



Civil Resolution Tribunal

Date Issued: March 6, 2019

File: SC-2018-006046

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Zeng v. Westland Insurance Company Limited*, 2019 BCCRT 266

B E T W E E N :

Chen Yu Zeng

APPLICANT

A N D :

Westland Insurance Company Limited

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. This is a dispute about insurance coverage for a stamp collection. The applicant, Chen Yu Zeng, owns a condominium in a building in Vancouver. On February 16, 2017, there was a flood that damaged items in the applicant's storage unit, including a stamp collection. The respondent, Westland Insurance Company Limited, is the applicant's insurer. The respondent denied the applicant's insurance claim for the

stamp collection because it says it was specifically excluded under the policy. The applicant says that the policy includes up to \$2,000 in coverage for a stamp collection, and claims that amount.

2. The applicant is represented by a family member who resides in Canada. The respondent is represented by an employee.

JURISDICTION AND PROCEDURE

3. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act*. The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
4. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
5. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
6. Under tribunal rule 126, in resolving this dispute the tribunal may make one or more of the following orders:
 - a. order a party to do or stop doing something;
 - b. order a party to pay money;
 - c. order any other terms or conditions the tribunal considers appropriate.

ISSUE

7. The issue in this dispute is whether the stamp collection was excluded under the applicant's insurance policy.

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, the applicant must prove his case on a balance of probabilities. While I have read all of the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision.
9. The applicant first purchased an insurance policy through his broker on October 12, 2011, with a different insurance company. At that time, the applicant informed the broker that his aunt would be occupying the unit, so the broker sold him a "Rented Condominium Unit Owner" policy. The respondent took over the applicant's policy when it was renewed on October 14, 2013.
10. The respondent renewed the applicant's insurance as a Rented Condominium Unit Owner policy each year. It is undisputed that the applicant's policy that the respondent issued in 2013, 2014 and 2015 excluded coverage for stamp collections.
11. On September 23, 2016, the respondent sent the applicant a renewal letter for a policy to take effect on October 14, 2016. The letter included a coverage summary, which does not mention stamp collections. The coverage summary states that "should coverage wordings, riders or endorsements be attached hereto, they will replace the corresponding previous wordings. Otherwise all terms and conditions remain the same".
12. The renewal letter also included a "Quality Sheet", which is another summary of the applicant's coverage. The Quality Sheet referred to coverage for stamps up to a \$2,000 limit. The Quality Sheet is for a "Comprehensive Condominium Unit Owner" policy. It appears that the respondent included the Quality Sheet in error, because it was for a different type of insurance policy.

13. The applicant paid for the renewal on October 4, 2016.
14. On February 15, 2017, there was a flood during which sea water entered the applicant's storage locker. The flood damaged many items, including the applicant's stamp collection. The applicant made a claim under his insurance. The respondent has paid \$7,545.04 under the policy for other damaged items, but denied the claim for the stamp collection.
15. The respondent says stamp collections are explicitly excluded under the applicant's policy. The respondent says that its policy is to only send policy documents upon renewal if there has been a change in coverage. Since there was no change in coverage from 2015 to 2016, the entire policy was not re-sent and the 2015 policy governed. The 2015 policy contains an exclusion for "Manuscripts, stamps and philatelic property".
16. The applicant says that the insurance policy in force at the time of the flood covered stamp collections up to a maximum of \$2,000, pursuant to the Quality Sheet. The applicant says that the stamp collection was estimated to be worth \$2,318.98, so he claimed the policy limit of \$2,000.
17. The respondent says that the document that refers to coverage for stamps, the Quality Sheet, is a summary of information only and does not form part of the insurance contract.
18. While the respondent does not explicitly refer to it, it effectively relies on section 16 of the *Insurance Act*. Section 16(3) of the *Insurance Act* says that if a policy is renewed, it does not need to include the entire insurance contract again, as long as it identifies the initial contract. In essence, the respondent says that since the policy was a renewal and the terms did not change, the Quality Sheet does not have any effect on the underlying policy because the renewal referred to the previous policy.
19. While the respondent does not explicitly admit that including the Quality Sheet in the renewal letter was a mistake, I find that it was. The Quality Sheet summarized the coverages under a different insurance product than the one the applicant had. The

question is whether the coverages in the Quality Sheet form part of the insurance policy, despite the respondent's mistake. For the reasons that follow, I find that they do.

