Court of King's Bench of Alberta

Citation: Amour v Security National Insurance Company, 2025 ABKB 726

Date: 20251209
Docket: 1703 04313
Registry: Edmonton

Between:

Roger Sterling Amour

Plaintiff/Respondent

- and -

Security National Insurance Company

Defendant/Applicant

Reasons for Decision
of the
Honourable Justice Bonnie L. Bokenfohr

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[1] This is an appeal from the decision of an Applications Judge. The issue in this appeal is whether the Defendant insurer can rely on Exclusion 3 of the Alberta Owner's Automobile Policy S.P.F. No 1 (the "Alberta SPF 1") to deny coverage to the Plaintiff for damage to his automobile.

[2] At the commencement of the hearing, I granted a Consent Order amending the style of cause to name Security National Insurance Company as the Defendant / Applicant instead of TD Insurance. The Defendant / Applicant will hereinafter be referred to as the Insurer.

[3] For the reasons set out below the appeal is dismissed. The insured Plaintiff / Respondent's claim for damage to his automobile is covered by both the insurance policy and by operation of the *Insurance Act*, RSA 2000, c I-3 [*Insurance Act*] ss 574(1)(b) and 545.

Facts

[4] The parties agreed to the following facts before the Applications Judge and confirmed they agree on them for the purposes of the appeal:

1. The Plaintiff, Roger Amour ("Amour") did not and does not have a valid policy with the named Defendant, TD Insurance. Rather, at the time of the Accident, he had a valid policy with Security National Insurance Company, numbered 1158391 (the "Policy"). There is no privity of contract between the Plaintiff and the named Defendant.
2. Amour had a valid policy, on the date of loss, July 7, 2015, for coverage of a 2013 Cadillac Escalade, (the "Vehicle"). The Policy was issued in the province of Alberta.
3. Amour was driving the Vehicle home to Alberta from Ontario with two friends, Andrew Rioux ("Drew") and Max Matthews (the "Driver").
4. The Driver had been living with Amour as a member of the household for the better part of a year and at the time of the Accident did not have a valid driver's license. At the time of the Accident the Driver's right to obtain a license was suspended, which Amour was aware of.
5. During the drive back to Alberta, from Ontario, Amour became fatigued. He pulled over at a rest stop, put the keys in the middle console, and told Drew, who was aware in the front passenger seat, that, if Drew slept, then when he awoke, Drew should begin driving. Amour then went to sleep in the back of the Vehicle.
6. While Amour was still sleeping the Driver woke up, moved from his position in the back of the Vehicle to the driver's seat, and began driving. The Driver then fell asleep at the wheel and hit a rock somewhere near Ignace, Ontario, causing the Accident.
7. Amour, the Driver, and Drew all agree that the Driver did not have permission to drive.
8. Amour sued the Insurer for Section B benefits and for property damage to the Vehicle.
9. The Defendant/Applicant applied for summary dismissal of the property damage portion of the claim and Amour cross applied with respect to Section B benefits. The matter was sent to Special Chamber. The parties have resolved the Section B claim and only the property damage claim remains outstanding.

[5] The Alberta SPF 1 includes the following General Exclusion (“Exclusion 3”):

> 3. Consent of Owner
>
> No person shall be entitled to indemnity or payment under this Policy who is an occupant of any automobile which is being used without the consent of the owner thereof.

[6] The Ontario Automobile Policy ("OAP 1") includes the following General Exclusion:

> 1.8.2 Excluded Drivers and Driving Without Permission
>
> Except for certain Accident Benefits coverage, there is no coverage (including coverage for occupants) under this policy if the automobile is used or operated by a person in possession of the automobile without the owner's consent or is driven by a person names as an excluded driver of the automobile policy or a person who, at the time he or she willingly becomes an occupant of an automobile, knows or ought reasonably to know that the automobile is being used or operated by a person in possession of the automobile without the owner's consent.
>
> Except for certain Accident Benefits coverage, there is no coverage for a person who, at the time he or she willingly becomes an occupant of an automobile, knows or ought reasonably to know that the automobile is being used or operated by a person in possession of the automobile without the owner's consent.

