



Civil Resolution Tribunal

Date Issued: August 23, 2022

File: SC-2022-000597

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Dare v. ICBC*, 2022 BCCRT 947

B E T W E E N :

CORINDA MARINA DARE

APPLICANT

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. The applicant Corinda Marina Dare's car was in an accident on December 28, 2020. Another person, JS, was driving at the time. JS was Miss Dare's friend at the time, and she had recently stayed with Miss Dare for several days. JS did not have a valid driver's license. Miss Dare told her insurer, the respondent Insurance Corporation of British Columbia (ICBC), that JS had taken the car without Miss

Dare's consent while Miss Dare was sleeping. ICBC did not believe her. ICBC therefore held her in breach of her insurance contract for knowingly allowing an unlicensed driver to drive her car and for providing a wilfully false statement about whether JS had her consent to drive. JS is not a party to this dispute.

2. In this Civil Resolution Tribunal (CRT) dispute, Miss Dare challenges ICBC's decision. She maintains that JS stole her car and denies lying to ICBC. Miss Dare asks for \$5,000 in damages, claiming that she lost her job and suffered mental anguish as a result of ICBC's incorrect decision. She is represented by a lawyer, Eric Chesterley.
3. ICBC stands by its initial decision and asks me to dismiss Miss Dare's claims. ICBC is represented by an employee.

JURISDICTION AND PROCEDURE

4. These are the CRT's formal written reasons. 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. This dispute turns on the credibility, or truthfulness, of Miss Dare's and JS's 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 *Yas v. Pope*, 2018 BCSC 282, 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.

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 pay money or to do or stop doing something. The CRT's order may include any terms or conditions the CRT considers appropriate.
8. ICBC argues that the CRT does not have jurisdiction over Miss Dare's claim because it is, in reality, a request for a declaration that Miss Dare is entitled to coverage under her ICBC policy. The CRT has consistently held that it does not have jurisdiction to make declaratory orders.
9. ICBC says that when it held Miss Dare in breach, it had already paid her the value of the car as a total write off. ICBC says that it has since notified Miss Dare that it will seek repayment of this payment, but it has not yet taken any formal steps to collect the alleged debt. Miss Dare has not voluntarily paid any portion of it. ICBC therefore says that she has no valid claim to monetary damages, and that her claim is therefore declaratory in substance.
10. I disagree with ICBC's characterization of Miss Dare's claim. In her Dispute Notice, she alleges that ICBC breached the parties' contract by declining coverage. She claims that she suffered damages as a result, alleging both monetary losses (based on losing her job) and intangible losses (for mental distress). These are both well-established types of damages available in breach of contract cases. I find that ICBC's argument that she is not entitled to the claimed compensation are about the merits of Miss Dare's claims. I therefore find that Miss Dare's claims are within the CRT's jurisdiction over damages for breach of contract.
11. I make no findings about Miss Dare's obligation to repay ICBC, since ICBC did not file a counterclaim in this dispute.

ISSUES

12. The issues in this dispute are:
 - a. Did Miss Dare give JS consent to drive her car?
 - b. If not, what, if anything, are Miss Dare's damages?

EVIDENCE AND ANALYSIS

13. In a civil claim such as this, Miss Dare as the applicant must prove her case on a balance of probabilities. In the context of insurance coverage for a stolen vehicle, this means that she must prove that it is more likely than not that JS took her car without her consent. See *Serown v. Insurance Corp. of British Columbia*, 1999 CanLII 6446 (BC SC). While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
14. On December 28, 2020, at around 4:30pm, JS was in an accident in Miss Dare's car. Miss Dare was not in the car. ICBC held JS fully at fault for the accident. This much is undisputed. I note that the issue of fault is not before me, so I make no findings about that.
15. On January 4, 2021, an ICBC adjuster took a recorded statement from Miss Dare. In that statement, Miss Dare said that on the day of the accident, she had fallen asleep with her keys beside her. She said that she woke up at 4:00pm and saw that the car was gone. She said she immediately called the police. Shortly afterwards, she learned that JS had taken the car and been in an accident. She said that she had never let anyone else driver her car.
16. Miss Dare provided a signed, written statement dated May 10, 2022. In that statement she says the following. JS went over to Miss Dare's house on December 28, 2020. Miss Dare was sleeping during the day because she had just worked a night shift. She woke up to see JS sitting beside her on the bed. JS asked Miss Dare if she could borrow her car. Miss Dare said no and went back to sleep. Miss

Dare woke up later that afternoon and discovered her car was gone. She reported the theft to the police. Shortly after she called the police, she received a call from JS that JS had been in an accident.

17. It appears that ICBC did not speak to JS until JS emailed an ICBC adjuster on March 29, 2021. It is unclear why ICBC waited this long, but I find that nothing ultimately turns on the delay. In that email, JS said that she had received a letter from ICBC about the accident. That letter is not in evidence, but I infer from JS's email that ICBC accused JS of taking Miss Dare's car without permission. JS denied that this was true.
18. An ICBC adjuster took a recorded statement from JS on April 30, 2021. JS said that she had borrowed Miss Dare's car several times before the accident. On the day of the accident, JS said that Miss Dare handed JS the car keys and asked JS to go fill a prescription for her.
19. In this dispute, Miss Dare says that JS had substance abuse issues, an accident history, and no driver's license. She also says that she needed her car for work almost every day. She argues that it is illogical to suggest that she would ever give JS permission to use her car. ICBC argues that I should prefer JS's evidence about what happened on December 28, 2020.
20. Both parties rely primarily on Miss Dare and JS's text message history. There are 3 versions of their conversations in evidence. ICBC provided one from JS and one from Miss Dare, which ICBC had obtained as part of its investigation. Miss Dare also provided a copy of several pages of text messages, which largely overlap with what ICBC provided. ICBC relies on the screenshots that JS provided, which undisputedly include messages that are not in the screenshots Miss Dare provided either to ICBC or to the CRT.
21. I note that Miss Dare previously disputed JS's messages' authenticity. According to ICBC's file notes, in a May 6, 2021 call to an ICBC adjuster, Miss Dare alleged that JS must have either drugged Miss Dare and sent messages from her phone, or

used an app to add fake messages to their text message history. Miss Dare does not repeat either of these arguments in this dispute, so I find these allegations unproven. She also does not deny sending and receiving the text messages in JS's screenshots. I therefore find that the screenshots JS provided accurately depict the parties' text message history.

