COURT OF APPEAL FOR ONTARIO

CITATION: Allstate Insurance Company of Canada v. Aftab, 2015 ONCA 349
DATE: 20150515
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Strathy C.J.O., LaForme and Tulloch JJ.A.

BETWEEN

Allstate Insurance Company of Canada

Applicant (Appellant)

and

Sumaira Aftab

Respondent (Respondent)

and

Meng C. Chiu and Honda Canada Finance Inc.

Respondents

Sheldon A. Gilbert, Q.C., for the appellant

Louis P. Covens, for the respondents Meng C. Chiu and Honda Canada Finance

Dena Oberman, for the respondent Sumaira Aftab

Heard: May 11, 2015

On appeal from the order of Justice David Price of the Superior Court of Justice, dated October 15, 2014, with reasons reported at 2014 ONSC 5996.

ENDORSEMENT

[1] The application judge determined that the appellant Allstate Insurance Company of Canada had a duty to defend its insured, Sumaira Aftab, under her homeowner insurance policy. The issue on appeal is governed by the decision of this court in *Sheppard v. Co-Operators General Insurance Co.; Quick v. MacKenzie* (1997), 33 O.R. (3d) 362. The application judge effectively found that decision had been displaced by our more recent decision in *Bawden v. Wawanesa Mutual Insurance Company*, 2013 ONCA 717, 118 O.R. (3d) 189. We disagree, and for that reason allow the appeal.

Background

[2] Aftab's young son, Sameer, was hit by a car while crossing the road after getting out of her van.

[3] Aftab commenced an action on behalf of Sameer against the respondent Chiu, the driver of the car that hit him. Chiu counterclaimed against Aftab for indemnification, alleging she had failed to take reasonable steps to ensure her son's safety.

[4] Aftab's auto insurer, Unifund Assurance Company, and her homeowner insurer, Allstate, brought separate proceedings for declarations that they had no duty to defend the counterclaim or to provide coverage for damages.

[5] The applications were heard together. Unifund argued that Sameer's injury did not arise from the use and operation of the van. Allstate argued that it did arise from the use of the van and was therefore excluded from coverage under the homeowner policy. It also argued that in any event, the homeowner policy excluded coverage for bodily injuries to residents of Aftab's household.

[6] The application judge held that both insurers had a duty to defend Aftab from the counterclaim against her. Allstate appeals, asserting that coverage for the counterclaim is excluded by its homeowner policy, because it is a claim "arising from" bodily injury to a person residing in Aftab's household.

[7] The relevant provisions of Allstate's policy are as follows:

> You are insured for claims made against you *arising from*:
>
> 1. Personal Liability – Legal Liability arising out of your personal actions anywhere in the world.
>
> You are not insured for claims made against you *arising from*:
>
> (a) The ownership, use or operation of any motorized vehicle, trailer, or watercraft, except those insured in this policy;
> …
>
> € Bodily Injury to you or to any person residing in your household other than a residence employee. [Emphasis added.]

[8] There is no dispute that the counterclaim for inadequate supervision falls within the broad scope of coverage and that, absent an applicable exclusion, Allstate has an obligation to defend. The issue is whether this court's decision in *Quick*, interpreting virtually identical contract language, should be applied, or

whether *Bawden* represents a change in the law, reflecting the purpose of the exclusion and the “reasonable expectations” principle.

Analysis

[9] The coverage and exclusion provisions in the Allstate policy are virtually identical to the provisions of the homeowner policy considered by this court in *Quick,* above.

[10] *Quick*, heard together with *Sheppard*, also involved a counterclaim by a tortfeasor against a parent for negligent failure to supervise a child. The motion judge had held that the claim did not “arise” from the injury to the child, but from the parent’s lack of supervision. Catzman J.A., speaking for this court, rejected this interpretation and allowed the appeal. He held that on the plain wording of the policy, the counterclaim against the parents was one “arising from” the child’s bodily injury.

[11] Here, the application judge referred to the decision in *Quick*, noting that the exclusion clause there was “almost identical” to the exclusion in this case. He stated, however, that the exclusion had been more recently considered in *Bawden*, which interpreted the exclusion more narrowly. He noted that in that case the court had observed that a narrow interpretation of the exclusion was consistent with the purpose of the clause, namely to remove from coverage claims that raise a risk of collusion between the claimant and the insured family member. Thus, direct claims

by a family member against the insured homeowner would be excluded, but indirect claims by a third party against the homeowner would not be excluded.

