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# Nat v. Wawanesa Mutual Insurance Co.

Between
Sukhvinder Nat, plaintiff, and
Wawanesa Mutual Insurance Company, Hari Somal, Raghbir Somal
and Fruitman Insurance Brokers, defendants

[2001] O.J. No. 2877
Court File No. 99-178994SR

**Ontario Superior Court of Justice**
**Brennan J.**

Heard: February 26-28, 2001.
Judgment: July 9, 2001.
(14 paras.)

*Insurance — The insurance contract — Formation of the contract — Policy limits — Termination by insurer — Notice of cancellation — Bars — Breach by insurer — Insurers — Duties — Duty to inform insured of changes to coverage — Negligence or breach of contract.*

Action by the insured for payment of benefits under his insurance policy. The insured's van was stolen. However, when he made a claim for it, the insurer indicated that the loss or damage coverage had been deleted for that vehicle because the insured failed to have it inspected. The insured indicated that he was never told that an inspection was necessary and that had he been informed, he would have seen to it. When he acquired the van, the insured contacted his broker and asked for full coverage. The certificate of insurance which was issued showed the van as the second insured vehicle. It included loss or damage coverage for both vehicles and showed a premium payable for it in respect of each vehicle. A month later, when no inspection had been completed, the insurer claimed that it sent the insured a revised certificate of insurance. In the body of the document, there was a line written in small type indicating the deletion of coverage with respect to the van.

**HELD:** Action allowed. The deletion of coverage was not effective, and the insured was entitled to payment in accordance with the terms of the loss or damage coverage for which he contracted when the vehicle was originally added to his policy. Even if this conclusion was wrong, the insured was entitled to recover the equivalent in damages for breach of the insurer's duty to keep him informed of any change in coverage. The insurer failed in its duty to properly inform the insured of deletion of part of the coverage.

**Statutes, Regulations and Rules Cited:**

Insurance Act.

**Counsel:**

Vadim Kats, for the plaintiff.
Donald G. Cormack, for the defendants.

¶ 1 **BRENNAN J.**:— On October 28, 1998 Sukwinder Nat's 1994 Plymouth van was stolen from a shopping mall in suburban Toronto. Believing he was insured for loss of the vehicle by theft, he notified his broker, who notified his insurer Wawanesa Mutual Insurance Company. Wawanesa denied that his policy covered that vehicle for theft, asserting that Loss or Damage Coverage, as provided by section 7 of the standard Ontario Automobile Policy (OAP 1), had been deleted because that vehicle had not been subjected to inspection.

¶ 2 When he purchased the Plymouth on September 12, 1997, Mr. Nat had telephoned his insurance broker to have it insured. An employee of the brokerage added it as a second vehicle to his existing policy. Loss or damage coverage was included.

¶ 3 The plaintiff claimed on the insurance contract and in the alternative that if the deletion was effective, he was nevertheless entitled to recover the loss from the insurer, or the broker or an agent, who failed in their duty to inform him of the inspection requirement and deletion. He claims he was not informed of the need to submit the vehicle for inspection, and would have done so if informed. He also claims he would have taken the steps necessary to restore the coverage if he had known of its deletion. At the opening of the trial plaintiff's counsel brought a motion to amend the statement of claim against Wawanesa to add allegations of negligence. I allowed the motion.

¶ 4 I have concluded that the deletion of coverage was not effective, and the plaintiff is entitled to payment in accordance with the terms of the loss or damage cover for which he contracted when the Plymouth van was added to his policy. If I am mistaken in that conclusion, he is entitled to recover the equivalent in damages for the breach of the insurer's duty to keep him informed of any change in coverage. That duty may have been delegated to the agent, who had a duty in his own right to see that the insurance the client sought was provided and continued. But the claims and crossclaims against the broker and agents were settled before the trial, and counsel stipulated that I should make no determination between the defendants. The plaintiff is entitled to the theft insurance proceeds less the amount of the premium that he would have paid if the deletion had not been made, and less any amount received in settlement from the agent or broker. With pre-judgment interest and costs. I may be spoken to if the parties cannot agree on the net amount of the judgment or as to costs.

Background.

