An insurer ordered to pay damages – The Court of Appeal intervenes

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Author

Chantal Saint-Onge

Senior Associate

On February 12, 2024, the Court of Appeal of Quebec handed down its decision in *Société d'assurance Beneva inc.* c. *Bordeleau*,[1] dealing in particular with the burden of proof incumbent on an insurer when it denies coverage on the basis of an insured's intentional fault, and an award of damages against an insurer for breach of its duty of good faith.

The facts

This decision was rendered further to a dispute between Société d'assurance Beneva inc. (hereinafter the "Insurer") and some of its insureds, including Mr. Michel Bordeleau, the owner of a multi-storey rental building that was damaged by fire. He lived in one of the units with his parents.

According to the uncontested expert evidence presented, the fire originated in one of the storage spaces in the basement of the building, which was assigned to a lessee couple. Access to the basement and all storage spaces was locked. The cause of the fire was deemed to be intentional, given the traces of accelerant found in the area of the fire's origin. The instigator or instigators were not identified.

On November 21, 2016, 60 days after the fire, the Insurer denied coverage because of the intentional nature of the fire, which it attributed to its insured, Mr. Bordeleau. A few months later, on March 22, 2017, it reached an agreement with Mr. Bordeleau's hypothecary creditor. The subrogation release provides for the Insurer's payment of the balance of the hypothecary debt of $149,720.99, and subrogation to the creditor's rights up to the amount paid.

Mr. Bordeleau, in his belief that he had been harmed by the Insurer's decision, instituted legal proceedings to recover the insurance benefit to which he claimed to be entitled, while also claiming damages. The Insurer filed a cross-application for recovery of the balance paid to the hypothecary creditor.

The trial

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The trial judge, relying on the evidence, concluded that although the fire was intentional in nature, the Insurer had not discharged its burden of establishing the insured's involvement in the fire.

Taking this conclusion into account, she then proceeded to analyze the plaintiffs' claim and to weigh the damages in light of the evidence and the limits of the insurance policy. In particular, she ruled in favour of Mr. Bordeleau's claim for damages for the building, the amount of which was admitted. In addition, she ordered the Insurer to pay $15,000.00 in damages for nuisance and inconvenience caused by its conduct, which she considered faulty. This conclusion was based on the Insurer's duty to act in good faith, to consider the facts and act on their basis, and to conduct a full investigation, duty which the Insurer had breached by failing to sufficiently follow-up on leads that could have identified who was responsible for the fire. In order to deny coverage, clear and compelling evidence of the insured's involvement, going beyond mere suspicion, was necessary. Given the sometimes implausible and sometimes contradictory testimonies of the people met during the investigation, there was no such evidence. In other words, the claims adjuster had jumped to conclusions.

In light of her conclusions, the trial judge dismissed the Insurer's cross-application, which she deemed to be unfounded, without giving further reasons.

The appeal

The Court of Appeal first refrained from intervening in light of the Superior Court's conclusions regarding the failure to demonstrate Mr. Bordeleau's involvement in the fire. It did however intervene on the damages awarded for nuisance and inconvenience suffered by the insureds, and pointed out the following:

> [40] [translation] Firstly, apart from the strict mathematical calculation of the amounts payable, and perhaps other technical aspects not requiring the exercise of judgment, the processing of a claim is an obligation of means, not one of result. The fact that a court found at the end of a trial held many years after the incident that an insurer should have covered in the first place obviously does not mean that the insurer necessarily committed a fault other than its refusal to pay, making it civilly liable, let alone that it acted in bad faith.
> [41] In this case, there was nothing in the evidence to support a finding of fault or breach of the duty of good faith.
> [42] On the contrary, there is enough evidence to conclude that the investigation by the appellant and its experts, which led to the denial of coverage, was not botched. . . .

In the opinion of the Court of Appeal, the evidence showed that the Insurer's investigation had been done in a conscientious manner, in particular because it had transferred the claim file to a special investigative unit, mandated a fire origin and cause expert and external investigators, and interviewed many witnesses who could have provided information on the circumstances of the incident. Moreover, it had no allegations that the Insurer had failed to consider exculpatory evidence against its insured.

In this context, although it took several years for the insured to obtain his due, with all the inconveniences of going through proceedings, the Insurer's conduct could not be considered offending or revealing of bad faith. No damages could be awarded.

Lastly, the Court of Appeal took a closer look at the question of the Insurer's subrogation to the hypothecary creditor's rights, which was little discussed in the judgment under appeal. Reiterating the fundamental principle in property and casualty insurance that the indemnification of an insured cannot result in enrichment, the Court of Appeal concluded that dismissing the Insurer's cross-application would have such an effect. In addition to receiving an insurance benefit for the damages sustained, Mr. Bordeleau would also have had seen his hypothecary debt discharged. This would have given him a clear advantage. In this case, the benefit paid to the hypothecary creditor needed to be deducted from the damages claimed by the insured. The trial judge's finding were thus revised accordingly.

Conclusion

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Despite the clear principles addressed in this case, the Court of Appeal’s analysis points to practical difficulties that insureds and insurers can encounter when dealing with similar claims. It points to the coexistence of two factors that can be difficult to balance: First, the burden of proof where coverage is denied on the basis of the insured's intentional fault, and second, the insurer’s obligation of means in processing the associated claim. The dismissal of a coverage defence does not in itself warrant awarding damages.

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1. *Société d’assurance Beneva inc.* c. *Bordeleau*, 2024 QCCA 171

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