



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Cruz v. ICBC*, 2024 BCCRT 642

B E T W E E N :

DANIEL RODOLFO CHI YAAN ALVAREZ CRUZ

APPLICANT

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Jeffrey Drozdiak

INTRODUCTION

1. This is a dispute about vehicle insurance coverage.
2. The applicant, Daniel Rodolfo Chi Yaan Alvarez Cruz, claims that on December 17, 2022, an unidentified vehicle hit his vehicle while he was driving on Marine Drive in Vancouver. He made a claim for the repairs to his insurer, the respondent, Insurance

Corporation of British Columbia (ICBC). ICBC denied the coverage. Mr. Cruz's repair claim to ICBC was for \$3,645.48, but he now claims \$4,600, which he says includes compensation for his wasted time.

3. ICBC says Mr. Cruz made a wilfully false statement about the vehicle damage, which disentitles him to coverage. ICBC asks me to dismiss Mr. Cruz's claim.
4. Mr. Cruz is self-represented. ICBC is represented by an 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.
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. In some respects, ICBC calls into question the credibility, or truthfulness, of Mr. Cruz's evidence. Under the circumstances, 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 that an oral hearing was not requested by either party, and the CRT's mandate is for proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.
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 court.
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.

ISSUES

9. The issues in this dispute are:
 - a. Did Mr. Cruz make a wilfully false statement to ICBC?
 - b. If not, is Mr. Cruz entitled to his claimed damages?

EVIDENCE AND ANALYSIS

10. In a civil claim like this one, Mr. Cruz, as the applicant, must prove his claims on a balance of probabilities (meaning “more likely than not”). However, when ICBC alleges a wilfully false statement, it must prove it on a balance of probabilities (see *Boyle v. Insurance Corporation of British Columbia*, 2017 BCSC 1762, at para 54).
11. While I have read all the parties’ evidence and submissions, I only refer to what is necessary to explain my decision.

The Accident

12. Mr. Cruz says on December 17, 2022, he drove his brother to the airport in his 2015 blue Mazda 3. Mr. Cruz says while driving back on Marine Drive near Ash Street, he collided with a white 2013/2014 Volkswagon Jetta. He says after changing from the left lane to the middle lane, the Jetta, which was in the right lane, tried to change to the middle lane.
13. Mr. Cruz says the Jetta hit his vehicle on the front right-hand side. After the accident, he says the Jetta turned right on Ash Street and pulled over. Mr. Cruz says he turned around, but by the time he reached Ash Street the Jetta was gone.
14. Mr. Cruz says he immediately reported the accident to ICBC, photographed the damage, and took his vehicle to George’s Body Shop Ltd. (George’s). George’s estimated it would cost \$3,645.38 to repair the vehicle damage.

15. For 6 months, Mr. Cruz tried to get ICBC to cover the vehicle repairs. Eventually, on June 14, 2023, ICBC wrote to Mr. Cruz denying coverage. In the letter, ICBC said the damage was not caused by a crash with an unknown vehicle. Instead, ICBC claimed that Mr. Cruz provided false information and therefore forfeited his coverage under section 75 of the *Insurance (Vehicle) Act* (IVA).
16. I note that throughout ICBC's claim process, Mr. Cruz consistently maintained that he was in an accident. He also made several attempts to schedule an in-person appointment at ICBC's claims centre to have the vehicle damage personally inspected. ICBC denied these requests, saying that an in-person inspection was not necessary.

Did Mr. Cruz Make a Wilfully False Statement to ICBC?

17. IVA section 75(c) generally says an insured, such as Mr. Cruz, loses their insurance coverage if they make a wilfully false statement in their insurance claim. As noted above, ICBC must prove Mr. Cruz made a wilfully false statement during the claim process.
18. A wilfully false statement is fraud. This means intent is a critical element (see *Inland Kenworth Ltd. v. Commonwealth Insurance Company*, 1990 CanLII 548 (BCCA)). To be successful, ICBC must prove Mr. Cruz intentionally, knowingly, and purposely made the false statement (see *Petersen v. Bannon*, 1993 CanLII 4719 (BCCA)).
19. ICBC argues that Mr. Cruz is not entitled to coverage because he provided a wilfully false statement. I infer from ICBC's submissions that it claims this on two grounds:
 - a. Mr. Cruz initially said his vehicle did not have pre-existing damage, but later admitted there was pre-existing wheel and rim damage.
 - b. Mr. Cruz falsely claimed that he was in a hit and run accident, and this accident caused the vehicle damage.

