



Civil Resolution Tribunal

Date Issued: February 28, 2024

File: SC-2023-002658

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Garcia v. ICBC*, 2024 BCCRT 196

BETWEEN:

CLEITON GARCIA

APPLICANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Alison Wake

INTRODUCTION

1. This dispute is about vehicle insurance coverage. Cleiton Garcia says that his vehicle was damaged in a hit and run. He made a claim for the repairs to his insurer, the Insurance Corporation of British Columbia (ICBC), which it denied.
2. Mr. Garcia claims \$5,000 for his vehicle repair costs. He is self-represented.

3. ICBC initially denied coverage because it said that Mr. Garcia had made a wilfully false statement about the claim. However, ICBC now says that Mr. Garcia is entitled to coverage, but has not provided evidence of his damages. 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). CRTA section 2 says that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
5. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Neither party requested an oral hearing, and I find that I am properly able to assess and weigh the documentary evidence and submissions before me. So, I decided to hear this dispute through written submissions.
6. CRTA section 42 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.

ISSUE

7. The issue in this dispute is whether ICBC must pay Mr. Garcia \$5,000 for his vehicle damage.

EVIDENCE AND ANALYSIS

8. As the applicant in this civil proceeding, Mr. Garcia must prove his claims on a balance of probabilities, meaning more likely than not. While I have considered all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.

9. The background facts are not in dispute. On June 27, 2022, Mr. Garcia reported to ICBC that his vehicle's passenger door had been damaged in a hit and run in a local business's parking lot, while his vehicle was parked and unattended. ICBC reviewed the damage and informed Mr. Garcia that because the damage was to the edge of his vehicle door, it appeared that it was caused when the door was open, and so was not consistent with a hit and run while the vehicle was unattended.
10. ICBC asked Mr. Garcia to provide a written statement and a notarized Automobile Proof of Loss form declaring that he did not cause, or know who caused, the damage to his vehicle. Mr. Garcia did so. ICBC reviewed this information and concluded that Mr. Garcia had provided false information about his claim. On September 12, 2022, ICBC informed Mr. Garcia that it would not pay for his vehicle repairs because he had provided a false statement, which is a breach of his insurance policy.
11. ICBC maintained this position in its Dispute Response, but in its later submissions it says that it has reconsidered its position and has determined that Mr. Garcia is entitled to coverage for his vehicle damage. However, it says that Mr. Garcia has not provided any evidence to support the amount that he paid to have his vehicle repaired.
12. Mr. Garcia relies on the original estimate ICBC obtained to repair his vehicle. The estimate shows a gross estimated repair cost of \$5,684.14. Mr. Garcia claims \$5,000, which is the CRT's small claims monetary limit.
13. Mr. Garcia argues that ICBC should pay him the original estimate amount, regardless of where his vehicle was repaired or what the repairs cost. He says that he used "improvised, cash only, unprofessional means" to have the vehicle repaired, but that he is entitled to the amount that ICBC would have paid if he had the repairs completed by a professional, accredited body shop.
14. ICBC disputes this, and says that Mr. Garcia must provide evidence of his out-of-pocket cost to repair the damage before it can reimburse him.

