

CANADA / JUDGMENT

Fabian v. BCAA Insurance Corporation

2022 BCSC 552

COURT

Supreme Court of British Columbia

DECIDED

6 April 2022

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2022 BCSC 552 Fabian v. BCAA Insurance Corporation

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Fabian v. BCAA Insurance Corporation,

2022 BCSC 552

Date: 20220406

Docket: S219564

Registry: New Westminster

Between:

Esmeralda Fabian and Carlos Fabian

Plaintiffs

And

BCAA Insurance Corporation

Defendant

Before: The Honourable Mr. Justice Jenkins

Reasons for Judgment

The Plaintiffs, appearing in person:

E. Fabian

C. Fabian

Counsel for the Defendant, BCAA Insurance Corporation:

B. De Vita, Q.C.

Place and Dates of Trial/Hearing:

New Westminster, B.C.

November 24 & 25, 2021

Place and Date of Judgment:

New Westminster, B.C.

April 6, 2022

- [1] On October 2, 2017, a rental residence located in Mission, B.C. owned by the plaintiffs burned to the ground as a result of arson. The plaintiffs had purchased a Comprehensive Insurance policy ("the Policy") from BCAA Insurance Corporation ("BCAA") in late 2016, which included limited Guaranteed Building Replacement coverage and specific limited riders for additional coverage including a by-law rider and a rental income rider.
- [2] The fire resulted in a total loss of the residence. The plaintiffs constructed a new house on the property.
- [3] The plaintiffs claim that under their coverage, BCAA is responsible for covering all fees related to by-law code upgrades and any professional fees involved in the construction of their house, including the cost of repair of a rock retaining wall ("retaining wall"). BCAA admitted coverage, submits it has fully complied with its obligations under the Policy, and that the plaintiffs have been fully indemnified. However, BCAA has denied liability for a portion of the costs of the installation of a sprinkler system including a new water line, construction of a front deck and overhang, rock pit drainage, and construction of a retaining wall and adjacent landscaping. The total amount claimed for the above items amounts to approximately \$46,000.
- [4] The plaintiffs also claim \$24,000 for lost rental income as a result of a ten-month delay in the construction of the replacement home.

SUMMARY OF THE EVIDENCE

- [5] The Policy is extensive, with its terms described in over 70 pages, much of which can be confusing to many homeowners. I will summarize the portions of the Policy which are in issue in this case.
- [6] Coverage A under the Policy is considered "Base Coverage" and covers the dwelling and attached structures, and is referred to on the declaration page as "D1 - Residential Rental Rider/Dwelling/Building Only" and in the actual policy at p. 38 as "3.16 Residential Rider D1".

- [7] In order to supplement the "Basic Coverage", the plaintiffs purchased extensions of coverage referred to in the Policy as a "R30 Rental Advantage Rider", a "C5 Rental Income Rider", and an "R13 Building By-Law Rider".
- [8] Under the Rental Advantage Rider, coverage is extended for the building to provide "Guaranteed Building Replacement" coverage ("GRC") up to 125% of the insurance limit indicated on the declaration page, the limit being \$402,000. With coverage up to 125%, the GRC increased the limit from \$402,000 to \$502,500.
- [9] The Rental Advantage Rider and the GRC included a limitation in coverage which stated:
- In determining the cost of repair or replacement we will not pay or include any increased costs of repair or replacement due the operation of any law regulating the zoning, demolition, repair or construction of buildings and their related services.
- [10] BCAA elected to pay for the building replacement cost up to a total of \$632,000, well over the coverage of \$502,500.
- [11] The Building By-Law Rider purchased by the plaintiffs did provide a limited amount of indemnity for increased costs of building replacement due to upgrades needed resulting from by-law changes.
- [12] The limit of additional coverage under the Building By-Law Rider listed in the declaration page issued by BCAA was \$20,000.
- [13] The Rental Income Rider allows for indemnity for the loss of fair rental income up to a limit of \$28,800 as set out in the declaration page.
- [14] The rent which was being paid by the tenant was \$2,400 per month and the maximum of \$28,800 provided for rental losses for one year. BCAA has paid the maximum rental loss of \$28,800 to the plaintiffs and a further \$7,200 over and above the maximum, due to delays incurred in completing construction of the new residence for which BCCA accepted responsibility as a "good faith" payment.
- [15] A 2017 by-law of the City of Mission ("Mission") required an improvement to the replacement residence in that the owner was required to include a sprinkler system, which was not included in the original construction of the residence.
- [16] BCCA acknowledged the Mission requirement of a sprinkler system was an item that would be covered under the Building By-Law Rider up to the limit of \$20,000. BCAA paid the limit of \$20,000 for changes to construction covered under the Building By-Law Rider and submits it has no further obligation to indemnify the plaintiffs under that by-law or otherwise under the Policy.
- [17] The plaintiffs incurred additional costs in order to install the sprinkler system, which included the cost of work on a retaining wall needed to allow for installation of a new water line to provide the water pressure required for the sprinkler system and landscaping work

