

Zlatic c. ING Assurances

2009 QCCQ 3398

## COURT OF QUEBEC

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL  
Civil Division

No: 500-22-134273-070

DATE: April 15, 2009

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**PRESIDED BY THE HONOURABLE DAVID L. CAMERON, J.C.Q.**

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**ZORAN ZLATIC**

Plaintiff

vs.

**ING ASSURANCE**

Defendant

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### JUDGMENT

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#### INTRODUCTION-THE PARTIES, THE POLICY AND THE PROCEEDINGS

[1] The Plaintiff, Zoran Zlatic, claims from the Defendant, ING Assurance ("ING"), an insurance indemnity of \$53,045 representing the limits available pursuant to the "personal property" coverage of a "Condominium Comprehensive" policy, number HP 6385775 (the "Policy").



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[2] Mr. Zlatic alleges that a collection of insects he owed, temporarily placed in a storage area in the Chateau Westmount Square condominium building, 4175 Sainte-Catherine West, in Westmount, PQ, was damaged on or about October 1, 2002 when a locked trunk in which the insects were being dried, was transported, along with other movable property, from the storage area to the corridor in front of the door of Mr Zlatic's condominium, unit number 301.

[3] The Policy was issued by Zurich Insurance Company for the policy period November 11, 2001 to November 11, 2002. The named insured are Zoran Zlatic and Kontesa Zlatic.

[4] The Policy provides property and liability coverages with respect to this unit, which was the principal residence of Mr Zlatic.

[5] ING admits that it has assumed the obligations of Zurich Insurance Company with respect to the Policy.

[6] ING's defence is based on a denial of coverage. It takes the position that the collection of insects does not fall within the policy coverage, not being property that is "*usual to the ownership or maintenance of a unit*". As a subsidiary defence, ING pleads exclusion 11.8 relating to "fragile or brittle articles, unless caused by a **specified peril**."

[7] Mr Zlatic joins issue with these denials of coverage and invokes an exception to exclusion 11.8, asserting that the loss was caused by a "specified peril" as defined in the Policy.

### **FACTUAL ANALYSIS**

#### ***The loss***

[8] Mr Zlatic is a collector of insects.

[9] Originally from the former Yugoslavia, he came to Canada in 1974. He earns his living as a tour organiser and tour guide. As a guide, his specialty is tours to the sites of the ancient Maya and Inca civilisations.

[10] His hobby, which he has practiced for some fifteen years, consists in travelling annually, chiefly to Serbia and Montenegro, but also to other countries such as Mexico, where he captures many varieties of ground beetles, known as *carabidae*. The captured dead insects are preserved in formaldehyde and brought to Canada, in plastic bags. Mr Zlatic submits them to a drying process by laying them out on newspaper placed on Styrofoam trays and then mounts them with pins on cardboard or plastic. If they are mounted with the legs spread, he first humidifies them to make them pliable, then spreads them with pins, and allows them to dry.

[11] Once mounted, the beetles are preserved and can be easily transported. Mr Zlatic uses them either for his own collections, or for purposes of sale or trading with other collectors, or for sale to a wholesaler.

[12] The loss pertains to approximately fifteen thousand such specimens that Mr Zlatic had acquired on one such trip to the former Yugoslavia. He left from Montreal on



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May 20, 2002 and returned September 16, 2002. On September 17 and 18 2002, he placed the specimens on Styrofoam trays carefully stacked with spacers in two blue trunks which were left to dry in a storage locker in the garage area of the building.

