

COURT OF APPEAL FOR ONTARIO

CITATION: Morgan v. Economical Mutual Insurance Group, 2013 ONCA 369

DATE: 20130605

DOCKET: C56415

Goudge, Gillese and Pepall JJ.A.

BETWEEN

Yvonne Morgan

Plaintiff (Appellant)

and

Economical Mutual Insurance Group

Defendant (Respondent)

Isaac Zisckind and David Fenicky, for the appellant

Joshua J.A. Henderson, for the respondent

Heard: May 23, 2013

On appeal from the order of Justice Carole J. Brown of the Superior Court of Justice, dated September 18, 2012.

By the Court:

[1] As a result of a motor vehicle accident in which she was involved, the appellant issued a statement of claim on November 25, 2008 against the respondent, her own insurer.

[2] The appellant's policy with the respondent included coverage for an accident involving an uninsured automobile, pursuant to s. 265 of the *Insurance Act*, R.S.O. 1990, c. I.8. Her policy also included the OPCF-44R Family Protection Coverage endorsement covering an accident involving an underinsured automobile.

[3] On October 11, 2011, after the applicable limitation period had expired, the appellant moved to amend her claim to plead that her damages "were caused by the negligence of the underinsured/uninsured motorist". She sought to clarify that she was raising an uninsured motorist claim after learning that the respondent took the position that her statement of claim did not raise such a claim.

[4] The Master found that the unamended claim contained sufficient details to allow it to be read to extend to uninsured coverage. She permitted the amendment sought in order to make that claim even clearer.

[5] On appeal, the Superior Court judge reversed, finding nothing in the four corners of the claim that set forth a claim for uninsured coverage.

[6] For the reasons that follow, we agree with the Master and would therefore allow the appeal.

[7] While there is a dispute about what claims it raises, there is no dispute that the appellant's action is not statute-barred. This case is therefore quite different

from *Joseph v. Paramount Canada's Wonderland*, 2008 ONCA 469, 90 O.R. (3d) 401, where the action itself was commenced after the limitation period expired. Here, the debate is whether the proposed amendment clarifies a claim in a timely action or sets out a cause of action that is time-barred.

[8] There is also no doubt that this claim is inelegantly, even poorly, drafted. However, it must be read as generously as possible, with a view to accommodating any inadequacies in the form of the allegations due to drafting deficiencies. See *Doe v. Metropolitan Toronto (Municipality) Commissioners of Police* (1990), 74 O.R. (2d) 225 (C.A.).

[9] As we read the appellant's claim, as a whole, it reasonably communicates to the respondent that the appellant is advancing an uninsured motorist claim along with an underinsured motorist claim. We say this for several reasons.

[10] First, the appellant pleads that both the owner and the driver of the at-fault vehicle were "insufficiently" insured at the time of the accident. This is not a term of art in insurance law. In this context it could reasonably encompass someone who had no insurance because such a person would be insufficiently insured.

[11] More importantly, paragraph 3 of the claim clearly pleads provisions of the *Insurance Act*, specifically those providing coverage for accidents involving "uninsured" automobiles.

[12] Paragraph 7 pleads that an underinsured motorist caused the appellant's damages. However, paragraph 7 also pleads that the appellant is entitled to claim damages against the respondent, consistent with the provisions of the *Insurance Act* referred to in paragraph 3 of the claim. These provisions refer only to an uninsured automobile. In our view, therefore, part of paragraph 7, read together with paragraph 3, sustains an uninsured motorist claim.

[13] While the claim is not completely free of ambiguity, paragraphs 3 and 7 of the claim together reasonably communicate to the respondent that the appellant is advancing both an underinsured and uninsured claim.

[14] We therefore conclude that the amendment's purpose is to clarify, rather than to assert a new cause of action.

[15] We would allow the appeal and restore the Master's order.

[16] As agreed, costs of \$2500 are ordered to the appellant for the appeal to the Superior Court. Costs for this appeal are to the appellant, fixed at \$4000. Both are inclusive of disbursements and applicable taxes.

Released: June 5, 2013 ("S.T.G.")

"S.T. Goudge J.A."

"E.E. Gillese J.A."

"S.E. Pepall J.A."