15. While he does not say so explicitly, I find Mr. Garcia is alleging that ICBC breached its contract to indemnify him for his vehicle repairs. ICBC acknowledges that Mr. Garcia is entitled to coverage for his vehicle repairs, and it undisputedly has not provided coverage or paid for Mr. Garcia's repairs. Damages for breach of contract should place Mr. Garcia in the position that he would have been in if the contract had been carried out.¹
16. Neither party provided a copy of Mr. Garcia's vehicle insurance policy in evidence, though as noted, both essentially make arguments about what the policy requires. I find it is unlikely that Mr. Garcia's insurance policy would require ICBC to pay him the estimated amount directly, even if he did not proceed with the repairs, or had them completed elsewhere. This would overcompensate Mr. Garcia.
17. Instead, I find the policy is more likely consistent with ICBC's submissions. Specifically, I find it likely requires ICBC to either pay an accredited repair shop directly, or to reimburse Mr. Garcia for his out-of-pocket vehicle repair expenses, subject to a deductible. This is supported by screenshots of ICBC's website in evidence, which I accept as accurate as Mr. Garcia does not challenge them.
18. ICBC's file notes in evidence show that Mr. Garcia provided inconsistent information about where and how his vehicle was repaired. Initially, he said that he had thrown away the repair receipts when cleaning his house. Later, he said that a friend of a friend performed the repairs and that he could not remember the shop's name. Finally, he said that he paid cash for a used door, and had a friend repaint and install it.
19. Mr. Garcia does not say that ICBC's file notes are inaccurate, and he does not explain where or how his vehicle was repaired, or how much it cost. Instead, he says that he should receive the claimed \$5,000, as this will help him in the future if the repairs do not "hold". However, he provided no evidence that the repairs he obtained are incomplete or are likely to fail in the future.

¹ *Water's Edge Resort Ltd. v. Canada (Attorney General)*, 2015 BCCA 319 at paragraph 39.

20. So, is Mr. Garcia entitled to damages in the absence of any evidence of the specific amount he paid? Based on the vehicle damage photographs in evidence, I accept that Mr. Garcia likely incurred some expense to repair the damage. ICBC does not dispute that the vehicle was damaged. The difficulty for Mr. Garcia is that, as ICBC notes, he has provided no evidence of the cost he incurred to repair his vehicle. However, the fact that damages are difficult to assess does not mean that Mr. Garcia should not be compensated at all. In some cases, the best that can be achieved is a rough estimate.²
21. Here, the only evidence before me of the repair cost is ICBC's original estimate. However, as Mr. Garcia points out, the estimate is for an ICBC-accredited body shop to make the repairs. As Mr. Garcia himself describes the repairs he ultimately proceeded with as "improvised" and "unprofessional", I infer that they likely cost significantly less than the accredited body shop estimate.
22. When a party fails to provide relevant evidence, the CRT may make an adverse inference against them. An adverse inference is when the CRT assumes that the party did not provide the evidence because it would not help their case. Here, I find that evidence of the cost of Mr. Garcia's vehicle repairs is clearly relevant. As Mr. Garcia did not submit any evidence of the repair cost or even provide submissions about the approximate cost, I find an adverse inference is appropriate. In the absence of any evidence of the actual repair cost, and bearing this adverse inference in mind, I award Mr. Garcia \$500 for his vehicle repairs.
23. However, the estimate in evidence shows that Mr. Garcia's claim is subject to a \$500 deductible. This cancels out the \$500 award, and the net result is that ICBC does not owe Mr. Garcia anything for his vehicle repairs. So, I dismiss Mr. Garcia's claim for compensation for vehicle repairs under his insurance policy.
24. Mr. Garcia also argues that ICBC acted in bad faith. However, I find this argument is unsupported by the evidence. Based on ICBC's file notes in evidence, I find ICBC

² See *Nickel v. Takhar*, 2020 BCSC 1462 at paragraph 62.

initially relied on its material damage estimator's opinion in support of its position that the damage to Mr. Garcia's vehicle was not consistent with a hit and run. The evidence shows that when ICBC then attempted to obtain an independent engineer's report about the vehicle damage's cause, the engineer advised that they could not conclusively determine that the damage could only have been caused when the vehicle door was open. Upon receiving this information, ICBC informed Mr. Garcia that it had changed its position, and gave him an opportunity to provide evidence of his repair costs so that it could reimburse him. I find there is no evidence that ICBC acted in bad faith, and I dismiss this aspect of Mr. Garcia's claim.

CRT FEES AND EXPENSES

25. Under CRTA section 49 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. Mr. Garcia was unsuccessful, so I dismiss his claim for CRT fees. ICBC did not pay CRT fees, and neither party claimed dispute-related expenses.

ORDER

26. I dismiss Mr. Garcia's claims and this dispute.

Alison Wake, Tribunal Member