[13] Mr Zlatic had to leave quickly on September 19, because he was called away to act as a tour guide. He was to return October 18. His plane tickets show an itinerary taking him to Havana on September 29, to San Jose, Costa Rica on October 14 and returning to Canada via Havana on October 18. (D-6, Exhibit F)

[14] Upon his return, he found all the contents of the storage area, including two trunks in which insects had been left to dry, as well as other trunks, bags and boxes containing personal effects, stacked in the vestibule of the building on the third floor outside his condo unit. The two trunks containing the insects had been turned up on their side. (P-6; U-4)

[15] Mr Zlatic later examined the specimens. Virtually all of them had damaged legs and antennae. Mr. Zlatic carried out a detailed inventory. (P-1). According to the unit prices applied by Mr Zlatic, the inventory shows an aggregate value of US\$127,336. The action was initially instituted for that amount. It was later reduced by amendment to the policy limits for personal property, \$53,045 (Canadian currency).

#### ***The events leading to the loss***

[16] It is not in issue that the trunks that Mr Zlatic alleges contained valuable *carabidae* specimens were moved from the storage locker to the vestibule landing next to Mr Zlatic's unit as an initiative of Lyne Duval, the manager working for the syndicate of the condominium, known as the "CWS condominium association" or the "Chateau Westmount Square condominium association" (the "Syndicate").

[17] The events leading to that initiative and the circumstances of the move were related to the Court through the testimony of Mr Zlatic and that of Ms Duval and appear in a series of documents.

[18] The parties agree on the chronology and essential objective facts. The context, in which these events occurred and the motives and intentions of the parties is the subject of a certain amount of difference of opinion, or perhaps of viewpoint. In some respects, it is necessary to resolve questions of credibility in order to obtain a true representation of what occurred, especially in light of the arguments made on the issue of whether the cause of the loss is a "specified peril".

#### ***The locker***

[19] Mr Zlatic did not have a storage locker of his own. He had been renting one from another resident of the building. In June 2000 he learned that he would no longer have the use of this space.

[20] Mr Zlatic asked Ms Duval if she could find him a locker he could rent. She informed him of a storage room that was part of the common areas of the condominium that the administration was not using.



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[21] The price asked was \$500, as opposed to the amount of \$300 Mr Zlatic had been paying for the space he had been previously renting. An agreement was reached and payment of \$500 received for the rental period July 1, 2001 to June 30, 2002. (P-7). A lease was drawn up between the Syndicate and Mr Zlatic, dated as of July 1, 2001, signed by Zoran Zlatic and Lyne Duval, "*Authorised representative of CWS*" (P-6, Exhibit C). The lease provides for an automatic renewal, and for the repossession of the space by the Syndicate:

6. In the event that CWS requires the use of the leased storage space for any purpose whatsoever, CWS shall so advise Mr. Zoran Zlatic by written notice three (6) months prior to any renewal thereof and repossess the storage space;

[22] Mr Zlatic asserts, at trial, that Ms Duval asked for a finder's fee and that he objected to this request. Ms Duval denies this assertion.

***The removal of the effects from the locker***

[23] By letter dated September 5 2001, Lyne Duval writes to Mr Zlatic informing him that his "*storage lease is terminated on June 30...*". The reason given is that "*At our last board meeting it was pointed out that the common area lockers are intended to be kept for CWS use only and not to be rented out. This locker has been rented to you by mistake.*" The letter states that Mr Zlatic must vacate the space and return the keys. (P-6, Exhibit E; D-2)

[24] A reminder letter dated May 10, 2002 is delivered by hand. (P-6, Exhibit E; D-2)

[25] On the eve of his departure for the four-month trip referred to above, in paragraph 12, Mr Zlatic hand delivers to Ms Duval a letter addressed to the "C.W.S." asking for an extension of four months to October 1 "*at which time I will move my stuff*". He encloses a money order for \$125. He entreats the syndicate:

Please do not remove any of documents or fragile items from the locker until I do not return. For this duration of the time as always in case of emergency call [name and telephone number of his cousin]. [sic]

Other ways please ask doormen **TO NOT ACCEPT** any registered mail, subinas, etc in my name under no circumstances. [sic]

[26] Mr Zlatic testifies that the letter is contemporaneous with a discussion with Ms Duval who agreed that they could "deal with it" upon his return.

