

**CITATION:** Tieu v. Aviva Insurance Company of Canada, 2024 ONSC 1110  
**COURT FILE NO.:** CV-22-0803010000  
**DATE:** 20240222

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:** )  
 )  
 Chang Tieu )  
 ) Jeffrey GOIT, for the Applicant  
 Applicant )  
 )  
 )  
 – and – )  
 )  
 Aviva Insurance Company of Canada ) Dennis ONG and Cailyn PRINS, for the  
 ) Respondent  
 Respondent )  
 )  
 )  
 )  
 ) **HEARD:** November 15, 2023

2024 ONSC 1110 (CanLII)

**ANTONIANI J.**

**REASONS FOR JUDGMENT**

[1] The Respondent, Aviva Insurance Company of Canada (“Aviva”) has denied coverage to the Applicant Chang Tieu (“Tieu”), alleging a breach of her insurance contract, pursuant to s. 233(1) *Insurance Act*, R.S.O. 1990, c. I.8, and the regulations, and for having committed civil fraud.

[2] A motor vehicle accident (the “Accident”) took place on March 18, 2019, involving Victoria Pui Wong (“Wong”) and Natalie Denise Robertson (“Robertson”). As a result of the Accident, Robertson commenced an action under Ontario Superior Court of Justice Court File No. 19-00069213-0000 (the “Main Action”).

[3] Tieu is Wong’s mother and the owner of a 2013 Toyota that was being operated by Wong at the time of the Accident.

[4] At the time of the Accident, both Tieu and Wong had insurance coverage on the same policy, in good standing with Aviva. Tieu was listed as the insured owner, and Wong was a listed driver.

[5] At the time of the Accident, Wong believed that her driver's licence was expired. Concerned that the expired licence would result in criminal consequences, Wong called her mother, Tieu, and asked her to attend at the scene and to state that she had been driving the vehicle. Tieu attended and agreed to represent herself as the operator of the vehicle at the time of the Accident.

[6] Tieu and Wong together convinced Robertson to go along with the story to ensure she would have coverage for her damages.

[7] Tieu and Wong attended at the Collision Reporting Centre together. Wong completed the necessary report and forms, naming Tieu as driver, and Tieu signed them as driver. Wong thereafter called Aviva to make the accident claim, representing herself to be Tieu, and representing Tieu to be the driver.

[8] In June 2019, Aviva embarked on a defence of the Main Action on behalf of its client, Tieu, believing she was the driver.

[9] Tieu repeated the false representation that she was the driver at the time of the accident, to the police, to Aviva, and later, to counsel appointed to defend her in the Main Action. Tieu continued with the false representation while testifying under oath in examinations for discovery, which were conducted by videoconference. Wong stood by off camera and assisted Tieu with responses.

[10] Aviva first learned of the misrepresentation after the examinations for discovery, two years after the Accident. Aviva denied coverage to each of Tieu and Wong under the Policy and declined to defend or indemnify them in respect of the claims brought by Robertson.

[11] Aviva took an off-coverage position for Tieu. It was appointed as a Statutory Third Party to the Main Action and filed a defence in this capacity.

[12] Tieu brings this Application for a declaration that Aviva owes her a defence under the insurance policy and is required to indemnify her with respect to claims brought by the Plaintiff.

[13] In the alternative, Tieu seeks relief from forfeiture pursuant to s. 98 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, and/or relief from forfeiture under s. 129 of the *Insurance Act*, on the basis that her misrepresentation amounts to imperfect compliance, and that Aviva has suffered no prejudice from her conduct.

[14] Aviva resists any form of relief requested.

[15] Wong brings a separate Application seeking the same relief against Aviva, in court file CV-22-79960-0000. There is much overlap in the Reasons for Decision in that Application, with the Reasons here.

## **DECISION**

[16] I find on a balance of probabilities that Tieu breached her insurance contract, and s. 233(1)(b) of the *Insurance Act*, and *Statutory Conditions – Automobile Insurance*, O. Reg. 777/93, Sched. 5(3), and committed civil fraud, and that in the result she is not entitled to the benefits of her policy.

[17] I also find that the conduct of Tieu, which included lying to police, to Aviva, and under oath during examination for discovery, bars her from relief from forfeiture.