There Was No Pre-Existing Wheel and Rim Damage

20. ICBC argues that Mr. Cruz initially said the vehicle did not have pre-existing damage, but he later admitted that wheel and rim damage was pre-existing. ICBC did not expand on this argument or direct me to which evidence supports its claim.
21. I have reviewed ICBC's evidence and there are two documents that I find relevant:
 - a. Mr. Cruz's signed accident statement, and
 - b. ICBC's 62-page internal file.
22. For the following reasons, I find ICBC has not proven that Mr. Cruz made a wilfully false statement about the wheel and rim damage.
23. First, ICBC must prove Mr. Cruz said there was no pre-existing wheel and rim damage. ICBC did not provide detailed submissions. So, I infer that its submissions refer to Mr. Cruz's signed accident statement. In the statement, Mr. Cruz says the right-hand side of the front bumper was not damaged prior to the accident on December 17, 2022. Nowhere in the accident statement did Mr. Cruz say there was no pre-existing wheel and rim damage. So, I find ICBC has not provided sufficient evidence to prove Mr. Cruz made any statement about pre-existing wheel and rim damage.
24. Second, ICBC must prove Mr. Cruz later admitted that there was wheel and rim damage. From ICBC's internal file, on June 6, 2023, an ICBC employee, NM, spoke to Mr. Cruz about the accident. NM wrote, "Daniel advised that the wheel damage was caused by himself and in (sic) unrelated to the v2v moving hit and run damage." Since ICBC did not provide a statement from NM, I place no weight on this evidence.
25. Mr. Cruz says that during his phone call with NM, they asked whether the wheel and rim were damaged before the accident. Mr. Cruz says he told NM that he parks on the street next to a curb, there could have been pre-existing damage, but he could not be sure. ICBC does not dispute Mr. Cruz's evidence, So, I accept Mr. Cruz's version of events.

26. Even if Mr. Cruz had said there was no pre-existing wheel and rim damage. I find ICBC did not provide sufficient evidence to prove Mr. Cruz intentionally, purposely, and knowingly lied. Based on the evidence before me, Mr. Cruz was unsure whether there was pre-existing wheel or rim damage. He told NM that there could have been damage, but he did not know for sure. I find this alleged admission does not prove Mr. Cruz wilfully made a false statement.

A Hit and Run Accident Caused the Vehicle Damage

27. ICBC argues that Mr. Cruz falsely claimed that he was in a hit and run accident, which caused the vehicle damage. ICBC says its internal investigation concluded that the damage did not occur by an unidentified vehicle and was not consistent with a vehicle-to-vehicle impact. Instead, it argues the damage was consistent with Mr. Cruz's vehicle hitting a stationary object.
28. Mr. Cruz argues that he was in an accident on December 17, 2022, and the accident caused the damage to his vehicle's front-right side. To support his claim that an accident occurred, Mr. Cruz provided the following evidence:
- a. His cellphone call history, showing at 1:10 p.m. he called his partner, and at 1:12 p.m. he called ICBC.
 - b. Date and location stamped cellphone photos taken at 1:12 p.m. showing the vehicle damage.
 - c. His text message conversation with his partner, showing he sent an image to them at 1:15 p.m. and they responded "omg" and "are you ok?".
 - d. His text message conversation with his partner, showing he confirmed he was at a repair shop at 2:29 p.m.
 - e. George's damage estimate showing it inspected the vehicle on December 17, 2022.