[27] In the two-day period between his arrival on September 16 from one trip and his departure September 19, Mr Zlatic does not have time to find an alternative spot for his moveable effects, including the *carabidae* he intends to dry. He will only return after the end of the extension, which is to expire October 1.

[28] He testifies about asking Ms Duval for a further extension and obtaining a qualified response: "*it's ok with me but I don't know what the bosses will do*". Ms Duval does not speak of this in her testimony.



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[29] On September 23, the Syndicate, through Ms Duval, writes to Mr Zlatic pointing out that the extension period to October 1, was "without approval" and reminding him that he must vacate the storage area no later than September 30 and that:

[...] no other extension will be granted.

Should you not vacate the storage premises by the due date, your personal belongings will be removed and brought up to your vestibule landing. A bailiff will be present to certify that we have not damaged your goods. All these expenses incurred will be at your cost.

[30] The letter is marked "hand delivered". Ms Duval states that the letter was given to the front desk to remit to Mr Zlatic. But Mr Zlatic had left September 19. An identical letter, except for the date, is sent September 27, this time by bailiff. The bailiff's return shows that the letter was left on Mr Zlatic's door.

[31] On October 1, after, according to Ms Duval's testimony, a telephone communication with Mr Zlatic's spouse, and an attempt to reach the contact mentioned in Mr. Zlatic's letter, Ms Duval proceeds, with a locksmith and a bailiff and the assistance of workmen to empty the locker and to place the contents on the hallway (also referred to as the vestibule landing) leading to Mr Zlatic's dwelling. At the time, no one is home. The effects consist in twenty-two cardboard boxes, some plastic bags and eight large blue trunks (bailiff's return, D-3). The photos taken by Mr. Zlatic upon his return (P-6, U-4) show a stack running the length of the hallway, and most of the way to the ceiling, an impressive quantity of "stuff". The pile leaves scarcely any room in front of the doorways on the extremities of the hall and minimal room to walk beside it.

[32] According to the witnesses who were involved in the moving operation, care was taken in moving the effects. None was able to account, however, for the two trunks being stacked sideways. From the photos, it appears that this vertical configuration was probably adopted in order to cram all the boxes bags and trunks into the available space. The decision to leave the boxes on a vestibule landing in Mr Zlatic's absence was taken as part of a planned operation attributed by Ms Duval to one of the members of the board of the Syndicate, an accountant named Mr Gilmore, who came up with the plan and instructed her to carry it out. Mr. Gilmore did not testify.

[33] The final phase of this removal operation by the Syndicate was to contact the fire department. This led to the issuance of orders on November 14 to the "Chateau Westmount" c/o Lynn Duval and to Mr Zlatic to remove the materials, which constituted both a fire hazard and an obstruction to the corridor. (P-11).

[34] The Syndicate followed up with a letter giving Mr Zlatic 48 hours to remove the materials, *"failing which they will be placed on the dock for garbage removal"*.

[35] Mr Zlatic acted quickly, removing the effects to a public warehouse facility on or about November 15.

[36] At trial, Ms Duval explained that the board of the Syndicate required the space to store salt to use in the winter to melt ice. That reason was never mentioned in any written or oral communication. Up until the trial, the reason the Syndicate reneged was that the space was rented "by mistake".



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[37] Mr Zlatic asked Ms Duval to see the locker, ostensibly to see that nothing had been left there. He had his camera with him and photographed the completely empty storage room (P-9). Then, according to Mr Zlatic, "*she physically grabbed me and slammed me against the wall.*"

[38] Ms. Duval corroborates this surprising testimony. She admitted that she felt insulted and angry and pushed him yelling "*hey!*" She demonstrated to the Court her spontaneous gesture.

[39] Mr Zlatic says he asked an employee in the spring of 2003 to have a look in the locker and that it was empty at that time.

#### ***Credibility***

[40] At first, it was possible to have certain doubts about the credibility of Mr Zlatic. In cross-examination he was confronted with his criminal record.<sup>1</sup>

[41] Several of his allegations about Ms Duval were unusual. He stated that she had done some secretarial work for him, essentially moonlighting from her duties as an administrator and that she had asked for a finder's fee, as mentioned above in paragraph 22.

