

COURT OF APPEAL FOR ONTARIO

CITATION: Wong v. Aviva Insurance Company of Canada, 2024 ONCA 874

DATE: 20241202

DOCKET: COA-24-CV-0296

MacPherson, Roberts and Wilson JJ.A..

BETWEEN

Victoria Pui Yu Wong

Applicant
(Appellant)

and

Aviva Insurance Company of Canada

Respondent
(Respondent)

Branko J. Kurpis, for the appellant

Dennis Ong and Cailyn Prins, for the respondent

Heard: November 28, 2024

On appeal from the judgment of Justice Sandra Antoniani of the Superior Court of Justice, dated February 22, 2024, with reasons reported at 2024 ONSC 1111.

REASONS FOR DECISION

Introduction

[1] The appellant, Ms. Wong, brought an application seeking a declaration that the respondent, Aviva Insurance Company of Canada (“Aviva”), owed her a defence to an action arising from a motor vehicle accident in which she is named

as a defendant. At the time of the collision, Ms. Wong and her mother, Ms. Tieu, were covered by the same insurance policy. Aviva denied coverage to Ms. Wong and her mother on the basis that they had breached the terms of their policy.

[2] Antoniani J. dismissed Ms. Wong's application, finding that she breached the policy, and further, that her conduct constituted civil fraud. Ms. Wong only appeals from the finding of civil fraud.

[3] After hearing from the appellant, we advised that it was not necessary to hear from the respondent and we dismissed the appeal with reasons to follow. These are our reasons.

Background

[4] The motor vehicle accident giving rise to the application occurred on March 18, 2019, when Ms. Wong was driving her mother's car. Ms. Wong believed her driver's license had expired, so she called her mother and asked her to come to the scene of the accident and represent that she had been driving at the time of the collision. Ms. Wong and her mother perpetuated this falsehood when they reported the collision at the Collision Reporting Centre and when they submitted the claim to Aviva. Ms. Wong and her mother continued such false representations when giving statements to the police and after the claim was instituted by the other driver (the "Main Action"). Aviva discovered the misrepresentation at the examinations for discovery in the Main Action. Subsequently, Aviva declined to

defend or indemnify Ms. Wong and her mother in the Main Action, giving rise to Ms. Wong's application on appeal.

[5] The application judge dismissed Ms. Wong's application for a declaration of coverage, finding that she had violated the terms and conditions of her insurance policy and made material misrepresentations to Aviva and others. Antoniani J. found that the elements of civil fraud were met on the evidence before her.

Analysis

[6] In *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87, at para. 87, the Supreme Court of Canada provided the test for the tort of civil fraud:

[T]he tort of civil fraud has four elements, which must be proven on a balance of probabilities: (1) a false representation by the defendant; (2) some level of knowledge of the falsehood of the representation on the part of the defendant (whether knowledge or recklessness); (3) the false representation caused the plaintiff to act; (4) the plaintiff's actions resulted in a loss.

[7] The appellant submits that it was unnecessary for the application judge to determine civil fraud. Furthermore, the appellant argues that the application judge was incorrect in making such a finding, because Aviva suffered no quantifiable losses as a result of Ms. Wong's actions. We do not agree.

[8] This argument was advanced before the application judge and was rejected. Antoniani J. found, at para. 34, "[t]he entire proceedings to date are no longer of use except as they may be used by [the other driver] to impugn Wong. Aviva is at

a disadvantage since the credibility of Wong has been significantly impacted.” We see no error in her reasoning and we agree with her findings, which are entitled to deference from this court.

[9] It is beyond dispute that Aviva has suffered losses to date because of Ms. Wong’s actions. The losses in terms of the defence of the Main Action cannot be quantified at the present time because the damages have not yet crystallized. However, it is clear that the respondent has sustained a loss in terms of the manner in which it can defend that action. This is a real loss, not a speculative one, which is a direct consequence of Ms. Wong’s actions.

Disposition

[10] The appeal is dismissed. The appellant shall pay the respondent its costs fixed in the sum of \$4,000 all inclusive.

“J.C. MacPherson J.A.”

“L.B. Roberts J.A.”

“D.A. Wilson J.A.”