[7] The standard automobile policy wording in each province is legislated by the province.

Applications Judge Decision

[8] Before the Applications Judge the parties agreed that because the accident occurred in Ontario, Ontario legislation and case law applied. In response to a question from the Applications Judge counsel for the Insurer specifically confirmed they agreed Ontario law should apply, including Ontario's statutory policy.

[9] The Applications Judge held Exclusion 3 did not apply because Amour was not a willing occupant. Under the OAP 1, Amour had to be a willing occupant for the exclusion to apply. Amour was asleep when the Driver began driving. Because Amour was asleep, he was not able to make a determination about being an occupant. He was therefore not a willing occupant. The Applications Judge cited both the Ontario policy wording and the Ontario decision ***Thorne v Prets***, 2003 CanLII 22084 (ONCA).

Position of the Parties

[10] Despite agreeing before the Applications Judge that Ontario legislation, statutory policy, and case law applied, the Insurer now argues the Ontario law does not apply for claims pursuant to Alberta SPF 1 Section C ("Section C") for loss of or damage to the insured automobile. The Insurer argues that where an accident occurs in another province, the wording of the policy in that province will be relevant to third party liability claims under Alberta SPF No 1 Section A ("Section A") and accident benefit claims under Alberta SPF No 1 Section B ("Section B") but will not be relevant to claims for property damage under Section C.

[11] The Insurer relies on the principles of statutory interpretation and directs the Court to the insurance scheme overall, the *Insurance Act* as a whole, and the Powers of Attorney and Undertakings all of which operate, according to the Insurer, to guarantee seamless benefits and coverage for individuals who suffer bodily injury regardless of where the accident occurs. The

Insurer argues there are sound public policy reasons for this reciprocity for the purposes of bodily injury coverage. The fact that third party liability and accident benefits are mandatory reinforces their position. This reciprocity was not, however, intended to nor should it extend to property damage claims. There is no public policy reason to extend the same principles to property damage claims. Accordingly, property damage coverage is not mandatory but optional for insureds.

[12] Amour argues that because the accident occurred in Ontario it is appropriate to consider the Ontario policy regardless of whether it is a claim under Section A, B, or C. Amour relies on the principles of statutory interpretation.

[13] Amour also relies on section 574(1)(b) of the *Insurance Act* RSA 2000, c I-3 which states:

> 574(1) Every motor vehicle liability policy issued in Alberta must provide that, in the case of liability arising out of the ownership, use or operation of the automobile in any province or territory,
>
> > (b) the insurer must not set up any defence to a claim that might not be set up if the policy were a motor vehicle liability policy issued in that province or territory.

[14] The Insurer states the word "liability" in s 574(1) highlights the distinction between mandatory and optional coverage insurance. Because of this distinction the Insurer argues that s 574(1)(b) only limits defences an insurer may rely on regarding Section A and B claims occurring in other provinces. Therefore, s 574(1)(b) does not apply to Section C claims, and thus the wording of the Ontario policy is irrelevant.

[15] Amour argues that independent of the Ontario policy wording and *Insurance Act* section 574(1)(b), Exclusion 3 should be interpreted as applying only when an occupant is a willing occupant. The Insurer argues this is contrary to the clear, plain, and ordinary meaning of the contract exclusion.

[16] Amour also argues this Court may declare an insurance contract provision non-binding on an insured under s 545(1) of the *Insurance Act*. The relevant portions of s 545 read:

> (1) If a contract contains a stipulation, condition, term, proviso or warranty, other than a prescribed exclusion referred to in subsection (3)(a), that is or may be material to the risk, including, but not restricted to, a provision in respect of the use, condition, location or maintenance of the insured property, the stipulation, condition, term, proviso or warranty is not binding on the insured if it is held to be unjust or unreasonable by the Court before which a question relating to it is tried.
>
> …
>
> (3) No insurer may provide in a contract that includes coverage for loss or damage by fire or by another prescribed peril an exclusion relating to
>
> (a) the cause of the fire or other prescribed peril other than a prescribed exclusion

[17] Both parties advised they were unable to locate any case law directly on point.

