



Civil Resolution Tribunal

Date Issued: October 9, 2019

File: SC-2019-004835

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Zhu v. ICBC*, 2019 BCCRT 1178

BETWEEN:

MARK HAI ZHU

APPLICANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This is a small claims dispute about payment for a damaged vehicle. The applicant, Mark Hai Zhu, says that his vehicle was damaged in a hit and run accident, and that

the respondent insurer, Insurance Corporation of British Columbia (ICBC), refuses to pay him for his vehicle's value. The applicant seeks \$5,000.

2. ICBC says the applicant made a wilfully false statement and therefore it denied his insurance claim under section 75 of the *Insurance (Vehicle) Act*.
3. The applicant is self-represented. ICBC is represented by an employee.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
5. The tribunal 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 tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is an issue.
6. The tribunal 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 tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

7. Under tribunal rule 9.3(2), in resolving this dispute the tribunal may make one or more of the following orders, where permitted by section 118 of the CRTA:
 - a. Order a party to do or stop doing something;
 - b. Order a party to pay money;
 - c. Order any other terms or conditions the tribunal considers appropriate.

Evidence

8. In his submissions the applicant argues that ICBC altered documents, from the ones it produced to him to the ones it produced as evidence, and therefore ICBC “should fail in this claim”. I disagree. I have reviewed the documents the applicant alleges are altered, and I note the only differences are (1) the “cover page” to the document has a lengthier description of the attached materials, and (2) an email that was previously attached to the documents was moved to be included within the body of the document. Otherwise, the evidence submitted by the applicant, which he calls the “original” copies, are the same as those produced by ICBC. I find ICBC did not “alter” evidence, as alleged by the applicant.

ISSUE

9. The issue in this dispute is whether the applicant is entitled to compensation for his damaged vehicle, and if so, how much?

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant bears the burden of proof on a balance of probabilities. While I have read all of the parties’ evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.

11. The applicant says that on February 18 or 19, 2019, while his vehicle was parked outside of his home, it was damaged in a hit and run incident. He reported the damage to ICBC on February 19.
12. The applicant's vehicle was examined by ICBC on several occasions. After the first inspection on February 22, 2019, an ICBC employee determined the damage was "inconsistent with vehicular impact" and that the vehicle appeared to have "collided with [a] stationary object". The ICBC employee also noted that based on the damages, the driver of the applicant's vehicle would have felt the impact of colliding with the stationary object. Both an ICBC Material Damage employee and manager inspected the vehicle again on March 13, 2019 and both noted a fibrous substance embedded into the vehicle's damage. It was determined, and is undisputed, that the substance was not vehicle material, but was likely wood.
13. Given its inspections, ICBC determined the most likely cause of damage was that the applicant's vehicle slid over and into a barrier or curb, causing damage to the lower front bumper, and then struck a stationary object like a fence post.
14. During ICBC's investigation, the applicant was interviewed by a Special Constable at an ICBC Claim Centre on March 29, 2019. ICBC provided a copy of the Special Constable's typewritten notes from that interview. The notes indicate the Special Constable advised the applicant about ICBC's inspection findings and noted that for a hit and run claim, the damage must be caused by vehicle to vehicle impact, not damage by collision with a stationary object. In response, the applicant suggested the damage could have been caused by a gardening truck with a wooden trailer.
15. On April 25, 2019, ICBC notified the applicant that it determined he had provided a wilfully false statement about how the damage to his vehicle occurred, and therefore it denied his claim under section 75(c) of the *Insurance (Vehicle) Act*. Section 75(c) sets out that if an insured makes a wilfully false statement about a claim, the insured forfeits their right to insurance money. ICBC says the applicant was not truthful about the way the damage happened, and says that after his claim was

denied, it discovered another false statement by the applicant about the vehicle's prior condition.

16. The other false statement was discovered when the applicant wrote to ICBC that he disagreed with ICBC's decision to deny his claim. In that June 12, 2019 email the applicant noted that the wood found on the vehicle was due to a previous "scratch" on his front bumper. He stated his front bumper had been hit "a few times" against a wooden block in a parking lot. However, I note that in a signed March 1, 2019 statement the applicant stated he "did not have any old damage to the front of [his] car before this incident happened". Further, in the March 29, 2019 interview with the Special Constable, the applicant again stated that there was no old damage to his vehicle other than from a previous incident where he was rear-ended. A rear-end collision would not have damaged the applicant's front bumper.
17. The applicant did not provide any evidence, expert or otherwise, about the cause of his vehicle's damage. Therefore, I find there is insufficient evidence to contradict the inspection findings by ICBC. On balance, I place more weight on the inspection findings by ICBC than the applicant's speculative theory about a gardening truck.
18. Given the above, I find the applicant's vehicle damage was caused by an impact with a stationary object, not another vehicle. Based on ICBC's inspection findings, I find the applicant knew or ought to have known the damage had occurred in that way and failed to disclose that to ICBC. As a result, I find ICBC reasonably denied his claim under section 75(c) of the *Insurance (Vehicle) Act*.
19. Additionally, I find the applicant failed to disclose the pre-existing damage to the front of his bumper. Although this failure was discovered after ICBC denied his claim, I find the applicant's failure to disclose this also would result in a denial of his claim under section 75(a)(ii), which states that an insured's right to insurance is forfeited if they falsely describe the vehicle that is subject of the claim. I find the applicant in this case falsely described the vehicle by initially denying it had previous damage to the front bumper.

20. Based on all the above, I dismiss the applicant's claim for compensation for his damaged vehicle. Given this conclusion, I do not need to provide an assessment of the applicant's claimed damages. However, I note that the applicant did not provide any evidence as to the value of the vehicle or the cost of repairs, and so I would not have awarded the claimed \$5,000 in any event.
21. Under section 49 of the CRTA, and the tribunal rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. I see no reason to deviate from that general rule. As the applicant was not successful, I find that he is not entitled to reimbursement of his tribunal fees. Neither party claimed dispute-related expenses.

ORDER

22. I order the applicant's claims, and this dispute, dismissed.

Andrea Ritchie, Vice Chair