IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Starr Insurance v. Granfar,*
2024 BCSC 1051

Date: 20240618
Docket: S222152
Registry: Vancouver

Between:

Starr Insurance, Allianz Canada, RSA Insurance, AIG Insurance, Lockton Companies, Westport Insurance

Petitioners

And

Noushin Granfar

Respondent

Before: The Honourable Justice Iyer

Reasons for Judgment

Counsel for Petitioners:	B. Cheng T. Deneka, Articled Student
The Respondent, appearing in person:	N. Granfar
Place and Date of Hearing:	Vancouver, B.C. May 8, 2024
Place and Date of Judgment:	Vancouver, B.C. June 18, 2024

OVERVIEW

[1] This dispute arises out of water damage in and around the respondent's strata unit located at 1002-1485 Duchess Ave in West Vancouver BC ("Unit") that occurred in May-June 2019. The respondent, Noushin Granfar, owns the Unit. The six petitioners are the insurers of the Owners of Strata Plan OSP VR 1148 ("Strata"). The only issue is whether a representative should be appointed for Ms. Granfar under the terms of the applicable statute.

[2] After Ms. Granfar reported the damage to representatives of the Strata, the petitioners opened a claim file ("Claim") and appointed Crawford & Company Canada ("Crawford") to adjust the Claim. As the adjuster, Crawford's role was to investigate the Claim and determine if and how much the petitioners should pay in respect of the Claim.

[3] Since 2019, there have been numerous disputes between Ms. Granfar relating to the Claim and, more generally, the Unit. She says it has not been habitable since approximately June 2019 and that she and her family have suffered a great deal of hardship because they cannot live in their home. Ms. Granfar has started a number of legal proceedings relating to these disputes. They include a claim to the Civil Resolution Tribunal ("CRT") that she is seeking to judicially review in this Court and two civil actions. In Action S215302, Ms. Granfar sues BCAA Insurance Corporation, the insurer of the contents of her Unit, and in Action S224299, Ms. Granfar sues a number of insurers, including the petitioners, advancing tort, contract and statutory claims.

[4] The vast majority of Ms. Granfar's submissions and evidence relate to those other disputes and not to the narrow issue before me. I understand that Ms. Granfar feels badly treated by the petitioners, the Strata, Crawford and her personal insurer. She also believes that they acted together. However, I must decide only the issue before me. I have therefore disregarded evidence and issues irrelevant to the present application.

[5] As noted, the issue in this petition concerns a step in the statutory dispute resolution process created by the *Insurance Act*, R.S.B.C. 2012, c. 1 ("Act") that is incorporated into every insurance policy governed by the Act. The dispute resolution process requires each party to a dispute to appoint a representative. If a party does not do so, the other party can apply to the court to appoint a representative for them. The issue in this case is whether I should grant the petitioners' request and appoint a representative for Ms. Granfar.

STATUTORY SCHEME

[6] Making an insurance claim initiates a process that requires the participation of both the insurer and the insured. In *Westland Insurance Company Limited v. Pounden* 2020, BCSC 264 [*Pounden* BCSC], aff'd 2021 BCCA 156 [*Pounden* BCCA], Justice Punnett explained it this way:

> [29] The nature of the insurance claim process which, at least initially ought to be cooperative, is explained in Denis Boivin, *Insurance Law*, 2nd ed. (Toronto, ON: Irwin Law, 2015) at p. 364:
>
> > In addition to giving notice, providing proof, and safeguarding the object from further damage, the insured must cooperate with the insurer. Indeed, at this stage of the process, the insurer is not yet an adversary; it is collecting information and evidence in order to determine the extent of its contractual obligations. The details provided by insureds are not always sufficient for the purpose of determining their entitlements. Quite naturally, the insurer may require additional information or evidence. Likewise, the insurer and its authorized agents may need to conduct an independent investigation, medical examination, or appraisal. Generally speaking, when the insurer makes a request as a follow-up on the proof of loss submitted by the insured, cooperation is in the best interests of the claimant; it expedites the settlement process. In addition, cooperation is a specific requirement of many contracts of insurance.
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> [30] In Barbara Billingsley, *General Principles of Canadian Insurance Law*, 2nd ed. (Markham, ON: LexisNexis Canada, 2014) at pages 193 and 194, the process is further explained:
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> > Once an insured loss has been suffered, several steps must be followed before an insured can expect to recover benefits under the insurance contract. At the outset, the insured must advise the insurer of the loss and of the insurance claim being advanced. The insurer must then investigate, verify and otherwise respond to the claim. The insurer's response to the claim necessarily involves a determination of the validity of the insurance contract and its application to the loss in question, as well as an assessment of the amount of compensation

> owed by the insurer given the nature of the loss and the terms of the insurance contract. In order to facilitate these practical steps, insurance law confers a number of intersecting rights and duties upon the parties to an insurance contract. These rights and obligations, which may be imposed by common law, by statute, or by contract, may differ depending on the type of insurance at issue.
>
> ...
>
> The insured's main post-loss obligations are to communicate with the insurer as to the details of the loss and to assist the insurer, as required, in processing the claim. These obligations form part of the insured's duty of utmost good faith