[42] Mr. Zlatic speaks of having been oppressed by the building administration on a series of occasions. In this conflictual context, he gives details of being denied access to parking for his guests and of other conflicts, one of which ended at the Small Claims Division of this Court. He interpreted the overly-high rent as well as the board's subsequent reversal of its consent to rent him the space as a reprisal by Ms. Duval for his refusal to pay the finder's fee and a general hostility toward him by the administration.

[43] A number of elements convinced the Court that in matters of contradiction, it should prefer the testimony of Mr. Zlatic to that of Ms. Duval:

- she admitted the moonlighting, blushing terribly during this part of the testimony, admitting she was paid cash.
- she had no reason to react compulsively to Mr. Zlatic taking a picture of the empty storage room by pushing him, unless she was embarrassed that it was empty, therefore not really required by the Syndicate.
- as questions concerning the board's need for a place to store salt were asked in cross-examination, she would not make eye contact with the undersigned,, directing her view upward. This part of her testimony is also rather implausible: why would the board of the syndicate meet in August to deal with the need to store salt? Why would salt for the exterior surfaces be stored in a locker, rather than placed in proximity to the areas where it would be used. Why lock up something that would have little intrinsic value? Why would such a large space, approximately eight feet by eight feet be required?

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<sup>1</sup> R. c. Zlatic, [1993] 2 R.C.S. 29

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- she asserted that she did not know what Mr. Zlatic was storing in the locker.. She had however received a letter from Mr Zlatic asking that "fragile items" not be removed from the locker.
- why the recourse to a locksmith, a bailiff and later the fire department? What was the urgency of acting in the absence of Mr Zlatic?
- what was the point of leaving letters for Mr Zlatic at the front desk or by bailiff during his absence?

[44] The Court does not accept Ms. Duval's assertion that the relationship between Mr. Zlatic and the administration was essentially cordial, nor can the delivery of the letters of September 23 and September 27 be seen as a sincere attempt to give Mr. Zlatic prior notice before moving his personal property out of the storage area.

***The nature of the actions leading to the loss***

[45] On the whole of the evidence, the Court comes to the conclusion that there was no valid reason to attempt to resiliate the lease for the storage area. Ms Duval participated in the planning and carried out an operation to remove Mr Zlatic's personal effects from the locker without his consent and without effective notice to him, putting his property at risk of loss, with no justification. An officer of justice was used, along with a locksmith, to facilitate and record the events, with a semblance of legitimacy. Whether she drove the events, or acted under the direction of one or more members of the board is not clear. What is clear is that her actions were a deliberate initiative taken with a view to causing prejudice to Mr. Zlatic, not, as the use of the bailiff might have suggested, the execution of a legally authorised eviction.

**ISSUES**

[46] The Court must decide:

1. Does the property, consisting in specimens of collectible beetles, fall within the personal property coverage of the Condominium comprehensive form?
2. If so, is the damage that occurred subject to the exclusion relating to fragile or brittle articles?
3. If so, does the exception to the exclusion apply because the damage was caused by a specified peril, either vandalism or malicious acts, transportation or theft or attempted theft?
4. If coverage is afforded, what is the value of the loss?

**ANALYSIS**

[47] Before dealing with the exclusion and its exceptions, it is necessary to consider the question whether the damaged property is included in the personal property coverage. The text reads as follows:

6.

**Coverage C: Personal Property**



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6.1

**We** cover the contents of **your unit** and other personal property **you** own, wear or use while on **your premises** which is usual to the ownership or maintenance of a unit. If **you** wish, **we** will include uninsured personal property of others while it is on that portion of **your premises**, which **you** occupy, but **we** do not cover property of roomers or boarders who are not related to **you**. (Underlining added))

6.2

**We** cover **your** personal property, uninsured personal property of others in **your** possession and personal property belonging to a **residence employee** travelling with **you**, or on **your** behalf while it is temporarily away from **your premises** anywhere in the world. However, personal property normally kept at any other location **you** own is not covered. Personal property stored in a warehouse is only covered for 30 days, but this time restriction does not apply if the loss damage is caused by fire or theft. **You** can request an extension of storage coverage for a further period by notifying **us** in writing. **We** can then endorse **your** policy as required.

