

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Economical Mutual Insurance Company v.
Aviva Insurance Company of Canada,*
2010 BCSC 783

Date: 20100604
Docket: S100459
Registry: Vancouver

Between:

Economical Mutual Insurance Company

Petitioner

And

**Aviva Insurance Company of Canada and
Surinder Singh Rattan**

Respondents

Before: The Honourable Mr. Justice Pitfield

Reasons for Judgment

Counsel for the Petitioner:

S. Margolis
E. Toews

Counsel for the Respondent, Aviva Insurance:

W.G. Neen

Counsel for the Respondent, Surinder Rattan:

N. Kent

Place and Date of Hearing:

Vancouver, B.C.
May 6, 2010

Place and Date of Judgment:

Vancouver, B.C.
June 4, 2010

Introduction

[1] Economical Mutual Insurance Company (“Economical”) applies for a declaration that Aviva Insurance Company of Canada (“Aviva”) is obliged to participate in the defence of claims made by three infant plaintiffs against Surinder Singh Rattan who is alleged to be liable for negligence as a social host.

[2] On March 30, 2008, Mr. Rattan hosted a social gathering at his townhouse, 36-31517 Spur Avenue, Abbotsford, British Columbia, which is part of Strata Plan LMS 3927. Mr. Hiebert was a guest. Mr. Hiebert left the gathering and allegedly caused a motor vehicle accident when his vehicle collided with a vehicle operated by one Balwinder Kaur Sidhu. Three minors who were passengers in the Sidhu vehicle claim in separate actions that they suffered injuries as a result of the accident.

[3] The claimants allege that Rattan was negligent because he failed to supervise the amount of alcohol Mr. Hiebert was served and consumed at the gathering, and he failed to take steps to ensure that upon leaving the gathering Mr. Hiebert would not operate a motor vehicle.

[4] There is no doubt that Mr. Rattan is an insured under a homeowner’s policy issued by Economical. At issue is the question of whether Mr. Rattan is also an insured with coverage under a policy issued by Aviva for the benefit of a Strata Corporation. The insured under that policy is disclosed in the policy as “The Owners of Strata Plan LMS 3927 Viewpoint Prop.”, a project in which Mr. Rattan is an owner and occupant of a strata lot shown on the strata plan.

[5] Economical claims that the Aviva policy affords coverage to Mr. Rattan for personal injury sustained by another for which Mr. Rattan may be found liable, and no exclusion in the policy applies to deny coverage. As a result, Economical says that Aviva has a duty to participate in the defence of the actions. Aviva says that when properly construed, the contract of insurance does not extend coverage to

Mr. Rattan for any liability he may have as a consequence of the accident giving rise to the three claims or the circumstances leading to it.

The Insurance Policies

[6] The Economical policy is a homeowner's policy and there is no doubt that Mr. Rattan will be indemnified in the event he is found to be liable.

[7] The Aviva policy names "The Owners of Strata Plan LMS 3927 Viewpoint Prop." as the insured. The declaration of insurance contains the following limitation:

Insurance is provided subject to the Declarations, Terms, Conditions, Limitations and Endorsements of this policy and only for those coverages for which specific limits or amounts of Insurance are shown on this Declaration Page.

[8] The policy limits liability for each of bodily injury, and personal injury, whatever the difference may be, to \$5 million.

[9] The terms and conditions attached to the Aviva policy provide as follows in relation to commercial general liability:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

Various provisions in this Coverage Form restrict coverage. Read the entire Coverage Form carefully to determine rights, duties and what is and is not covered. Throughout this Coverage Form the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the Company providing the insurance.

The word "insured" means any person or organization qualifying as such under SECTION II WHO IS AN INSURED.

Other words and phrases that appear in quotation marks have special meaning.

COVERAGE A: BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement:

a. We will pay those sums that the Insured becomes legally obligated to pay as compensatory damages because of "bodily injury" or "property damage" to which this insurance applies. No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under SUPPLEMENTARY PAYMENTS COVERAGES A, B AND D. This insurance applies only to "bodily injury" and "property damage" which occurs during the policy period.

The "bodily injury" or "property damage" must be caused by an "occurrence". The "occurrence" must take place in the "coverage territory". We will have the right and duty to defend any "action" seeking those compensatory damages but:

- 1) The amount we will pay for compensatory damages is limited as described in SECTION III - LIMITS OF INSURANCE;
 - 2) We may investigate and settle any claim or "action" at our discretion; and
 - 3) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A, B, D or medical expenses under Coverage C.
- b. Compensatory damages because of "bodily injury" include compensatory damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

[10] Economical and Aviva agree that there is no specific exclusion which would deny liability or coverage for the bodily injury, if any, sustained in the circumstances of this case if Mr. Rattan is an insured under the policy.

[11] Economical says that Mr. Rattan is an insured by virtue of s. 150 and s. 155 of the *Strata Property Act*, S.B.C. 1998, c. 43 (the "SPA"):

Liability insurance required for strata corporation

150(1) The strata corporation must obtain and maintain liability insurance to insure the strata corporation against liability for property damage and bodily injury.