[7] The Act contemplates that insurers and insureds may not be able to agree on how to resolve claims. Section 29 sets out a number of statutory conditions that are deemed to be part of every insurance policy. Statutory condition 11 addresses disagreements:

> 11.(1) In the event of disagreement as to the value of the insured property, the value of the property saved, the nature and extent of the repairs or replacements required or, if made, their adequacy, or the amount of the loss or damage, those questions must be determined using the applicable dispute resolution process set out in the *Insurance Act*, whether or not the insured's right to recover under the contract is disputed, and independently of all other questions.
>
> (2) There is no right to a dispute resolution process under this condition until
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> (a) a specific demand is made for it in writing, and
>
> (b) the proof of loss has been delivered to the insurer.

[8] Section 12 of the Act establishes the mandatory dispute resolution process for statutory condition 11. The relevant subsections are:

> (2) This section applies to disputes between an insurer and an insured about a matter that under Statutory Condition 11 set out in section 29, or another condition of the contract, must be determined using this dispute resolution process.
>
> (3) Either the insured or the insurer may demand in writing the other's participation in a dispute resolution process after proof of loss has been delivered to the insurer.
>
> (4) Within 7 days after receiving or giving a demand under subsection (3), the insured and the insurer must each appoint a dispute resolution representative and, within 15 days after their appointment, the 2 representatives must appoint an umpire.
>
> (5) A person may not be appointed as a representative if the person is

> (a) the insured or the insurer, or
>
> (b) an employee of the insured or the insurer.
>
> (6) The representatives must
>
> (a) determine the matters in dispute by agreement, and
>
> (b) if they fail to agree, submit their differences to the umpire,
>
> and the written determination of any 2 of them determines the matters.
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> (7) Each party to the dispute resolution process must pay the representative whom the party appointed, and each party must bear equally the expense of the dispute resolution process and the umpire.
>
> (8) If
>
> (a) a party to a dispute resolution process fails to appoint a representative in accordance with subsection (4), or
>
> (b) a representative fails or refuses to act or is incapable of acting and the party that appointed that representative has not appointed another representative within 7 days after the failure, refusal or incapacity,
>
> on application of the insurer or insured, on 2 days' notice to the other, the Supreme Court may appoint a representative.
>
> (9) On an application under subsection (8), the court may award special costs against the person whose representative is appointed by the court, whether or not that person appeared on the application.

[9] In summary, either an insured or an insurer can invoke the statutory dispute resolution process by giving the other party a written demand after proof of loss has been given to the insurer. I will refer to this statutorily-mandated dispute resolution process as the “DRP”.

[10] The cases establish that, in exercising its discretion to appoint a representative under s. 12(8), the court should appoint a representative unless there are good reasons not to do so: *Arlington Invt. Ltd. v. Commonweallth Ins. Co.*, [1985] BCWLD 674, 1985 CanLII 349 (C.A.) at para. 18. In *Pounden* BCCA, the Court of Appeal cautioned the court to be mindful that the legislature intended the parties to use the DRP rather than civil actions, noting that the fact that one party has already commenced a civil action is not necessarily a good reason to not give effect to the DRP: at paras. 120-121, 124; see also *Canadian Northern Shield Insurance Company v. Edwards International Services Inc.*, 2011 BCSC 1092 at paras. 30-32

[*Canadian Northern*]. Similarly, a party's failure to submit proof of loss should not be permitted to frustrate access to the DRP: *Pounden* BCSC at para. 56.

[11] If a petitioner establishes a *prima facie* case for the appointment of a representative, the respondent bears the burden of persuading the court it should refuse to do so: *Canadian Northern* at para. 7.

SHOULD A REPRESENTATIVE BE APPOINTED IN THIS CASE?

[12] There is no dispute that the petitioner's insurance policy applies to the water damage that occurred in or around the Unit. On June 4, 2021, Crawford wrote to Ms. Granfar on behalf of the petitioners, invoking the DRP. The letter set out the applicable provisions of the Act, acknowledged receipt of Ms. Granfar's proof of loss, stated that the petitioners rejected it, and advised her of the name of the petitioner's representative. The letter informed her that she was required to provide Crawford with the name of her representative within seven days.

[13] Ms. Granfar responded within the time limit. In an email to Crawford, dated June 11, 2021, Ms. Granfar informed Crawford that she did not consider the DRP appropriate in this case because she had commenced a claim at the CRT. However, she also said that, if the DRP went ahead, her representative would be a lawyer named Alexandra Samii. Ms. Granfar did not provide Ms. Samii's contact information.

[14] I permitted the petitioners to tender evidence at the hearing that Crawford's representative emailed Ms. Granfar later that day to ask for the representative's contact information. I also gave Ms. Granfar an opportunity to look through her records to see if she had ever provided Ms. Samii's contact information. I directed that she could file an affidavit on or before May 15, 2024 attesting to whether she provided Ms. Samii's contact information to Crawford and, if so, a copy of that correspondence.