At **your** request, **we** will also cover uninsured personal property belonging to others while it is in **your** care, custom or control and located within Canada or the United States of America. The maximum **we** will pay under this extension is \$5,000 in all.

[48] The term **premises** is defined in the definitions section of the policy, in the part dealing with liability insurance as follows:

"Premises" means

The land within the lot lines on which the unit is situated.

[49] The issue raised by ING is that of the qualification "usual to the ownership of a unit".

[50] In the present case, the property was of a type normally used by the insured in the dwelling as part of his hobby. If it was off the premises, this was temporary. The process of drying the bugs in trunks placed in the storage locker was a step in the process of preserving and mounting the specimens. Most of that process took place in the dwelling space of the unit.

[51] The Defendant argues, referring to the testimony of its expert witness, that very few residents of the Province of Quebec, at best one thousand persons, engage in the serious collection of insects. Only that small group would have collections of value. From this, the Court is asked to infer that the property is not usual to the ownership or maintenance of a unit.

[52] Counsel for the insured argues that the text of clause 7 of the policy is an indication that collections are considered covered because certain specific types of collections are subject to certain monetary and other limitations.

[53] Section 7, titled **Special limits of Insurance** refers to a number of items that are obviously included already in the notion of personal property that is usual to the ownership of a unit, such as animals, bicycles, money, jewellery, fur garments etc.



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[54] Since specific collectible items, notably numismatic property, manuscripts and stamp collections are mentioned, with limits, this is an indication that other collections, not specifically mentioned, are covered, without special limits.

[55] Bearing in mind that a section providing coverage must be given a broad application, the Court concurs with the approach suggested on behalf of the insured.<sup>2</sup>

[56] Given that collections are covered, the fact that a particular collection is one that is not frequently found in the general population is not, in the Court's understanding, relevant. To give a purely hypothetical example, a collection of musical scores would be an object one would normally expect to find in a person's dwelling. What about a collection of scores of a composer whose works are not in the repertoire that any concert pianist in Quebec performs? Is such an unusual collection to be treated differently than, say, a collection of works for clavier of J.S. Bach?

[57] The problem with such a casuistic approach is that it requires a comparison between the usual and the unusual in a way that could give rise to arbitrary distinctions based on personal preferences or prejudices. Insect collectors are a rare breed, but there is an insectarium in Montreal that promotes their work. Who can say whether insect collections are usual or not? It depends upon your perspective. A court must act judicially, not arbitrarily in interpreting the text of a contractual document.

[58] On a broad reading of the coverage clauses of the policy, the Court, putting aside any personal prejudice, cannot say that insects in the drying stage of the collection process are not properly "*usual to the ownership or maintenance of a unit*".

[59] The application of the exclusion clause relating to fragile or brittle objects is obvious. The exclusion reads as follows:

11.

**Exclusions –Part I****We Do Not Cover:**

[...]

11.8

scratching, abrasion or chipping of any property , or breakage of any fragile or brittle articles, unless caused by a **specified peril** or accident to a land vehicle, watercraft or aircraft;

[60] The concept derived from the ordinary meaning of the words found in the expression: "scratching, abrasion or chipping of any property, or breakage of any fragile or brittle articles", is not more obscure because of the nature of the property - entomological specimens. They were clearly brittle and fragile: that is why they were readily damaged when the trunks in which they were stored were turned on end.

<sup>2</sup> This approach is consistent with the decision of the Court of appeal in *Lusignan c. Compagnie d'assurances Bélair inc.* (C.A., 2000-02-11), SOQUIJ AZ-50069612, J.E. 2000-431, [2000] R.J.Q. 403, dealing with a collection of hockey cards.