### **ISSUES**

[18] In arriving at my decision, I have considered the following issues:

- 1) Was Tieu in breach of her policy with Aviva under s. 233(1)(b) of the *Insurance Act* and/or the regulations?
- 2) Did Tieu’s conduct amount to civil fraud?
- 3) If the answer to either a) or b) is in the affirmative, should Tieu be granted relief from forfeiture in the circumstances? and
- 4) If Tieu is successful in the Application, should she be permitted to appoint counsel of her choosing to continue her defence of the claim brought by the Plaintiff?

### **ANALYSIS**

#### **Issue 1: Was Tieu in breach of her policy with Aviva under s. 233(1)(b) of the *Insurance Act* and/or the regulations?**

[19] Aviva denies coverage pursuant to the *Insurance Act*, alleging that Tieu contravened a term of her contract, and failed to cooperate in the defence of the Plaintiff’s action. It relies on the provisions from the *Insurance Act* and *Statutory Conditions – Automobile Insurance*.

[20] Section 233(1) of the *Insurance Act* provides that:

Where,

(a) an applicant for a contract,

(i) gives false particulars of the described automobile to be insured to the prejudice of the insurer, or

(ii) knowingly misrepresents or fails to disclose in the application any fact required to be stated therein;

(b) the insured contravenes a term of the contract or commits a fraud;  
or

(c) the insured wilfully makes a false statement in respect of a claim under the contract,

a claim by the insured is invalid and the right of the insured to recover indemnity is forfeited.

[21] Schedule 5(3) of the *Statutory Conditions – Automobile Insurance* regulation provides:

The insured shall, whenever requested by the insurer, aid in securing information and evidence and the attendance of any witness and shall cooperate with the insurer, except in a pecuniary way, in the defence of any action or proceeding or in the prosecution of any appeal.

[22] I am satisfied that Tieu travelled to the scene of the accident for the purpose of presenting herself as the driver on the date of the accident, and that she attended at the collision reporting centre where she knowingly signed the accident report as driver. I am satisfied that Tieu permitted her daughter to call Aviva to initiate the claims process, and to represent Tieu as the driver. I am satisfied that Tieu represented herself as the driver in the Main Action for over two years. In consideration of these facts, I find that Tieu did not cooperate with Aviva in the defence of the Main Action, and that she was in breach of the Act and of her policy. She failed to provide truthful information or to cooperate with Aviva. Further, for the reasons below, I find that she committed fraud. I find that Tieu's right to recover indemnity is forfeited.

### **Issue 2: Did Tieu's conduct amount to civil fraud?**

[23] Aviva alleges that Tieu committed civil fraud, and as such is not entitled to the benefits of her policy, or to relief from forfeiture. The elements of the tort of civil fraud include:

- i) a false representation made by the defendant;
- ii) some level of knowledge of the falsehood of the representation on the part of the defendant;
- iii) the false representation caused the plaintiff to act; and
- iv) the plaintiff's actions resulted in a loss.

See *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87, at paras. 86-87; *Bruno Appliance and Furniture, Inc. v. Hryniak*, 2014 SCC 8, [2014] 1 S.C.R. 126, at para. 21.

#### **i) A false representation made by the defendant**

[24] Tieu argues that she herself did not make false representations, and that she was not aware of the actions of her daughter in misrepresenting the circumstances of the accident to the police and to Aviva.

[25] Each of Tieu and Wong actively participated in false representations to Aviva. Tieu travelled to the scene of the accident expressly to represent herself as the driver of the vehicle. Tieu attended in person with Wong at the collision reporting centre. Wong completed the accident report, and initiated the claims process in Tieu's name, and Tieu signed the collision report as driver.

[26] Tieu and Wong each actively participated in the deceit of Aviva in their conduct in respect of the claim in the Main Action, where Tieu attended at examinations for discovery by videoconference, and testified under oath that she was the driver, while Wong stood by off screen to assist her with some answers.

[27] I find that Tieu made false representations and this element is made out on the facts.

**ii) Some level of knowledge of the falsehood of the representation on part of the defendant**

[28] Tieu argues that her English language skills contributed to her being an uninformed accomplice to Wong's misrepresentation about who was driving at the time of the accident. I reject the argument that her language skills interfered with her ability to understand the circumstances and the significance of her participation.