Standard of Review

[18] The standard of review for an appeal of an Applications Judge's decision is correctness and thus no deference is owed to that decision: ***Bahcheli v Yorkton Securities Inc***, 2012 ABCA 166 at para 30. As these appeals are considered *de novo*, parties may present new arguments: ***Lesenko v Wild Rose Ready Mix Ltd***, 2024 ABKB 333 at para 15.

Analysis

I. Insurance Contracts and the *Insurance Act*

[19] Automobile insurance contracts are largely drafted by statute or with approval from the Superintendent of Insurance appointed under the *Insurance Act*. The *Insurance Act* provides all insurance contracts must be consistent with the Act: *Insurance Act*, s 515(1). All policies must also be in a form approved of by the Superintendent: *Insurance Act*, s 551(1). Section 556 sets out a series of statutory conditions which must be part of every insurance contract without variation, omission, or addition.

[20] Insurance contracts, therefore, are a special category of contract that must be interpreted with an eye to both the statutory nature of the contract and the unequal bargaining power of the parties.

[21] Courts must use the general principles of statutory interpretation when interpreting the language of an insurance policy meaning the policy must be read (1) in its entire context, (2) in its grammatical and ordinary sense, and (3) harmoniously with the scheme of the Act, object of the Act and the intention of the legislature: ***Rizzo & Rizzo Shoes Ltd (Re)***, 1998 CanLII 837 (SCC)***; Cardinal v Alberta Motor Association Insurance Company,*** 2018 ABCA 69 at para 11 [***Cardinal***]. Where the language of the policy is clear and unambiguous, effect should be given to the clear language: ***Cardinal*** at para 11.

[22] Any remaining ambiguity is interpretated using contract principles which take into account the unequal bargaining power of the parties. First, the policy should be construed against the insurer pursuant to the principle of *contra proferentem****: Jesuit Fathers of Upper Canada v Guardian Insurance Co of Canada***, 2006 SCC 21 at para 28 [***Jesuit Fathers***]; ***Cardinal*** at para 11. Second, coverage should be construed broadly but exclusions should be construed narrowly: ***Jesuit Fathers*** at para 28; ***Cardinal*** at para 11.

[23] I must interpret Exclusion 3 based on these principles.

[24] The Alberta Court of Appeal in ***Cardinal*** previously interpreted Exclusion 3 and whether an occupant must have knowledge of the driver's consent. In that case, the insured occupant did not know the driver did not have consent to operate the vehicle: ***Cardinal v Alberta Motor Association Insurance Company***, 2017 ABQB 487 at paras 2, 22. The Court of Appeal found the Exclusion did not import a knowledge component regarding consent, as the language of the policy is not ambiguous: ***Cardinal*** at para 19. In conducting their analysis, the Court relied on other sections of the policy which contain clear language regarding knowledge such as "knew or ought to have known": ***Cardinal*** at para 20. Therefore, it was unnecessary to use contractual interpretation rules: ***Cardinal*** at para 20.

[25] The parties agree consent is not in issue here. Both parties acknowledge the Driver did not have Amour's consent to operate the vehicle at any time. Therefore, I do not find ***Cardinal*** assists in interpreting the portion of the clause before me.

[26] What is in issue is the word "occupant" in Exclusion 3. Amour did not know the Driver was driving at the time. Amour went to sleep under the express impression and instruction that Drew would take over driving. In other words, he agreed to be an occupant under the condition that Drew would drive. Therefore, I must determine whether Amour's lack of consent or lack of intention to be in the vehicle while the Driver drove captures him as an "occupant" under Exclusion 3.