¶ 5 Mr. Nat moved to Toronto from Montreal in May 1997. He knew he needed to have Ontario coverage on the automobile he then owned, a 1992 Jetta. He contacted Raghbir Somal, an agent who speaks Nat's native language. Somal was associated with J.P.D. Insurance Brokers and Services Inc., a predecessor of the defendant Fruitman Insurance Brokers. He filled in an application form for full coverage, including the standard Ontario Automobile Policy (OAP 1) loss or damage coverage, with the defendant Wawanesa and had Nat sign it. Nat had been insured with Wawanesa in Quebec since 1992, and requested that Somal place the coverage with Wawanesa. Somal testified that he explained the form carefully and that Nat understood it. Somal had authority to bind Wawanesa and a standard Ontario policy, number 7577986, came into effect on May 31, 1997. Later Wawanesa sent Mr. Nat a certificate in a standard form, enclosing the familiar pink form of insurance certificate carried by motorists in Ontario. Although Mr. Nat was unable to locate his copies of these documents, the agent's copy of these and other material documents were produced at the trial. This certificate of insurance on the Jetta was stamped by the brokerage staff "received June 27, 1997", some 4 weeks after the effective date. I find that Mr. Nat received his copy at about that time. There is no dispute that the policy insured the Jetta for loss or damage coverage including theft.

¶ 6 New regulations under the Insurance Act had come into effect on January 1, 1997, as part of Bill 59, which effected a number of changes to the Ontario compulsory system of auto insurance. The regulations which affect the issues in this case were passed with the declared intention of reducing insurance fraud. With important exceptions, they required that vehicles to be insured for loss or damage be subject to "pre-insurance inspection". I use parentheses with that term because it does not say what it means. Purchasers of loss or damage coverage were supposed to be directed to an inspection station to submit the vehicle for inspection within 10 days after they purchased the loss or damage coverage. The inspection was not really done "pre-insurance". An agent issued a "binder", a temporary policy providing loss or damage coverage. If the inspection did not take place within 10 days of the application, the coverage was to be deleted.

¶ 7 There were several exceptions to the inspection requirement. For example it did not apply to new vehicles. One important exception was that continuing customers of an insurer were exempt from the requirement. Since the intended purpose of the inspection regime was to reduce fraudulent claims, insurers were permitted to treat their known clients with trust. Mr. Nat was such a customer of Wawanesa when he came to Ontario and insured his Jetta. No inspection was ever demanded in respect of that vehicle. The bank debit information he gave at the time of the application turned out to be invalid, and the policy lapsed for non-payment. It was re-issued with the same policy number and full coverage when the premium was paid and proper debit information provided. Again no inspection was required of Mr. Nat. It is significant that he took immediate steps to contact the agent and re-apply when notice of the lapse of the policy on that occasion was sent by registered letter. Wawanesa did not communicate by registered letter on the later occasion when the insurer purported to delete the coverage he had contracted for when he purchased insurance for the Plymouth van.

¶ 8 Wawanesa had provided agents with a form to give to clients informing them of the requirement of inspection and directing them to locations where the inspections were to be carried out by "Carco" personnel authorized by Wawanesa to do so. No such form was ever given to Mr. Nat.

Analysis:

¶ 9 When he telephoned to have the Plymouth van insured, someone at the brokerage added it to the existing policy. Mr. Nat was still a "continuing customer" of Wawanesa. I find that he was entitled to exemption from the inspection requirement then, as he had been when he insured the Jetta. There is no doubt he asked for full coverage, and the certificate of insurance first issued by Wawanesa showing the Plymouth van as the second insured vehicle included loss or damage coverage for both vehicles and showed a premium payable for it in respect of each vehicle. Mr. Nat received that certificate and the pink insurance slips which came with it. From the fact that a copy of that certificate reached the broker on September 29, 1997, I deduce that Mr. Nat received his copy at about that date. Its effective date was September 12, 1997. It is in a form similar to a number of such certificates put in evidence. The certificate form has been approved by the Superintendent of Insurance pursuant to regulations made under the Act.