[29] In addition to the facts already set out above, Tieu attended examinations for discovery and testified under oath that she was the driver. She testified in English, giving appropriate answers and using relatively good grammar. She requested clarification on at least two occasions when she did not understand the question posed. Again, it has been admitted that Wong stood by off screen and assisted Tieu with answers during examinations for discovery. Tieu first admitted her participation in writing, via her own counsel, who sent a letter after the examination for discoveries, to all parties in Main Action, and described the fabrication. I find that the second criteria for civil fraud is met on these facts.

**iii) The actions caused Aviva to act and iv) the plaintiff's actions resulted in a loss**

[30] Tieu admits that her actions caused Aviva to defend her in the Main Action.

[31] However, counsel for Tieu argues that Tieu's false testimony and the fact of her collusion with her daughter will have no impact on Aviva's defence of the Main Action. Counsel suggests that the only issue in the Main Action is the extent of the Plaintiff's damages and therefore, the credibility of either Tieu or Wong will have no impact on the outcome. However, during examinations for discovery, Tieu was examined extensively about her driving and conduct on the date of the accident, including her speed, sobriety, vision and more. As Tieu's entire testimony was false, it is clear that the proceedings to date are no longer of use except as they may be used by Robertson to impugn any new defence Aviva might advance on Wong's behalf. Aviva is now at a disadvantage since the credibility of each of Tieu and Wong has been significantly undermined.

[32] In the alternative, counsel suggests that each of Tieu and Wong are prepared to compensate Aviva for the cost of the proceedings to date, and the wasted discoveries in particular. They argue that this returns Aviva to its original position, and as such no loss will have occurred.

[33] I find that a loss occurred. Aviva retained counsel and defended the Main Action for the wrong defendant, for over two years. This necessarily involved the expenditure of time and money. I have already found that Aviva's position in the Main Action is irreparably impacted. I also reject the suggestion that a fraud could be undone by putting the victim back into its original financial position. Certainly, the restitution would be a move toward taking responsibility for their actions, but it would not negate the fact that the loss occurred, and in this case, it would not return Aviva to its original circumstance.

[34] I am satisfied that the conduct of Tieu resulted in a loss.

[35] Having found all three elements exist, I find that, on a balance of probabilities, Tieu committed civil fraud.

**Issue 3: If the answer to either a) or b) is in the affirmative, should Tieu be granted relief from forfeiture in the circumstances?**

[36] Section 98 of the *Courts of Justice Act* provides:

A court may grant relief against penalties and forfeitures, on such terms as to compensation or otherwise as are considered just.

[37] Section 129 of the *Insurance Act* provides:

Where there has been imperfect compliance with a statutory condition as to the proof of loss to be given by the insured or other matter or thing required to be done or omitted by the insured with respect to the loss and a consequent forfeiture or avoidance of the insurance in whole or in part and the court considers it inequitable that the insurance should be forfeited or avoided on that ground, the court may relieve against the forfeiture or avoidance on such terms as it considers just. [Emphasis added.]

[38] Relief from forfeiture seeks to prevent hardship to insured persons when they have failed to comply with a condition of their insurance contract, and where leniency in requiring strict compliance with the condition will not result in prejudice to the insurer. Relief from forfeiture is not available where the case involves false statements or fraudulent conduct. As concluded in *Ghaffari v. Cooperators General Insurance Co.* (1996), 30 O.R. (3d) 144 (S.C.), aff'd (1998) 41 O.R. (3d) 254 (C.A.):

As a consequence of any fraud or wilfully false statement in respect of a claim under the insurance contract, s. 233(1)(c) of the Insurance Act provides that the claim of the insured is invalid and the right of the insured to recover indemnity is forfeited: see *Royal Insurance Co. of Canada v. Dimario* (1987), 26 O.A.C. 370, [1988] I.L.R. 1-2260 (Div. Ct.).

Once fraud is established, no matter how slight the amount, the entire claim under the proof of loss is forfeited: *Fotinos v. Pitts Insurance Co.*, 1981 CanLII 1687 (ON SC), [1981] I.L.R. 1-1377 at p. 264 (Ont. S.C.). This

statutory provision appears to be predicated upon a public policy objective of seeking to deter fraudulent claims thereby ensuring premium costs are in line with true losses and risks. An insured is in control of the information submitted in a proof of a loss and, in many cases, the insurer cannot easily verify its accuracy. A contract of insurance is one of utmost good faith.