[12] *Bawden* is distinguishable because, as this court noted, the ambiguous language of the exclusion clause there was quite different from the clause in *Quick* and in this case. Here, as in *Quick*, both the coverage clause and the exclusion clause use the term "arising from". In *Bawden,* the use of the word "for" in the exclusion clause, rather than "arising out of", was found to limit the scope of the exclusion. Here, in contrast, there is symmetry between the coverage on the one hand and the exclusion from the scope of coverage on the other.

[13] A reading of the reasons of Sanderson J. of the Superior Court in *Bawden*, 2013 ONSC 1618, 116 O.R. (3d) 9, at para. 53, serves to distinguish that case from *Quick*:

> In *Quick*, the Court of Appeal considered whether the parents of Laura were entitled to coverage for damages for their failure to supervise her despite an exclusion clause in their homeowners' policy: "you are not insured <u>for claims made against you arising from: bodily injury to you or to any person residing in your household</u>." The exclusion clause referred to claims made against the insureds <u>arising from bodily injury to Laura</u>. The Court of Appeal held the counterclaim was a claim <u>arising from</u> Laura's bodily injury within the meaning of the clause. In *Quick*, the words <u>arising from</u> were used in both the coverage provision and the exclusion clause. The scope of the wording in the exclusion was clearly as broad as the scope of the coverage provision. <u>Arising from</u> clearly covers indirect claims. [Emphasis in original.]

[14] Later in her reasons, in language that was specifically approved by this court, Sanderson J. noted the absence of the words “arising out of” in the exclusion clause, in contrast with their use in the coverage clause, observing that it was open to the insurer to have used the same broad language in the exclusion.

[15] In our view, nothing in *Bawden* supports the interpretation of the policy advanced by the respondent. Indeed, *Bawden* supports the appellant’s submission that the language in Allstate’s policy, like the homeowner’s policy in *Quick*, serves to exclude coverage for the counterclaim because it “arises from” the injury to Sameer.

[16] There is no dispute about the applicable principles of insurance policy interpretation, including the principle that coverage provisions should be construed broadly and exclusions should receive a narrow interpretation: *Monenco Ltd. V. Commonwealth Insurance Co.*, 2001 SCC 49, [2001] 2 S.C.R. 699, at para. 31.

[17] It remains the law, however, that the primary interpretative principle in the construction of insurance policies is that, where the policy is unambiguous, the court should give effect to its clear language, reading the policy as a whole: *Progressive Homes Ltd. V. Lombard General Insurance Co. of Canada*, 2010 SCC 33, [2010] 2 S.C.R. 245, at para. 22; *Non-Marine Underwriters, Lloyd’s of London v. Scalera*, 2000 SCC 24, [2000] 1 S.C.R. 551, at para. 71.

[18] Another important principle is that the courts should strive to ensure that similar insurance policies are construed consistently: *Progressive Homes*, at para.

23; *Co-operators Life Insurance Co. v. Gibbens*, 2009 SCC 59, [2009] 3 S.C.R. 605, at para. 27. This gives certainty and predictability to insurance companies and their customers.

[19] The respondents submit that the application judge's interpretation gives effect to the reasonable expectation of the parties. In our view, the reasonable expectations doctrine has no application where, as here, the policy language is unambiguous and where, as here, the plain meaning of that language does not strip the policy of all efficacy or deprive the insured of what she bargained for.

[20] Nor would we give effect to the appellant's reliance on the purpose of the exclusion clause discussed in *Bawden* – to prevent collusion between family members. That may well have been the purpose of the narrower exclusion in that case, but the purpose of the clause here is clear and broader – to exclude the risk of claims arising from injuries to the insured or residents of her household.

Disposition

[21] For these reasons, the appeal is allowed, the order of the motion judge is set aside, and this court declares that the respondent Sumaira Aftab is not entitled to coverage from the appellant with respect to the counterclaim in Court File CV-11-37117-00.

[22] We see no reason why the respondents should not pay costs in the usual course. Their positions were advanced by insurance companies with a direct

financial interest in the outcome. Costs of the appeal are fixed in the agreed amount of $14,389.26, all inclusive, and shall be paid by the respondents, jointly and severally. The costs below are fixed at $5,650.00, all inclusive, payable by the respondents Chiu and Honda Canada Finance Inc.

"G.R. Strathy C.J.O."
"H.S. LaForme J.A."
"M. Tulloch J.A."