



Civil Resolution Tribunal

Date Issued: February 12, 2024

File: SC-2023-001845

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Zhou v. ICBC*, 2024 BCCRT 137

B E T W E E N :

WENLIANG ZHOU

APPLICANT

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about insurance coverage.
2. Wenliang Zhou was involved in a motor vehicle accident on May 20, 2022, which she admits was her fault. Although Ms. Zhou had purchased vehicle insurance, ICBC refused to cover her for the accident because she did not have a valid BC driver's

licence at the time. Ms. Zhou says nobody advised her that she had to get a BC driver's licence. She says that she paid a more expensive rate for insurance because she had a foreign licence, and that ICBC committed fraud by accepting her money and then refusing coverage. Ms. Zhou claims a \$2,715 refund of her paid premiums from July 2021 to July 2022.

3. ICBC denies Ms. Zhou's allegation of fraud. It says Ms. Zhou should have known she had 90 days to obtain a BC driver's licence after moving to BC, and that it was her obligation to ensure she followed BC licensing requirements.
4. Ms. Zhou is self-represented. ICBC is represented by an authorized employee.

JURISDICTION AND PROCEDURE

5. 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.
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. 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 to provide proportional and speedy dispute resolution, I find that an oral hearing is not necessary in the interests of justice.
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.
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 Ms. Zhou is entitled to any refund of her paid vehicle insurance premiums.

EVIDENCE AND ANALYSIS

10. In a civil dispute like this one, the applicant Ms. Zhou must prove her claims on a balance of probabilities (meaning “more likely than not”). I note that Ms. Zhou did not provide any final reply submissions despite having the opportunity to do so. I have read all the parties’ submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.
11. Ms. Zhou says she moved to BC in January 2021, to accompany her son while he attended school. I infer that Ms. Zhou did not intend to remain in BC permanently, but the evidence suggests she planned to live in BC for at least several years. She purchased a vehicle in June 2021 and bought ICBC insurance for it every 3 months from the same insurance broker.
12. In May 2022, Ms. Zhou was in an accident, which was undisputedly her fault. The evidence shows she had an insurance policy on her vehicle at the time, valid from April 3, 2022, to July 2, 2022. In a June 3, 2022 email, ICBC thanked Ms. Zhou for providing a copy of her foreign driver’s licence and asked her to provide a translated copy of it. ICBC also requested further information about Ms. Zhou’s residency to confirm coverage. Ms. Zhou responded that she had been in BC for 1.5 years, was not attending school or working, and did not have a translated copy of her foreign driver’s licence.
13. ICBC sent Ms. Zhou a June 3, 2022 letter stating that she was in breach of her insurance coverage because she did not have a valid licence, and so she was not covered for the accident. The letter advised that ICBC would pay the claim if Ms. Zhou obtained the required license on her first attempt and provided a copy of that license within 10 business days of the letter’s date. Otherwise, ICBC would not pay the claim.

14. ICBC says that while Ms. Zhou later passed her “L” learner’s licence test, she still did not qualify for coverage for the accident because she did not have a licensed, supervising driver in the vehicle with her at the time of the accident, which breached the conditions of an “L” licence. So, ICBC says Ms. Zhou was still in breach of her insurance policy and was not eligible for coverage.
15. Section 24(1) of the *Motor Vehicle Act* (MVA) says that a person must not drive or operate a motor vehicle on a highway unless the person holds a driver’s licence issued under the MVA for the relevant vehicle class. Section 25 sets out the application requirements for a driver’s licence issued under the MVA.
16. Section 34(1.1)(a) of the MVA says that where a person has a valid driver’s licence from the place they are ordinarily resident, the requirement to hold a driver’s licence issued under the MVA does not apply for 6 months from the date the person last entered BC. In other words, visitors can drive in BC using their valid foreign licence for up to 6 months before they must get a BC licence. Under section 34(1.1)(b) of the MVA, where a person becomes a BC resident, they must get a BC licence issued under the MVA within 90 days of becoming a BC resident.
17. ICBC relies on Division 8, section 3(2)(a) of its optional insurance policy, which states that ICBC is not liable to an insured who is not authorized and qualified to drive in BC. I also note that under section 75(b) of the *Insurance (Vehicle) Act* (IVA), an insured’s claim to insurance money under an optional insurance contract is forfeited if the insured violates a term or condition of the optional insurance contract.
18. Section 24.1(1) of the MVA defines “resident of BC” as someone who is ordinarily resident in BC. So, I agree with ICBC that Ms. Zhou was required to obtain a BC driver’s licence within 90 days of moving to BC, as she clearly intended to live in BC for several years. However, even if Ms. Zhou was ordinarily resident outside of BC, it is undisputed that she had been in BC for more than 6 months before the accident and had failed to obtain a BC driver’s licence. So, I find that she was not qualified to operate a motor vehicle in BC at the time of the accident. This means that ICBC was

not liable to cover Ms. Zhou under her insurance policy, and she forfeited her claim to any insurance payments.