22. ICBC argues that these messages prove that Miss Dare lent JS her car several times before the accident. I find that there are 4 relevant pre-accident text messages. The first is from either December 20 or 21, 2020. After an exchange in which Miss Dare asked JS to pick up Miss Dare's prescription, Miss Dare said "Please keep car clean". The second is from December 21, when Miss Dare asked JS "Where's my car". JS responded that she was in line at the pharmacy. Miss Dare responded "Ok" and "Be careful". The third is from December 24, 2020, when Miss Dare told JS that the "car needs to be back half hour ago" and to "please bring it back now". Finally, there is a text message whose date is unclear where Miss Dare told JS not to let anyone other than JS and JS's boyfriend into her car.
23. Miss Dare maintains that she never lent JS her car but does not explain the above messages in her submissions and final reply, even though ICBC expressly relies on them. I find that Miss Dare lent her car to JS in the few days before the accident. I say this because there is no other plausible explanation for these messages.
24. I turn next to the parties' post-accident text messages. Minutes after the accident, JS sent Miss Dare 6 messages. There are typos in the text messages, so I will not reproduce them exactly, but I find that JS told Miss Dare that Miss Dare should immediately report her car stolen to the police and tell the police that she does not know JS. Miss Dare responded that she called the police.
25. Later (it is unclear precisely when), JS sent Miss Dare a text message that JS had found Miss Dare another car to use. In response, Miss Dare asked JS what she had told the police because the police said their stories "did not match". JS responded that she told the police that she needed the car and took it while Miss Dare was sleeping. JS then said that Miss Dare had actually woken up and given JS the keys.

JS asked Miss Dare to stop telling people JS stole Miss Dare's car because that's "just the story for the cops". Miss Dare responded that they "have to keep up with story" because there might be an investigation.

26. Again, Miss Dare says nothing about these messages in her submissions. I find that shortly after the accident, Miss Dare and JS agreed to tell the police that JS had taken the car without permission, even though they both knew that this was not true. Again, I find that there is no other plausible explanation for what they said to each other.
27. In addition to the messages themselves, ICBC argues that Miss Dare manipulated her and JS's text message history to mislead ICBC. Miss Dare denies intentionally deleting or omitting messages from the screenshots she sent ICBC. Miss Dare says that she and JS exchanged many text messages in the weeks leading up to the accident, so she had to edit them for length. She says that ICBC was "jumping to conclusions".
28. I do not accept Miss Dare's explanation for the missing text messages. First, it is clear from comparing the 2 versions of the text message history that Miss Dare deleted several individual messages from her phone before taking the screenshots she gave to ICBC. For example, in the conversation about JS picking up Miss Dare's prescription, Miss Dare provided a screenshot that was missing only the messages "Where's my car" and "Please keep car clean", which should have appeared in the middle of the screenshot. Along the same lines, she deleted the post-accident message that she and JS had to "keep up" their story for the police. Other messages, such as the string of text messages that JS sent immediately after the accident and JS's message that their story was "for the cops", were omitted from the text message history by cropping the screenshots at particular points.
29. I find that the deleted and missing messages clearly contradict Miss Dare's statements to ICBC and her evidence in this dispute. I find that it is not believable that her decision to delete or omit them could have been an innocent mistake, since they are obviously relevant and incriminating. I find that Miss Dare deliberately

manipulated her text message history with JS in an attempt to mislead ICBC (and now the CRT).

30. I also note that Miss Dare's initial statement to ICBC and her statement in this dispute are quite different in how they describe what happened on December 28, 2020. In her initial statement, Miss Dare said that JS took her car while Miss Dare was asleep. In her signed statement, she said that JS woke her up and asked to use Miss Dare's car, and that Miss Dare explicitly said no. Miss Dare does not explain this discrepancy.
31. Overall, I find that Miss Dare's evidence that she never gave JS permission to use her car is not credible, and I reject it. I find that Miss Dare lent her car to JS on multiple occasions before the accident. I find that on the accident date, Miss Dare gave JS her keys and, in doing so, gave her express consent for JS to use her car.
32. Section 75 of the *Insurance (Vehicle) Act* says that all claims by an insured (like Miss Dare) are invalid if the insured makes a wilfully false statement with respect to the claim. I find that by telling ICBC that JS stole her car, Miss Dare breached section 75 by making a wilfully false statement. It follows that ICBC did not breach the parties' contract by holding Miss Dare in breach. Having made that conclusion, I find it unnecessary to determine whether Miss Dare also knew that JS did not have a driver's license, which was ICBC's other basis for holding her in breach of her insurance contract. I also find that I do not need to address Miss Dare's evidence and arguments about her alleged damages. I dismiss Miss Dare's \$5,000 claim.
33. 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. Miss Dare was unsuccessful, so I dismiss her claim for CRT fees and dispute-related expenses. ICBC did not claim any dispute-related expenses or pay any CRT fees.

ORDER

34. I dismiss Miss Dare's claims, and this dispute.

Eric Regehr, Tribunal Member