[27] Under the Policy, occupant is defined as "a person driving, being carried in or upon or entering or getting on to or alighting from an automobile." The insurer argues Amour was "being carried in" the vehicle and thus constitutes an occupant for the purposes of Exclusion 3. However, the remaining wording in the definition imports intention. "A person driving … entering … getting on to or alighting" all denote an intention to be in, on, or leaving the vehicle, or at the very least active participation. Therefore, whether there is in fact an intention component to the word "occupant" is ambiguous. In the face of ambiguity, exclusions are to be interpreted narrowly: ***Jesuit Fathers*** at para 28; ***Cardinal*** at para 11. I find a person must have the intention to be an occupant for Exclusion 3 to apply. As Amour did not intend to occupy the vehicle if the Driver drove, he was not an occupant for the purposes of Exclusion 3.

[28] I make this finding independent of the Ontario policy wording. An occupant can only be an occupant if they intend to be an occupant. If an individual is unable to make a decision about being in a vehicle that is being driven because they are asleep in the vehicle or perhaps forcibly placed into and confined in the vehicle, they cannot be an occupant for the purposes of the exclusion.

II. Section 574 of the *Insurance Act*

[29] Amour also argues s 574(1)(b) of the *Insurance Act* prevents the Insurer from denying coverage in this case by relying on the Alberta exclusion when they would be unable to do so on the basis of the Ontario exclusion. The Insurer argues s 574(1)(b) only applies to liability coverage. An insured's own vehicle loss, therefore, would not be covered. Based on these arguments, I must interpret the meaning and purpose of s 574(1)(b) using the principles of statutory interpretation.

[30] Section 574(1) contains a few terms that must be defined to determine whether the Insurer can bring its defence. Section 1(ll) of the *Insurance Act* defines "motor vehicle liability policy" as:

> a policy or part of a policy evidencing a contract insuring.
>
> (i) the owner or driver of an automobile, or
>
> (ii) a person who is not the owner or driver of an automobile where the automobile is being used or operated by the person's employee or agent or any other individual on the person's behalf,

> against liability arising out of bodily injury to or the death of an individual or loss or damage to property caused by an automobile or the use or operation of an automobile.

[31] The definition focuses on liability arising from various types of claims, denoting a focus on legal responsibility for a claim. This definition on its own is likely broad enough to include Section C coverage.

[32] The objects of s 574(1) must also be defined, specifically "damage to property." Section 1(yy) defines "property" that is the subject of an insurance contract as including:

(i) profits, earnings, and other pecuniary interests; and

(ii) expenditure for rents, interest, taxes and other expenses and charges and expenditures in respect of inability to occupy the insured premises, but only to the extent provided for in the contract.

[33] This definition provides little assistance, other than to suggest that "property" is a broad term. I must therefore look to other portions of the *Insurance Act* to aid in my interpretation.

[34] Section 556, the Statutory Conditions, distinguishes types of loss or damage: "loss or damage to persons or property" and "loss or damage to automobile". The "loss or damage to persons or property" statutory condition refers to "any accident involving loss or damage to persons or property" and "any claim made on account of the accident." Nothing in this statutory condition appears to limit the types of claims that fall under "loss or damage to property." I read this statutory condition as applying to all claims of an insured.

[35] The other statutory condition regarding "loss or damage to automobile" appears to provide additional requirements on top of those listed in the more general statutory condition. There is no direct overlap between the two statutory conditions. Additionally, while at first glance this more specific provision appears to only use the word "automobile," the word "property" is used in subsection 6 to refer to any property lost or damaged. This use of the more general term evidences the legislature's intention to use "property" as a more general term encompassing "automobile." I note "property" cannot refer to property carried in or on an automobile, as this is expressly excluded by s 550(2)(b) and (c) of the *Insurance Act*. Therefore, I am satisfied "property" in s 574(1) also refers to the insured's vehicle.

[36] The remaining term in s 574(1) needing definition is "liability". The statutory conditions are also useful in determining whether the word liability limits the application of s 574(1) to Section A and B claims or may also encompass Section C claims. Under the "loss or damage to automobile" statutory condition, such a claim is described as an insurer's liability. Therefore, Section C claims are a form of liability according to the *Insurance Act*. As s 574(1) does not limit the source of liability, and the loss or damage of the insured vehicle constitutes a liability under other parts of the *Insurance Act*, I find s 574(1) also applies to Section C claims.