[15] Ms. Granfar's affidavit of May 15, 2024, states that she retained Ms. Samii on June 12, 2021 and signed a contract to that effect. The contract is not attached as

an exhibit, nor is there any other documentary evidence supporting Ms. Granfar's statement. The affidavit does not provide contact information for Ms. Samii. I have disregarded the rest of the affidavit because it goes beyond the scope of my direction.

[16] Thus, the additional evidence does not substantially advance matters: Ms. Granfar says she has named a personal representative but has not provided contact information for that representative.

[17] Leaving that issue aside, I find that the DRP was invoked as the Act requires. I am also satisfied that the petitioners have established a *prima facie* case for the appointment of a representative. There is a genuine disagreement between the parties about "the value of the insured property, the value of the property saved, the nature and extent of the repairs or replacements required or, if made, their adequacy, or the amount of the loss or damage" as set out in statutory condition 11. A great deal of information relating to the claimed losses has been exchanged and the parties are clearly at an impasse.

[18] I must therefore appoint a representative unless Ms. Granfar has provided a good reason for exercising my discretion to refuse to do so. As I understand her submissions, she says there are five such reasons. First, she says that a petition is the wrong procedure because the *Supreme Court Civil Rules* require this application to be made by commencing an action. Second, she says that the *Civil Resolution Tribunal Act*, S.B.C. 2012, c. 25 requires that the resolution of the dispute between the parties be determined by the CRT. Third, she says that the fact that she commenced a CRT claim before the petitioners made their demand to invoke the DRP means the CRT process should be used. Fourth, she says that she never provided full proof of loss to the petitioners, only partial proof of loss. Fifth she says the DRP is inefficient because it cannot resolve all of the issues arising from the dispute because they involve other parties, such as the Strata.

[19] None of these reasons provide a basis for declining to appoint a representative. Ms. Granfar is incorrect that the petitioners have used the wrong

procedure. Rule 2-1(2)(b) expressly requires a proceeding to be started by petition where a statute (such as the Act) authorizes an application to be made to the court.

[20] Ms. Granfar is also incorrect in her interpretation of the *Civil Resolution Tribunal Act*. Section 15 provides that once a CRT proceeding is started, a party to it cannot commence or proceed with another proceeding until the CRT proceeding is finished. However, under s. 4, a person may only commence a CRT claim if it is within the jurisdiction of the CRT. Disputes to which s. 12 of the Act apply are not within the CRT's jurisdiction because they are not a claim category listed in s. 2.1 of the *Civil Resolution Tribunal Act*. In its preliminary decision, dated September 22, 2021, the CRT determined it did not have jurisdiction over Ms. Granfar's claim against the petitioners, referring to s. 12 of the Act. The fact that Ms. Granfar is seeking judicial review of the CRT's decision does not change this.

[21] Ms. Granfar's last three reasons are inconsistent with case law that has established that the fact that a party has already commenced a civil proceeding is not a good reason to decline a DRP: *Pounden* BCCA at paras. 120, 124. Even if the CRT had jurisdiction over this dispute, it is a civil proceeding. The cases have held that full proof of loss is not required to initiate a DRP, and they have established that the DRP is an appropriate process even if there are related disputes with other parties: *Pounden* BCSC at para. 56; *King v. Aviva*, 2022 BCSC 973.

[22] Although not clearly raised, it may be that Ms. Granfar says that the process has dragged on for so long that the DRP is not appropriate. However, that argument was rejected in *Pounden* BCSC at paras. 16-17, 42-46 and *King* at paras. 41-48.

CONCLUSION

[23] The petition is granted. The DRP shall proceed. Within five days of the date of this decision, Ms. Granfar shall provide counsel for the petitioners with the name and contact information of her personal representative, whether that is Ms. Samii or someone else.

[24] With respect to costs, s. 12(9) of the Act permits the court to award special costs, and the petitioners seek those costs. In their written submissions, the petitioners say:

> The petitioners ought not to have had to bring this petition because the respondent should have complied with the *Insurance Act*.

[25] The issue was not addressed in oral submissions.

[26] While I would have been inclined to agree with the petitioners, their failure to put an adequate record before the court added confusion to what was already a challenging hearing. The petitioners knew that the question of whether Ms. Granfar had or had not appointed a representative was before the court. In their petition, they state as a fact:

> To date, the respondent has not selected a dispute resolution representative or otherwise taken any steps to facilitate and advance the dispute resolution process.

[27] The petition does not refer to evidence establishing that fact. To the contrary, the evidence established that Ms. Granfar named her representative and there was no evidence that the petitioners had asked her to provide her representative's contact information. Permitting the petitioners to file a new affidavit at the hearing complicated the process and was understandably confusing to Ms. Granfar because she had unsuccessfully sought to file new evidence at the hearing.

[28] In these circumstances, I decline to award special costs. Each party shall bear their own costs of this application.

"Iyer J."