¶ 10 Susan Maltman, a manager in Wawanesa's automobile insurance underwriting department in Toronto, testified that Wawanesa relied on agents to advise clients about coverage, and had no direct communication with its policy holders, other than by written documents approved by the Superintendent or the Financial Services Commission Ontario (successor to the Ontario Insurance Commission). The requirement of inspection to avoid deletion of loss or damage coverage, in particular, was not communicated by the insurer to a policy holder. Although Wawanesa provided inspection request forms to agents, no provision was made to ensure their use, nor to inform the insurer that the agent had made the client aware. There was, however, a system at Wawanesa which caused applications and vehicle additions to be reviewed for the purpose of determining whether the vehicle had been inspected. Where

no report of inspection had been received 45 days after the contract was made by the agent, the internal system caused the coverage to be deleted retroactively to the 11th day after the contract was made. Wawanesa then informed the insured of the purported deletion by sending a "certificate of insurance" by ordinary post.

¶ 11 Wawanesa's Toronto office notified the head office at Winnipeg that the Plymouth van had not been inspected within 10 days of its being insured, and a "certificate of insurance", Exhibit 7, was printed on October 31, 1997, and sent to the insured from the Winnipeg office. Its heading, in small but visible print, indicates "deletion of coverage - no vehicle inspection". In the body of the document there is a line "insurance is provided only where a premium is shown for the coverage." No premium is shown for "loss or damage" in the column listing the premiums for the second vehicle, the Plymouth van. Exhibit 6, the certificate issued at the time the vehicle was added, did have entries in that column. By comparing the two certificates and carefully examining the differences between them, one could decipher that the insurer intended to delete the loss or damage cover on one of the vehicles. Someone in the business might find it obvious, but not someone unfamiliar with such certificates. In my view the arrangement of information in the certificate form made it difficult to understand that the insurer no longer intended to honour the contract the insured made with the agent. The insurer's intention could have been much better expressed by simply printing in an obvious way something as simple as "Loss or Damage Coverage has been deleted". A covering letter might suffice, but none was provided.

¶ 12 Mr. Nat testified that he believed he did not receive a copy of Exhibit 7, and in any event did not know of the deletion. I accept that evidence. There is nothing to show he received it. And if he did, I hold that the certificates are difficult to read and to understand, even for a person whose first language is English. In my view they are not sufficient to allow an insurer to alter unilaterally an existing contract of insurance which was made between the insured and the agent acting on the insurer's behalf. The insurer would have to establish on the evidence that the insured agreed to the alteration, at least by acquiescence after effective notice that the insurer was no longer providing the coverage.

¶ 13 I find Mr. Nat was not aware of the purported deletion of coverage. The agent, Raghbir Somal, testified that when a copy of Exhibit 7 came to the brokerage, no action was taken by him or by anyone at the brokerage to ensure the client was aware of the deletion. Even if Mr. Nat received it, I conclude that it did not make him aware of the insurer's intention to delete coverage for which he had contracted. An insured might be taken to acquiesce in such a change in the contract of insurance, but not in the absence of evidence that it was communicated to him. In this case there is no evidence that he even knew of the inspection requirement. Mr. Somal said he believed he would have discussed it with him, but I do not accept his evidence in that respect. Mr. Nat was exempt from the requirement when the applications for insurance on the Jetta were taken. I hold that he was also exempt when the addition of the Plymouth was made by telephone. The fact that Mr. Nat was a continuing client, who had been exempted from the inspection requirement in May 1997, seems not to have been recorded.

¶ 14 If I am mistaken in holding that the insurer is liable on the policy, I hold that the insurer failed in its duty to inform the insured of deletion of part of the coverage. Approval by FSCO of Wawanesa's system dealing with the inspection requirement would protect the insurer from a complaint that it had not put in place a system to implement the new regulation. It has no effect on the insurer's duty to persons who have in good faith purchased coverage to protect themselves from theft or other loss or damage to their vehicles. That duty sounds in either contract or tort. The decision of this Court in Kadaja v. CAA Insurance Company (Ontario) (1995), 23 O.R. (3d) 275 is authority that an insurer has such a duty. The insurer in that case dealt directly with its customers, rather than through agents, but in my view that does not alter the duty. In the present case the insurer may have delegated to agents the responsibility to inform purchasers of the inspection requirement and the purported deletion, and might

be entitled to indemnity from the agent or broker for failing to do so effectively, but that question is not before me.

BRENNAN J.

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