29. Mr. Cruz also provided an affidavit from his brother, DAC. In the affidavit, DAC said when Mr. Cruz picked him up, there was no damage to the vehicle's front-ride side. DAC said Mr. Cruz dropped him off at the airport at approximately 12:26 p.m., and at 1:17 p.m. Mr. Cruz sent him a message about the accident. Attached to the affidavit were copies of DAC's flight itinerary, and the vehicle damage picture he received from Mr. Cruz.
30. I find Mr. Cruz's documentary evidence persuasive. The evidence is consistent with Mr. Cruz's description of events and creates a reasonable timeline for the accident. So, I accept Mr. Cruz's evidence and I find that he was in an accident on December 17, 2022.
31. To support his claim that the accident caused the vehicle damage, Mr. Cruz provided a report from Lam Vo, a 10-year auto mechanic with TLV Auto. In the report, Lam Vo relied on 50 vehicle damage photographs, Mr. Cruz's accident statement, and an in-person vehicle inspection to conclude the vehicle damage was consistent with a sideswipe bumper-to-bumper vehicle collision. Lam Vo wrote that the vehicle damage was not caused by hitting a wall or stationary object. They go on to write that if the vehicle had hit a stationary object, the paint would have chipped off and there would be cracks, which were not present.
32. ICBC does not address Lam Vo's report in its submissions, challenge the author's qualifications as an expert, or argue the report's conclusions were wrong. So, I accept Lam Vo's report as expert opinion evidence and I accept its conclusions. Although Lam Vo is a mechanic and not an auto body technician, the author does have 10 years of automotive experience. I find their conclusions were straight forward and logical. I also place added weight on the opinion, as Lam Vo personally inspected the vehicle.
33. ICBC argues that even if Mr. Cruz was in an accident, the vehicle damage was insignificant, and an earlier accident caused most of the damage. In support, ICBC provided a vehicle damage assessment report from Jonathan P. Gough, a professional engineer with CEP Forensic.

34. In the report, Jonathan Gough relied solely on 50 vehicle damage photographs and Mr. Cruz's accident statement, without an in-person vehicle inspection, to conclude:
- a. There were 2 distinct sets of contact marks on the vehicle's front-right bumper cover that wraps around the front right fender – horizontal abrasions and curved contact marks.
 - b. The horizontal abrasions happened before the curved contact marks, as the curved contact marks had wiped away some of the horizontal abrasions.
 - c. The curved contact marks were consistent with vehicle-to-vehicle contact where the vehicle contacted another vehicle's moving tire.
 - d. The horizontal abrasions were typical of those occurring when a vehicle sideswipes a fixed object, such as a concrete wall or pillar.
 - e. There were also horizontal abrasions on the sidewall of the front right tire. These abrasions were likely caused by the same object that caused the front right bumper abrasions.
 - f. Horizontal abrasions are not typical of vehicle-to-vehicle contact.
35. I pause here to note that CRT rule 8.3(2) requires an expert to give a statement of their qualifications in evidence, which ICBC did not provide for Jonathan Gough. The only evidence before me is that Jonathan Gough is a professional engineer. I am unable to figure out Mr. Gough's field of engineering, how long they have been practicing, and what experience they have assessing motor vehicle accidents.
36. Under CRT rule 1.2(2), I have discretion to waive the expert qualifications requirement to promote the fair and efficient resolution of a dispute. Prior CRT decisions have applied CRT rule 1.2(2) to allow expert evidence without a statement of qualifications where the other party has not objected to the expert's qualifications (see *Verhaeghe v. ICBC*, 2024 BCCRT 383). Here, Mr. Cruz does not specifically dispute Jonathan Gough's qualifications. However, he argues I should give the report

no weight, as Jonathan Gough's opinion is inconsistent, contradicts itself, and makes no sense. I note that in *Verhaeghe* the tribunal member accepted Jonathan Gough as an expert.

37. To promote the fair and efficient resolution of this dispute, I accept Jonathan Gough's report as expert opinion evidence. However, ICBC's failure to provide its expert's qualifications will go towards the weight I give the CEP report when making my decision.

38. Mr. Cruz argues Jonathan Gough's opinion has several problems, including:

- a. The opinion did not explain why horizontal abrasions are not consistent with vehicle-to-vehicle contact.
- b. The opinion did not consider whether horizontal abrasions could have been caused when the 2 vehicles contacted each other and moved horizontally relative to each other.
- c. The opinion did not explain how the Jetta's white paint embedded in the horizontal abrasions.
- d. The opinion did not consider the following alternative scenario where the horizontal abrasions and the curved contact marks occurred in the same accident.
 - i. The horizontal abrasion happened first when the Jetta merged into the middle lane.
 - ii. The curved contact marks happened second when the Jetta disengaged and turned their front wheels to drive back into the right lane.
- e. The opinion contradicts itself when explaining how the 2 sets of horizontal abrasion happened.

