

CITATION: Woodbury v. State Farm, 2010 ONSC 4202

COURT FILE NO.: CV-10-394921

DATE: 20100827

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:)	
)	
ROBERT WOODBURY)	
)	<i>John D. Campbell, for the Applicant</i>
Applicant)	
)	
- and -)	
)	
STATE FARM FIRE AND CASUALTY COMPANY)	<i>Thomas J. Donnelly and Lynne A. Weagle, for the Respondent</i>
)	
Respondent)	
)	
)	
)	HEARD: April 14, 2010

L. A. PATTILLO J.:

Introduction

[1] This is an application by Robert Woodbury for a declaration that the respondent State Farm Fire and Casualty Company ("State Farm") is obliged to defend him pursuant to a Homeowners policy of insurance, policy # 60-KB-0506-0, issued by State Farm (the "Policy") plus other ancillary relief.

Background

[2] On August 11, 2007, Mr Woodbury was towing his son on an inner tube behind his motorboat on Rice Lake when the tube collided with another boat. Mr. Woodbury's son was injured in the accident and subsequently sued Mr. Woodbury and the other boat driver.

[3] Mr. Woodbury gave State Farm notice of the action and requested it defend him. State Farm denied coverage on the ground that the Policy did not cover liability arising from the accident.

The Policy

[4] The Policy provides coverage for personal legal liability arising out of the insured's personal actions anywhere in the world. It contains, however, a number of exclusions including an exclusion for watercraft. That exclusion in paragraph 1(a) of the Coverage L – Personal Liability section states:

You are not insured for claims made against you arising from . . . the following:

- a. the ownership, use or operation of any . . . watercraft, except those for which coverage is shown in this policy . . .

[5] The Policy contains the following exception to the exclusion of watercraft in paragraph 1 of the Special Limitations section:

1. Watercraft You Own. You are insured against claims arising out of your ownership, use or operation of watercraft equipped with an outboard motor or motors of not more than 19 kW (25 H.P.) in total when used with or on a single watercraft. You are also insured if your watercraft has an inboard or inboard/outboard motor of not more than 38 kW (50 H.P.).

You are also insured for other watercraft not described above if it is 8 meters (26 feet) or less in length, provided it is not:

- a. designated as an airboat, air cushion, or similar type of craft; or
- b. a personal watercraft using a water jet pump powered by an internal combustion engine as the primary source of propulsion.

Should you acquire any motors or watercraft larger than those stated above after the effective date of this policy, your insurance will be extended automatically for a period of 30 days in order for you to notify us of the acquisition.

[6] The issue to be decided is whether the above noted exception to the exclusion, and more specifically the 2nd paragraph, operates to restore coverage on the facts of this case.

[7] The parties agree that Mr. Woodbury's boat was less than 26 feet long; had a 175 horse power inboard motor and had been purchased more than 30 days prior to the accident.

Interpretation of Insurance Contracts

[8] An insurance contract, like any other contract, must be interpreted in a commercially sensible fashion giving effect to the reasonable expectations of the parties at the time they entered into the policy. Further, the word or words in issue cannot be read in isolation but must be read having regard to the wording of the policy as a whole. See: *Consolidated Bathurst Export Ltd. v. Mutual Boiler and Machinery Insurance Co.*, [1980] 1 S.C.R. 888 (S.C.C.); *Solway v. Lloyd's Underwriters (Attorney in Fact in Canada)* (2006), 80 O.R. (3d) 401 (C.A.); *RBC Travel Insurance Co. v. Aviva Canada Ltd.* (2006), 82 O.R. (3d) 490 (C.A.).

[9] In addition, special rules have evolved in regards to the interpretation of insurance contracts. In particular, coverage provisions should be construed broadly and exclusion clauses narrowly: *Reid Crowther & Partners Ltd. v. Simcoe & Erie General Insurance Co.*, [1993] 1 S.C.R. 252; *Non-Marine Underwriters, Lloyd's of London v. Scalera*, [2000] 1 S.C.R. 551. Where there is an exception to the exclusion, the insured bears the burden of establishing that the exception applies: *Trafalgar Insurance Co. v. Imperial Oil (sub nom. R.W. Hope Ltd. v. Dominion of Canada General Insurance Co.)* (2001), 57 O.R. (3d) 425 (C.A.) at paras. 18 and 68.

[10] Finally, where ambiguity is found to exist in the wording of the policy, the wording is to be construed against the insurer. This is the principle of *contra proferendum*. See: *Consolidated Bathurst*, supra, at pp. 899-900. However, where the policy wording is open to two or more reasonable interpretations, before resorting to the *contra proferendum* principle, the court should attempt to interpret the policy in a “commercially reasonable fashion and in a way that gives effect to the reasonable expectation of the parties.” *Solway v. Lloyd’s Underwriters*, supra, at para. 43.

Position of the Parties

[11] Mr. Woodbury submits that he is entitled to coverage based on the plain wording of the exception because his boat, which has an inboard motor of more than 50 h.p. is not described in paragraph one. Because the second paragraph provides coverage for “watercraft not described above” (which his boat is not), he submits he is entitled to coverage because his boat is less than 26 feet and not one of the watercraft described in (a) or (b).

[12] State Farm submits that because Mr. Woodbury’s watercraft had an inboard motor greater than 50 h.p., on the plain wording of the exception, it is excluded from the exception and the wording of paragraph two does not operate to provide coverage under the Policy.