Section 129 of the Insurance Act allows for relief against forfeiture where there is "imperfect compliance with a statutory condition as to the proof of loss". This provision has no application in a situation of fraudulent conduct: *West v. Royal Insurance Co. of Canada* (1986), 21 C.C.L.I. 53 at p. 59 (Ont. Dist. Ct.); *Wigmore v. Canadian Surety Co.* (1994), 1995 CanLII 66 (SCC), 27 C.C.L.I. (2d) 96, [1995] I.L.R. 1-3139 (Sask. Q.B.). However, where the insured's proof of loss contains an honest mistake, the court can resort to s. 129 in order to grant relief on the basis that the insured's proof of loss amounted to "imperfect compliance".

[39] In exercising its discretion to grant relief from forfeiture, a court must consider three factors: (i) the conduct of the applicant, (ii) the gravity of the breach, and (iii) the disparity between the value of the property forfeited and the damage caused by the breach: *Kozel v. The Personal Insurance Company*, 2014 ONCA 130, 119 O.R. (3d) 55, at paras. 30-31.

[40] The conduct of Tieu described herein is serious. The breach is at the very high end of the spectrum. Lying about who the actual driver was and perpetuating the misrepresentation in civil litigation for over two years, is a breach which goes to the heart of the contract between the insured and the insurer. Tieu's conduct was not imperfect compliance, it was non-compliance. I have considered the fact that the disparity between the value of property forfeited, and the breach is significant. I recognize that Tieu faces a civil action with potentially significant cost consequences.

[41] Counsel on her behalf submitted that it was not Tieu's intent to perpetrate a fraud against the insurance company, but rather she intended only to assist her daughter. I have no doubt that each of Tieu and Wong acted out of fear. There is some evidence in the record that Wong has some history of mental health issues, and I accept that Tieu was likely motivated by wanting to allay her daughter's upset. However, this does not provide Tieu with a basis for relief from forfeiture. For facts already discussed, I find that Tieu colluded with Wong to perpetrate a fraud on Aviva. The fraud was not brief nor insignificant. Most seriously, the court cannot condone giving false testimony under oath in a court proceeding.

[42] Had the accident been properly reported, Tieu and Wong would each have in fact been eligible to have the benefit of their insurance, as the policy was in good standing, as was Wong's driver's licence. Despite this fact, I find that Aviva cannot be returned to its original position in defending the Main Action, as the credibility of each of Tieu and Wong is significantly compromised.

[43] On considering and balancing all the factors, and in particular, on account of my finding that Tieu participated in civil fraud, and in consideration of Tieu's lying under oath in examinations

for discovery, I find that Tieu is not entitled to an equitable remedy and decline to grant relief from forfeiture.

[44] Tieu's application is dismissed.

### Costs

[45] I would urge the parties to agree on costs. If they are unable to do so, then costs submissions may be made as follows:

- a. The Applicant Tieu shall serve and file their written costs submissions, not to exceed three pages, double-spaced, together with a draft bill of costs and copies of any pertinent offers, within 21 days of the release of these reasons; and
- b. Aviva shall serve and file its responding costs submissions of no more than three pages, double-spaced, together with a draft bill of costs and copies of any pertinent offers, within 30 days of the release of these reasons; and
- c. Tieu's reply costs submissions, if any, are to be served and filed within 35 days of the release of these reasons, and are not to exceed two pages.

[46] If no costs submissions are received by the deadlines specified herein, the parties will be deemed to have resolved the issue of costs, and the issue will not be determined by me.

[47] If the parties settle the question of costs or if a party does not intend to deliver submissions, counsel are requested to advise the court accordingly.



Antoniani, J.

**Released:** February 22, 2024



**CITATION:** Tieu v. Aviva Insurance Company of Canada, 2024 ONSC 1110  
**COURT FILE NO.:** CV-22-0803010000  
**DATE:** 20240222

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

CHANG TIEU

(Applicant)

– and –

AVIVA INSURANCE COMPANY OF CANADA

(Respondent)

---

**REASONS FOR JUDGMENT**

---

Antoniani J.

**Released:** February 22, 2024