39. I find Mr. Cruz's arguments persuasive. I find the CEP report did not explain its key finding that horizontal abrasions are not consistent with vehicle-to-vehicle damage. I find the CEP report also did not consider a logical alternative cause of the curved contact marks and horizontal abrasions. Given these findings, and ICBC's failure to provide its expert's qualifications, I place little weight on the CEP report.
40. Mr. Cruz also argues that ICBC's internal notes show Jonathan Gough was advocating for ICBC, contrary to CRT rule 8.3(7). Mr. Cruz highlights ICBC's internal notes from December 18, 2023, where an employee wrote, "Does CEP agree that MD not consistent w/ V2V", "What are their thoughts on est theory on what caused the dam", and "Do they agree that the wheel was not in motion"?
41. Mr. Cruz argues that these remarks show that ICBC was influencing CEP's conclusions. I agree that if ICBC had used these direct questions when writing to Jonathan Gough, the resulting opinion could be problematic. However, ICBC did not provide its correspondence to CEP. Given that I place little weight on the CEP report, I decline to request this evidence at this late stage, and I find I do not need to address this submission.
42. The parties also made submissions about whether ICBC acted in good faith while processing Mr. Cruz's claim. Given my conclusion below, I find I do not need to address this argument.
43. Overall, I find ICBC has not proven that it was more likely than not that an earlier accident caused the vehicle damage, and Mr. Cruz made a wilfully false statement. As noted, I place little weight on the CEP report. In comparison, Mr. Cruz provided convincing evidence to prove an accident occurred, including an unchallenged expert report confirming that a vehicle-to-vehicle collision caused the vehicle damage. I also place considerable weight on Mr. Cruz's partner's comments after receiving the vehicle damage photograph. If most of the vehicle damage was pre-existing, as ICBC alleges, why would Mr. Cruz's partner remark, "omg" and "are you ok." I find these remarks are consistent with a person seeing the vehicle damage for the first time.

Is Mr. Cruz Entitled to His Claimed Damages?

44. In his Dispute Notice, Mr. Cruz claimed \$4,600 for vehicle damage and his time spent dealing with ICBC. Mr. Cruz says he has not fixed his vehicle yet, and the vehicle paint has corroded. So, he says the repair cost is higher than the original estimate. The only evidence before me for these claims is George's \$3,645.38 estimate. So, I find Mr. Cruz's claim is limited to \$3,645.38.
45. In submissions, ICBC did not address George's \$3,645.38 estimate. ICBC only argues that the vehicle damage was from another accident. Since I found ICBC did not prove this, I find Mr. Cruz is entitled to \$3,645.38, minus his \$500 deductible, as shown in his insurance policy.
46. Lastly, as noted above, Mr. Cruz claims an unspecified amount for wasted time dealing with ICBC. CRT rule 9.5(5) says the CRT does not award compensation for time spent on a dispute except in extraordinary circumstances, which I find are not present here. Mr. Cruz also did not provide evidence to quantify the time he spent dealing with ICBC's claim process. So, I decline to order an amount for lost time.

Conclusion

47. In conclusion, I find ICBC has not proven Mr. Cruz made a wilfully false statement. So, I find Mr. Cruz did not lose his insurance coverage and he is entitled to \$3,145.38 for vehicle repairs.
48. Mr. Cruz did not claim interest, so I do not award any.
49. 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. However, Mr. Cruz did not pay CRT fees, so I make no order for reimbursement. Neither party claimed any dispute-related expenses.

ORDERS

50. Within 14 days of the date of this order, I order ICBC to pay Mr. Cruz a total of \$3,145.38 in damages.

51. Mr. Cruz is entitled to post-judgment interest, as applicable

52. This is a validated decision and order. 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.

Jeffrey Drozdiak, Tribunal Member