[37] This analysis aligns with that in ***Lindblom v Wawanesa Mutual Insurance Company***, 2001 ABCA 102 [***Lindblom***] where the Alberta Court of Appeal analyzed what is now s 33 of the *Insurance Act*. This section grants insurers the licence to provide automobile insurance and prohibits insurers from bringing defences in other jurisdictions where such a defence could not stand in that province or territory. The insurer argued the section only applies to third party liability insurance: ***Lindblom*** at para 17. The Court rejected this argument holding the wording suggested "a broad scope not limited to one particular head of coverage of auto insurance":

Lindblom at paras 18-19, 24. As the section was intended to modify the common law conflict of laws rules, it would be antithetical to the legislature's intention to allow a "back and forth between common-law choice-of-law rules and the statutory ones with little rhyme or reason": ***Lindblom*** at paras 38-39.

[38] Interpreting s 574(1) as applying to all heads of auto insurance ensures the general scheme of the legislation regarding conflict of laws is upheld and absurdities are avoided. Section 574(1)(b), therefore, includes Section C claims such as Amour's.

[39] Having found s 574(1)(b) applies to Section C claims I now turn to the application of that section. The Ontario exclusion clearly only excludes coverage for a person who willingly becomes an occupant. I agree with the Applications Judge; because Amour was sleeping, he was unable to make a determination about being an occupant, he therefore was not a willing occupant as he was unable to decide whether to be an occupant or not. The Ontario exclusion cannot apply to exclude coverage. The Insurer would be unable to use this exclusion to deny coverage in Ontario. By virtue of the operation of s. 574(1)(b) they are unable to raise the exclusion in this instance.

III. Section 545 of the *Insurance Act*

[40] If I am wrong on either the contractual or statutory interpretation analyses above, s 545 of the *Insurance Act* applies in this instance to remedy an unjust or unreasonable result. Section 545 is part of the General Insurance Provisions and thus applies to all insurance contracts in Alberta. This section has only been judicially considered once by the Court of Appeal in ***Funk v Wawanesa Mutual Insurance Company***, 2018 ABCA 200 [***Funk***]. In that case the insured sought to rely on s 545 although it was not in force on the date of the accident: ***Funk*** at para 22. The Court commented it would be a rare instance where an insurance policy provision would be unjust, unreasonable, or contrary to public policy, given terms of insurance policies are highly regulated: ***Funk*** at para 27.

[41] While I am cautious given the Court of Appeal's commentary, if Exclusion 3 does not contain any intention, the clause as it stands invites unreasonable and unjust results. While Amour was in a car with his friend, one can easily imagine a situation where an insured is kidnapped in their own vehicle. This hypothetical occurred to the Applications Judge as well without prompting from counsel. If someone is kidnapped in their own vehicle, and an accident occurs, it would be unjust and unreasonable to disallow insurance coverage just because the insured was in the vehicle. Such a result cannot be accepted simply because imprecise drafting enables it. That is the purpose of s 545(1), to prevent such results if indeed the policy allows for it.

[42] If the contract cannot be interpreted to find an element of intention in the word "occupant" or if *Insurance Act* s 574(1)(b) does not apply to Section C claims, then s 545(1) enables me to find Exclusion 3 does not apply to Amour on these facts. Therefore, he is entitled to his claim under Section C.

Conclusion

[43] Amour is entitled to coverage and there are no applicable exclusions under the Alberta SPF 1.

[44] The appeal is dismissed.

[45] If the parties are unable to agree on costs, they may file written submission of no more than 3 pages within 45 days of this decision.

Heard on the 14th day of November, 2025.
Dated at the City of Edmonton, Alberta this 9th day of December, 2025.

Bonnie L. Bokenfohr
J.C.K.B.A.

Appearances:

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