowledges that Mr. Keating's 2018 and 2019 claims will impact his insurance premiums for 10 years at a diminishing rate under the IRM and Basic Insurance Tariff. However, I find there is no evidence that ICBC knew or should have known that its insurance model would be changing as of September 1, 2019, when it advised Mr. Keating about the impact of the first and second collisions on his insurance premiums. So, I find Mr. Keating has not proven that ICBC made a negligent misrepresentation.
20. I note that even if I had found ICBC negligently misrepresented Mr. Keating's future premiums, I would have dismissed his claims for a failure to prove damages. As noted, Mr. Keating did not file any evidence in this dispute. There is no evidence before me about his previous premium payments, how much they have increased, or

the value of the 2018 and 2019 claim payments ICBC made. In the absence of any evidence, I have no way to determine Mr. Keating's losses. I dismiss his claims.

21. 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. Keating was unsuccessful, so I find he is not entitled to any reimbursement. As ICBC was successful, I find Mr. Keating must reimburse it \$25 for CRT fees. Neither party claimed dispute-related expenses.

ORDERS

22. Within 30 days of the date of this decision, I order Mr. Keating to pay ICBC a total of \$25 as reimbursement of CRT fees.
23. ICBC is entitled to post-judgment interest, as applicable.
24. Mr. Keating's claims are dismissed.
25. 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. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Kristin Gardner, Tribunal Member