Analysis

[13] The Policy is a homeowner’s policy of insurance. The exclusion of watercraft from the Policy is clear and unambiguous and extends to all watercraft. The exception in issue operates to restore coverage to certain types of watercraft, beginning with those in paragraph one of the exception that have an outboard motor or motors of less than 25 h.p. in total and inboard or inboard/outboard motors of less than 50 h.p. On the plain wording, Mr. Woodbury’s boat,

having an inboard motor of greater than 50 h.p., is excluded from the watercraft described in the first paragraph.

[14] It is submitted on Mr. Woodbury's behalf that coverage is provided through the second paragraph of the exception which applies in respect of "other watercraft not described above" where the watercraft is less than 26 feet in length, is not an airboat, air cushion or similar type of craft and is not a personal watercraft using a water jet pump powered by an internal combustion engine. He submits that the watercraft "described above" in paragraph one of the exception are boats with an outboard motor or motors of not more than 25 h.p. in total and inboard or inboard/outboard motors of not more than 50 h.p. Because Mr. Woodbury's boat has a 175 inboard motor, it is not described in paragraph one. Further, because it is less than 26 feet and is not a watercraft described in subparagraphs a or b of paragraph two, the exception operates to provide Mr. Woodbury coverage for his boat.

[15] In my view, the words: "other watercraft not described above" in the second paragraph of the exception cannot be interpreted as Mr. Woodbury submits. To do so would give rise to a nonsensical result that was never intended by the parties. Such an interpretation would effectively render motor size meaningless and make the length of the boat the determining factor.

[16] It is clear, in my view, from the wording of the Policy in general and the exclusion for watercraft liability and the exception to the exclusion clauses in particular that the intention of parties was to provide limited coverage for certain types of watercraft under the Policy.

[17] Paragraph one of the exception provides limited coverage for, among other things, watercraft with an inboard motor of less than 50 h.p. Mr. Woodbury's interpretation would provide unlimited coverage to watercraft less than 26 feet regardless of motor size, thereby

rendering the limitation in paragraph one meaningless. Such an interpretation must be avoided: *RBC Travel Insurance Co.*, supra at para 11.

[18] Where the words in an insurance contract are capable of two different constructions, the one that brings about the more sensible commercial result rather than the one that brings about an unrealistic result is the one that should be accepted: *Consolidated Bathurst*, supra, at p. 901 per Estey J.

[19] Having regard to the words of the Policy in general and the exception providing limited coverage for watercraft in particular, it is my view that the words “other watercraft not described above” in paragraph two of the exception must be interpreted to mean watercraft that are not powered by outboard motors, inboard motors or inboard/outboard motors. In other words, “other watercraft not described above” refer to the type of watercraft described in paragraph one and not the size of the motor.

[20] Given the intention of the parties is to provide limited coverage for certain types of watercraft under the Policy, the above interpretation is clearly within the reasonable expectations of the parties. Further, it provides a more commercially reasonable result than the interpretation submitted by Mr. Woodbury. Finally, unlike Mr. Woodbury’s interpretation which renders paragraph one meaningless, it gives meaning to the entire exception provision.

[21] Nor do I think that the doctrine of contra proferendum should be applied here. The wording in issue is not ambiguous. At best it can be said to be capable of two different meanings.

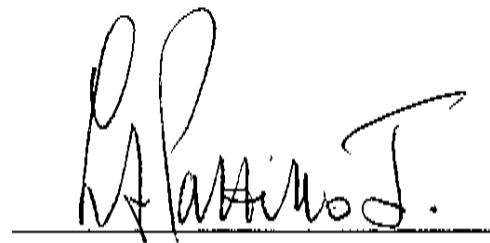
[22] The parties referred me during argument to the decisions of this Court in *Desjardins v. Luck*, [2006] O.J. No. 3838 (S.C.J.), 42 C.C.L.I. (4th) 43, *Smith v. Dewitt*, [1997] O.J. No.

1588 (Gen. Div.), 43 C.C.L.I. (2d) 315 and *Pennock v. General Accident Assurance Co. of Canada*, [1994] I.L.R. 1-3054 (Ont. Ct. Gen. Div.) all of which considered a similar question of whether watercraft with powerful motors were covered under policies of homeowners insurance. While the principles of interpretation which were applied in those cases are similar to the principles I have referred to, in each case the wording of the insurance policy being considered by the Court was different from the one in issue in this case and are therefore of limited assistance.

Conclusion

[23] For the reasons set forth, Mr. Woodbury's motor boat is not covered under the Policy. As a result, State Farm has no duty to defend him in respect of the claim arising from the accident. Mr. Woodbury's application is therefore dismissed.

[24] The parties have agreed that costs in the amount of \$5,000 should follow the event. That amount is fair and reasonable having regard to the issues. Accordingly, State Farm is entitled to costs fixed in the amount of \$5,000.

A handwritten signature in black ink, appearing to read "L. A. Pattillo J.", is written over a horizontal line.

L. A. Pattillo J.

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BETWEEN:

ROBERT WOODBURY

Applicant

- and -

STATE FARM FIRE AND CASUALTY COMPANY

Respondent

REASONS FOR JUDGMENT

PATTILLO J.

Released: August 27, 2010