20. First, section 16(1) of the *Insurance Act* says that an insurer cannot rely on any evidence outside of the terms of an insurance contract, but an insured can. This rule reflects the reality that insurance companies draft the policies which insured people have little to no ability to negotiate or modify. Accordingly, insurers are strictly held to the wording that they choose. I find that I cannot rely on any extrinsic evidence from the respondent other than what is in the insurance contract.
21. Like any other contract, for a contract of insurance to exist, there must be an offer, acceptance of the offer, and consideration, which is something of value given by each party. In the context of a homeowner's insurance policy, which generally will automatically expire after 12 months, each renewal is a new contract of insurance. Accordingly, for each renewal there must be an offer, acceptance and consideration.
22. In the typical renewal of a homeowner's insurance contract, the insurer will make an offer to the insured by sending a renewal letter with the terms of the new agreement, which may or may not be the same as the previous year. If the insured pays the premium requested, the payment acts as both acceptance and consideration. See D. Boivin, *Insurance Law*, 2nd ed. (Toronto: Irwin Law, 2015), at 265.
23. Applied to this dispute, I find that the enclosures that the respondent sent with the renewal letter contained the terms of the respondent's offer to renew the applicant's insurance. The applicant paid the premium on time and therefore accepted the offer. Accordingly, whether by error or not, the respondent offered coverage for a stamp collection and the applicant accepted the offer.
24. I do not accept the respondent's argument that because the Quality Sheet referred to a different type of insurance product, it cannot be part of the contract and that the

wording in the underlying policy must govern. I find that this argument is in conflict with the renewal documents, which state that if there is a conflict between the renewal documents and the underlying policy documents, the renewal documents will supersede.

25. Therefore, I find that the applicant had coverage up to \$2,000 for stamp collections.
26. The respondent asserted that the applicant had failed to prove that he owned the stamps. Presumably, the respondent bases this argument on the fact that the applicant does not live in Canada and therefore does not use the storage unit. I find that the respondent's position is inconsistent with the fact that it has already paid claims totaling \$7,545.04 under the policy for other damaged items in the storage locker. I reject this argument.
27. The respondent also asserted that the applicant had failed to prove the value of the stamp collection. The stamp collection consisted mostly of annual stamp books produced by the Chinese government. The applicant provided evidence using third party websites that sell stamps to estimate the value of the stamps in Canadian dollars. The respondent did not provide any evidence to suggest that the applicant's estimates were inaccurate or inflated. I find that the applicant's method of calculating the value of the stamp collection was reasonably accurate. Given that the policy limit for stamps was \$2,000, I find that the applicant has proven that the value of the stamp collection was at least \$2,000.
28. I order the respondent to pay the applicant \$2,000 under the policy for the damaged stamp collection.
29. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. I find the applicant is entitled to reimbursement of \$125 in tribunal fees. The applicant did not claim any dispute related expenses.

ORDERS

30. Within 14 days of the date of this order, I order the respondent to pay the applicant a total of \$2,170.03, broken down as follows:
- a. \$2,000 as reimbursement for the stamp collection under the applicant's insurance policy.
 - b. \$45.03 in pre-judgment interest under the *Court Order Interest Act* from the date of the flood to the date of this decision, and
 - c. \$125 for tribunal fees.
31. The applicant is entitled to post-judgment interest, as applicable.
32. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.
33. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Eric Regehr, Tribunal Member