More On ICBC Claims And Accelerated Depreciation

October 19th, 2010

As I've previously written, when a vehicle is involved in a crash and is then repaired it is generally worth less than it would be had it not been in the crash. The reason for this is quite simple, when a buyer is looking to purchase a vehicle, those that have previously been damaged and repaired carry a stigma with them. This stigma generally results in a lower resale value.

The law recognizes this lost value and if your vehicle was damaged due the the actions of others you can sue to recover your damages for "*accelerated depreciation*". Reasons for judgement were released today discussing this area of law.

In today's case (Signorello v. Khan) the Plaintiff owned at Mercedez-Benz SL65 AMG. The vehicle cost $210,000. On route to a business trip in 2007 he left the vehicle with a valet service. The valet crashed the vehicle causing $26,000 of damage which was ultimately repaired.

The Plaintiff then claimed damages for accelerated depreciation. The Defendant argued that the vehicle was repaired properly and to the highest standard therefore there was no accelerated depreciation. Mr. Justice Grauer disagreed and found that, despite the sufficient repairs, the vehicle was now left with a reduced value and awarded the Plaintiff $16,000 for this loss. In reaching this verdict Mr. Justice Grauer gave the following reasons:

[11] In British Columbia, a person wishing to sell a used motor vehicle that has sustained damage in an accident costing $2,000 or more to repair must declare that to any potential buyer. Other matters that must be declared include whether the vehicle has been leased or rented, whether it has been used as an emergency vehicle, and whether it has been registered out of province.

[12] Since any person considering the purchase of Mr. Signorello's Mercedes would presumably investigate further and thereby become aware of its history and the cost of its repairs, Mr. Signorello maintained that the market value of his vehicle has been reduced, a phenomenon known as accelerated depreciation.

[13] The plaintiff's claim under this heading was supported by expert evidence from Mr. Garry Cogbill of C/S Automotive Appraisals. It was his conclusion that the loss amounted to 15% of the vehicle's value at the time of the collision, varying between $12,500 and $18,000 depending upon whether one takes wholesale or retail.

[14] The defendants' contention that the plaintiff has suffered no loss in this regard was supported by expert evidence from Mr. Tom Cino of T.C. Consultants. Mr. Cino expressed the view that so long as a vehicle damaged in an accident has been repaired properly, as this one clearly was, then there is no loss due to accelerated depreciation regardless of the amount of the damage.

[15] Having read their reports and listened to the evidence of both experts, I find that I prefer the evidence of Mr. Cogbill to that of Mr. Cino…

[19] The issue is whether, in the marketplace, people prepared to pay a six-figure sum for an exotic performance motorcar such as Mr. Signorello's are likely to pay less for one that they learn has sustained $26,000 worth of damage, then they would for one that had never been in an accident, all else being equal.

[20] The thrust of Mr. Cino's opinion seems to be that a reasonable person who is as knowledgeable about motor vehicles as he most certainly is, would not think that a car that had been properly repaired is worth less than a like vehicle that has never been damaged. That does not answer the question of what is likely to happen to this car in the marketplace, where reason does not necessarily prevail, and where few have his depth of knowledge.

[21] Mr. Cino further based his opinion in part on the proposition that the majority of the repair work performed on Mr. Signorello's Mercedes was to repair cosmetic damage rather than mechanical damage or damage to the frame. He included in his description of "cosmetic damage" damage that could be repaired by the removal and replacement of the damaged part. Mr. Cogbill, on the other hand, described most of the damage as other than cosmetic. I prefer Mr. Cogbill's approach.

[22] To my mind, to be of significance in this context, cosmetic damage must mean damage that pertains only to the vehicle's appearance, and need not be repaired in order for the vehicle to operate properly. On that basis, I can well imagine that a potential buyer's approach to a vehicle that had suffered $20,000 worth of cosmetic damage would be different from his approach to a vehicle that had suffered $20,000 worth of damage of a type that had to be repaired in order for the vehicle to be operable. In this case, it is clear that the majority of the damage to the SL 65 was of the latter type, even if it consisted largely of the removal and replacement of mechanical parts. I therefore found Mr. Cino's approach in this regard to be less than convincing.

[23] Finally, Mr. Cino sought to support his opinion by making a comparison to people purchasing very expensive vintage collector car, such as a 1967 Plymouth Barracuda, that has had all kinds of work put into it to restore what was a rusted hulk to like-new status. With the greatest respect, that is not an apt comparison to a discriminating purchaser considering a near-new exotic luxury sports car....

[29] The law does not require that the plaintiff demonstrate the loss precisely by having sold the vehicle. It is enough for him to establish, as I find that he has, a reduction in its value: seeCummings v. 565204 B.C. Ltd., 2009 BCSC 1009. I accept Mr. Cogbill's conclusion in that regard, and doing the best that I can with his figures, I assess the reduction at $16,000.

Another interesting part of this judgement was the Court's award of costs. Usually when a Plaintiff is awarded less than $25,000 they are deprived their costs because they could have sued in Small Claims Court. Despite this usual result, Mr. Justice Grauer awarded the Plaintiff costs finding it is reasonable to bring accelerated depreciation lawsuits in the BC Supreme Court even if the claim is worth below $25,000. The Court provided the following useful reasons:

[52] On the matter of costs I am satisfied, in all of the circumstances of this case, that it was appropriate to commence this action in Supreme Court. It was subject to former Rule 66, indicating an attempt to reduce expense. It concerned an area that is not well traversed in fact or in law, particularly given the rarity and unusual nature of this motor vehicle. Therefore, I find that the plaintiff is not limited to disbursements only, as though the action should have been brought in Provincial Court. He is entitled to costs in the ordinary way under the Supreme Court Rules.