19. Ms. Zhou does not particularly dispute any of this. However, as noted above, she argues that nobody told her about the requirement to get a BC licence. While she does not specifically use this term, I find she is essentially arguing that ICBC or the insurance broker acting as ICBC's agent, was negligent in failing to advise her that her foreign licence would disqualify her for insurance coverage.
20. To succeed in proving negligence, Ms. Zhou must prove that ICBC owed her a duty of care, it failed to meet the applicable standard of care, and that the failure caused Ms. Zhou damages that were reasonably foreseeable (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27).
21. A public insurer such as ICBC has a duty to provide the information a customer needs about the available range of coverage so that the customer can make an informed choice about the level of coverage they need (see *Mann v. BCAA*, 2004 BCSC 139 at paragraph 71, citing *Fletcher v. Manitoba Public Insurance Co.*, 1990 CanLII 59 (SCC)). That is, customers generally rely on insurers and their agents and brokers to give them information about available insurance products, such as optional coverages, limits, and deductible amounts.
22. That said, I find that the duty of care for ICBC and its insurance agents does not extend to ensuring the customer has the proper driver's licence to be covered under the insurance policy they are purchasing. I find that obligation rests with the customer. While ICBC's insurance policy says that ICBC will not cover an insured if they are not authorized and qualified to drive in BC, the contract does not require the insured to have a BC licence. Rather, it is a separate legal requirement under the MVA for new BC residents to get a BC licence within 90 days. I find that ICBC and its insurance agents are not obligated to advise customers about such legal requirements.
23. I acknowledge Ms. Zhou's argument that the same insurance broker renewed her insurance several times and never told her that she had to get a BC licence. However,

I find that owning a vehicle and renewing an insurance policy does not necessarily indicate that someone is a BC resident or needs a BC licence. Ms. Zhou could have been visiting BC on several occasions for less than 6 months at a time, which would not require her to get a BC licence. I also note that section 34(1.1)(c) of the MVA provides an exception to the requirement to obtain a BC drivers licence for full time students. In other words, I find it would not necessarily have been obvious to the broker that Ms. Zhou was not properly licensed. I find the broker did not have a duty to make further inquiries about Ms. Zhou's residency status, and there is no evidence before me that Ms. Zhou raised her residency status with the broker.

24. In summary, I find Ms. Zhou has not established that ICBC owed her a duty of care to advise her about the requirement for new BC residents to obtain a BC driver's licence.
25. Even if ICBC did have a duty to advise Ms. Zhou about the relevant licensing requirements, I would not have found ICBC negligent. ICBC provided excerpts from its website which state on more than one page that new BC residents have 90 days to switch their valid foreign licence to a BC driver's licence after moving to BC. I accept that this information is likely relatively easily located on ICBC's website. Therefore, I find ICBC took reasonable steps to inform new BC resident customers about the requirement to obtain a BC driver's licence, and so it would have met the applicable standard of care.
26. To the extent Ms. Zhou argues her insurance broker breached the standard of care for not advising her that she needed to obtain a BC driver's license, the insurance broker is not a party to this dispute. Further, there is no evidence before me about the contractual relationship between ICBC and the insurance broker. So, I make no findings about the insurance broker's alleged breach of the standard of care.
27. For all these reasons, I find it unproven that ICBC was negligent.
28. As noted above, Ms. Zhou also argues that ICBC committed fraud by selling her insurance but then refusing to cover her accident. ICBC denies this allegation.

29. The four elements of civil fraud, also known as fraudulent misrepresentation, were set out by the Supreme Court of Canada in *Bruno Appliance and Furniture, Inc. v. Hryniak*, 2014 SCC 8 at paragraph 21, and include:
- a. A false representation made by the respondent,
 - b. Some level of knowledge on the respondent's part that the representation was false (whether through actual knowledge or recklessness),
 - c. The false representation caused the applicant to act, and
 - d. The applicant's actions resulted in a loss.
30. Ms. Zhou did not specifically address these elements in her submissions. I infer that she argues ICBC falsely represented that the insurance policy she purchased would cover her in the event of an accident when it knew she would not be covered because she did not have a valid BC licence.
31. I find that ICBC did not make any representation that Ms. Zhou was properly authorized and qualified to drive in BC. Rather, I find ICBC represented only that she would have certain insurance coverage, so long as she complied with her obligations under the insurance contract. Again, I find it was Ms. Zhou's obligation to ensure she had a valid driver's licence. I also find there is insufficient evidence to prove ICBC knew Ms. Zhou was not authorized and qualified to drive in BC. So, I find ICBC did not make a false representation, and Ms. Zhou's allegations of civil fraud are unproven.
32. For all these reasons, I dismiss Ms. Zhou's 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. As Ms. Zhou was unsuccessful, I dismiss her claim for CRT fees. ICBC did not pay any fees or claim dispute-related expenses, so I make no order.

ORDER

34. I dismiss Ms. Zhou's claims, and this dispute.

Kristin Gardner, Tribunal Member