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[61] The demonstration was made at trial through expert testimony that the specimens would have been flexible and not subject to damage when moist, for example when being transported in formaldehyde, or, after drying when moistened for pliability at the mounting stage. In that sense, insects are not fragile or brittle, but strong and robust.

[62] But the property, considered at the time of the loss, was in a state where it was fragile and brittle because it had been dried out. Therefore the exclusion applies, subject to the exception, if applicable.

[63] The Court was asked to consider the following specified perils as defined in the section entitled "*Definitions Used Throughout This Policy*":

**"Specified Perils"**

Unless otherwise excluded or restricted in this policy,

**specified perils** means:

[...]

7. vandalism or malicious acts;

[...]

10. transportation, meaning loss or damage caused by collision, upset, overturn, derailment, stranding or sinking of any automobile or attached trailer in which covered property is being carried. This doesn't include loss or damage to property in a vacation or home trailer **you** own. This would also apply to any conveyance of a common carrier;

11. theft or attempted theft;

[64] Item 10, "transportation", does not apply: the specified peril deals with transport in the sense of carriage by means of a motorised vehicle. This would not apply to the dollies that were used to shuttle the contents of the locker to their ultimate destination.

[65] The exception for "*vandalism or malicious acts*" was argued more strongly than the others.

[66] These are terms that are not defined in the policy, and the jurisprudential tendency is to refer to the ordinary meanings of the words as defined in dictionaries.

[67] Recent decisions<sup>3</sup> have gleaned from the jurisprudence two elements inherent in the notion of vandalism or malicious acts: the act must be committed with an intention to cause prejudice, and there must be no lawful excuse for the conduct.

[68] In the present case, the Court has already characterised the actions of Ms Duval as being deliberate and without justification (paragraph 45).

[69] The Court retains the following factual elements as relevant to the issue:

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<sup>3</sup> *Beauchamp c. Promutuel L'Abitibiennne*, 2006 QCCQ 1739, l'Hon. Claude Bigué J.C.Q.;  
*Deschênes c. Compagnie d'assurances Bélair Direct Inc.*, 2007 QCCQ 7775, l'Hon. Jean-Paul  
Aubin J.C.Q.;

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- The negative feelings of Ms Duval, and the board of the Syndicate toward Mr Zlatic. The reasons given to terminate the lease at the time, that it had been a mistake, and that given by Ms Duval at trial, that the space was required by the Syndicate for salt, were without substance. The real reason was that the board did not want to give a favour to Mr Zlatic.
- The decision to go ahead with the forcible removal of the contents of the locker knowing that Mr Zlatic was away and not aware of the final ultimatum and therefore not in a position to protect these contents.
- The awareness that some of the contents of the locker were fragile, and therefore subject to breakage, and the awareness of the importance Mr Zlatic put on this. This awareness came from the specific request made in Mr Zlatic's letter of May 10.
- The decision to place the contents in an open area, rather than a secure location. This shows a disregard both for the privacy of Mr Zlatic and for the security of the contents, which were left exposed to loss, theft or, as was the actual outcome, damage because of the way in which the trunks were placed vertically rather than horizontally.

[70] It was not demonstrated that Ms Duval or the board of the Syndicate had the specific intent to cause damage to the insect specimens, because they did not necessarily know that the trunks contained these specimens. There was however intent to cause harm in the sense of a recklessness or wilful blindness. Ms. Duval was aware of Mr. Zlatic's hobby of collecting insects. Knowing that Mr Zlatic had a concern about fragile items, and had specifically asked that they not moved, Ms Duval showed a deliberate disregard for the risks inherent in moving the trunks, knowing that some of the contents were fragile.