...

Named insureds

155 Despite the terms of the insurance policy, named insureds in a strata corporation's insurance policy include

- (a) the strata corporation,
- (b) the owners and tenants from time to time of the strata lots shown on the strata plan, and
- (c) the persons who normally occupy the strata lots.

[12] Aviva says that its policy does not extend coverage to Mr. Rattan because of Section II, which provides as follows:

SECTION II - WHO IS AN INSURED

1. If you are designated in the Declarations as:
 - a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
 - b. A partnership or joint venture, you are an Insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
 - c. An organization other than a partnership or joint venture, you are an insured. Your executive officers and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds but only with respect to their liability as stockholders.

[13] Aviva says that if Mr. Rattan is deemed to be a named insured by virtue of s.155 of the *SPA*, none of clauses 1. a., b., or c. apply to provide coverage in this instance.

Analysis

[14] Economical claims that the coverage provided to Mr. Rattan should be determined by reference to the *SPA* which, as previously noted, requires the Strata Corporation to obtain and maintain liability insurance to insure the Strata Corporation against liability for property damage and bodily injury.

[15] Economical says that because of the provisions of s. 155 of the *SPA*, the Aviva policy must be read to include Mr. Rattan as an insured, and to afford him coverage co-extensive with the coverage provided to the Strata Corporation. Economical claims that liability is alleged in an "action", damages are sought for "bodily injury", the bodily injury occurred during the "coverage period" as a result of an "occurrence", and the occurrence took place within the "coverage territory" as defined by the policy.

[16] Aviva says that while s. 155 of the *SPA* imposes a duty upon a Strata Corporation to maintain a liability policy for owners, it cannot have the effect of

amending any policy that the Corporation has in fact obtained. The coverage actually obtained by the Strata Corporation must be determined by reference to the terms of the contract of insurance.

[17] Aviva says that if, by virtue of s. 155 of the *SPA*, Mr. Rattan must be viewed as one who is designated in the Declaration as an insured, then the extent of the coverage provided to him in his individual capacity is limited by clause 1. a. of Section II:

1. If you are designated in the Declarations as:
 - a. An individual, you and your spouse are insured, but only with respect to the conduct of a business of which you are the sole owner.

[18] Aviva says that coverage for an individual is restricted to claims arising in respect of the conduct of a business of which the individual insured is the sole owner. There is no allegation that the claim by the three infants arises as a result of the conduct of a business of which Mr. Rattan is the sole owner and he cannot claim coverage under the policy as a result.

[19] In the alternative, Aviva claims that the only other heading which may be construed to provide coverage to Mr. Rattan is clause 1. c.:

1. If you are designated in the Declarations as:
 - ...
 - c. An organization other than a partnership or joint venture, you are an insured. Your executive officers and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds but only with respect to their liability as stockholders.

[20] Aviva says that the action against Mr. Rattan is personal in nature and does not arise in connection with any liability he may have by virtue of being a stockholder in the Strata Corporation within the meaning of clause 1. c. In the result, the policy does not afford him protection in respect of the claims against him.

[21] Compliance with the SPA is something for which the officers and directors of the Strata Corporation are responsible. Their omission to fulfill their duties owed to anyone including Mr. Rattan as one of its members, may give rise to a claim against them. No such claim has been advanced in this case. To the extent that it is deficient, the contract of insurance cannot be varied or amended to ensure that it complies with the SPA. The policy provides only the coverage that the insurer has agreed to provide. If the coverage which the Strata Corporation obtained is inadequate, or not in compliance with a requirement imposed by the SPA, that is an issue between the Strata Corporation and Mr. Rattan as an owner and does not impose a duty to defend on Aviva.

[22] In this case, the Strata Corporation enjoys coverage as an organization other than a partnership or joint venture. The organization's executive officers and directors, who are insureds, could likely claim coverage for damages resulting from their omission to fulfill their duties as officers or directors, one of which is to ensure that appropriate insurance is acquired and maintained by the Strata Corporation. However, in the actions as framed against Mr. Rattan, the Strata Corporation is not named as a defendant and there is no allegation that the three claimants, who allege that they sustained bodily injury, are entitled to compensation from the officers or directors as a consequence of their failure to obtain and maintain a policy of general liability insurance that might afford protection to an individual other than in relation to the conduct of the individual's business. Finally, none of the claims allege that Mr. Rattan is liable in his capacity as a stockholder of the Strata Corporation.

Conclusion

[23] In all the circumstances, I am satisfied that the Strata Corporation has acquired a policy that does not afford Mr. Rattan coverage except in respect of any business conducted by him and in respect of any liability he may have in his capacity as a stockholder in the Strata Corporation. As neither constitutes the base from which the claims against Mr. Rattan are advanced, Aviva has no duty to defend or to participate in the defence of any of the three actions brought against him.

[24] The petition is dismissed. Aviva is entitled to costs at Scale B.

"Mr. Justice Pitfield"