required for installation of the water line. The \$10,395 claimed by the plaintiffs for repairs to the retaining wall were necessitated by the installation of the sprinkler system in the home. There was no sprinkler system in the original residence and, as such, all costs associated with the same and any other costs stemming from the by-law were compensated in the \$20,000 limit in the Building By-Law Rider.

- [18] BCAA also submits that as the retaining wall was not damaged by any of the specified perils under the Policy, work on the retaining wall would not be covered even if the limit under the Building By-Law Rider was not in place.
- [19] In addition to the costs of the sprinkler system (including associated work and materials required for the system), the plaintiffs incurred additional costs including the costs of a home warranty coverage, and the costs to build a front porch and extended roof to comply with other requirements necessitated under Mission by-laws.
- [20] The total costs claimed by Canstar Restorations Ltd., the contractor retained by the plaintiffs, for the above items, all of which were necessitated by Mission by-laws, was \$56,113.61. Of this total, BCAA paid the contractual limit of \$20,000. The evidence of Glenn Payne, the insurance adjuster, Mike Alexander, the owner of Canstar and Ms. Fabian's testimony from her examination for discovery all supports the fact that both the expenditures referred to above and their necessity were due to Mission by-laws.
- [21] Turning to the plaintiffs' claim for rental losses and the Rental Income Rider, the plaintiffs admit they were paid by BCAA the sum of \$28,800 which is the maximum amount payable under the Rental Income Rider.
- [22] The plaintiffs further claim \$24,000 (based upon a monthly rental of \$2,400) for a ten-month delay in the construction of the replacement home. It is apparent from all of the evidence that delays were caused by the time taken by Mission to approve plans for the home, as changes were required from the original set of drawings.
- [23] The plaintiffs have been further indemnified for delays which could have been attributed to BCCA by payment of the \$7,200 representing three months' delay, made as a good faith payment and not pursuant to any terms of the Policy.
- [24] BCAA has paid a total of approximately \$632,000 to the plaintiffs under the Policy, considerably more than it was obliged to pay or indemnify the plaintiffs under the Policy and the extended coverage provided by the additional riders.

DECISION

- [25] The claims of the plaintiffs for \$36,113.61 for costs incurred due to the requirements of the Mission by-laws are dismissed. This includes the sprinkler system, the front deck with an overhang and drainage, BCAA having indemnified the plaintiffs the maximum amount payable under the Building By-Law Rider of \$20,000.

- [26] The plaintiffs' claim for \$24,000 for lost rental income is dismissed, the plaintiffs having been indemnified for the maximum amount payable under the Rental Income Rider of \$28,800. Any further delays were not the responsibility of BCAA but caused by factors outside the control of BCAA, including delays in the delivery of drawings and in permitting by the City of Mission.
- [27] The claim for the cost of repairing the damaged retaining wall is work that was directly required for installation of the sprinkler system for which the plaintiffs have been fully indemnified under the Building By-Law Rider. As well, the damage to the retaining wall was not caused by a named peril under the Policy.
- [28] In summary, BCAA has admitted coverage, has fully complied with its obligations under the Policy, and the plaintiffs have already been fully indemnified. BCAA has honoured the plaintiffs' Policy and the riders within it and has acted in good faith, paying well over the coverage for the building replacement cost. Any further losses suffered by the plaintiffs due to Mission by-laws go beyond the scope of the Policy and are not the responsibility nor the liability of BCAA. The plaintiffs' claims are therefore dismissed.

COSTS

- [29] No submissions were made on the issue of costs, which in this case would normally be awarded to BCAA as the successful party. BCAA has been very fair in its dealings with the Fabians, who proceeded with this case in good faith and with considerable effort, although apparently without legal assistance. Accordingly, if BCAA wish to pursue costs, I will hear submissions to be arranged through Supreme Court Scheduling in New Westminster.

"Jenkins J."

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