[71] The action was unlawful in the sense that the Syndicate did not have judicial authorisation to interrupt the possession of the locker space and to take control over the contents. There may be instances where a lessor is legally justified in using self-help to evict a tenant. For example in commercial leases, specially drafted clauses may permit, exceptionally, the extra-judicial resiliation of a lease and the expulsion of a tenant. This was not one of those instances. The lease was renewable, except in cases where the Syndicate required the space. At the time the Syndicate purportedly exercised its right to prevent the renewal of the lease, it did not refer to a need for the space, stating that the space had been rented by mistake. The idea of storing salt that came up at trial was not credible.

[72] The Court finds that there are sufficient elements of illegality and intention to harm to conclude that the damages were caused by a malicious act.

[73] In that light, it is not necessary to discuss the question of theft. The point was argued and the parties may wish to know the Court's opinion on the matter. Theft is defined in the Criminal Code of Canada as follows:

322. (1) [Theft] Every one commits theft who fraudulently and without colour of right takes, or fraudulently and without colour of right converts to his use or to the use of another person, anything, whether animate or inanimate, with intent



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(a) to deprive, temporarily or absolutely, the owner of it, or a person who has a special property or interest in it, of the thing or of his property or interest in it;

(b) to pledge it or deposit it as security;

(c) to part with it under a condition with respect to its return that the person who parts with it may be unable to perform; or

(d) to deal with it in such a manner that it cannot be restored in the condition in which it was at the time it was taken or converted.

(2) [Time when theft completed] A person commits theft when, with intent to steal anything, he moves it or causes it to move or to be moved, or begins to cause it to become movable.

[74] In the present case, the elements of theft are present in the sense that Ms Duval (as opposed to the workmen) intentionally deprived Mr Zlatic of the possession of the contents of the locker during the time that they were in transit.

[75] With reference to article 322 (1) (a), the Court would have found that theft had occurred. Theft is a crime of general intent. Intention to deprive the owner the object is sufficient *mens rea*, regardless of the consequences of the act in terms of damage to the property.

[76] The damage occurred during the theft as a result of the way in which the trunks were stacked when put in a place where it was anticipated Mr Zlatic would find them.

[77] The Court would have applied the specified peril of theft, although "malicious act" is perhaps a more obvious application of the policy.

[78] A point was raised at trial concerning exclusion 11.5 for "*any property illegally acquired, kept, stored or transported, or property subject to forfeiture*" with respect to property originating in Mexico. The defendant did not go far with this and there is an absence of proof. The Court will not deal further with it.

### ***The Quantum***

[79] The Court heard expert testimony as to the value of the damaged specimens. Mr George Brossard, a reference in entomology, endorsed Mr Zlatic's own assessment of US\$ 127,336. His testimony was also useful in explaining the nature of the insect specimens, and the likelihood of the damage resulting from a mishandling of the trunks in which they were stored.

[80] The expert called by ING, also a recognized expert in the field of entomology, provided a counter valuation of US\$ 57,375. He acknowledged as well that the change of the position of the trunks from horizontal to vertical could have caused the damage.

[81] Proof was not made of the conversion rate, but it is fair to say that at the date of judgment, the US dollar is worth more.

[82] According to both experts, the amount of the loss is in excess of the policy limit of \$53,045, and it is therefore not necessary for the Court to decide which expert is



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more credible nor to determine the value of the specimens damaged. That may be a debate for another day in Superior Court in case number 500-17-027669-053.

[83] There is a deductible of \$1,000 per occurrence.

**FOR THESE REASONS, THE COURT:**

**GRANTS** the Plaintiff's action;

**CONDEMNS** the Defendant ING Assurance to pay the Plaintiff the sum of \$ 52,045 together with interest at the legal rate of 5% and the special indemnity provided by article 1619 of the Quebec Civil Code calculated from October 2, 2002;

**WITH COSTS**, including the costs of Plaintiff's expert for the preparation of his report and his presence at trial.

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**DAVID L. CAMERON, J.C.Q.**

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Dates of hearing: May 28, 2008, November 28, 2008 and February 11 - 12, 2009