



Civil Resolution Tribunal

Date Issued: August 21, 2020

File: SC-2020-000924

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Watson v. AZGA Service Canada Ltd.*, 2020 BCCRT 936

B E T W E E N :

ROBERT WATSON

APPLICANT

A N D :

AZGA SERVICE CANADA INC. doing business as ALLIANZ GLOBAL ASSISTANCE, AZGA INSURANCE AGENCY CANADA LTD. doing business as ALLIANZ GLOBAL ASSISTANCE, and CUMIS GENERAL INSURANCE COMPANY AND IN FRENCH LA COMPAGNIE D'ASSURANCE GENERALE CUMIS

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. This dispute is about trip cancellation benefits under a travel insurance policy.

2. The applicant, Robert Watson, purchased trip cancellation insurance for a June 2019 vacation he had booked.
3. The respondent CUMIS General Insurance Company and in French La Compagnie D'Assurance Generale CUMIS (Cumis), underwrote the insurance policy Mr. Watson purchased. The respondents Azga Service Canada Ltd., and Azga Insurance Agency Canada Ltd., do business as Allianz Global Assistance (Allianz). Allianz administered the insurance policy.
4. In March 2019 Mr. Watson was diagnosed with cancer and cancelled his June 2019 vacation. In April 2019 he made a claim for outstanding trip costs with the respondents, who refused to pay. Mr. Watson claims \$520 under the insurance policy.
5. The respondents say Mr. Watson's claim was denied because he failed to comply with the policy requirements to have a medical certificate completed within 72 hours of the trip cancellation. The respondents also say Mr. Watson had a pre-existing condition under the terms of the insurance policy. They ask that the claim be dismissed.
6. Mr. Watson is self-represented. The respondents are represented by an employee.

JURISDICTION AND PROCEDURE

7. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT 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.
8. The CRT 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.

9. The CRT 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 CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
10. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

ISSUES

11. The issues in this dispute are:
 - a. Whether Mr. Watson complied with any medical certificate requirements in the trip cancellation insurance policy,
 - b. Whether Mr. Watson had a pre-existing condition, according to the terms of the trip cancellation policy, and
 - c. Whether the respondents must pay Mr. Watson \$520 under the terms of the trip cancellation insurance policy.

EVIDENCE AND ANALYSIS

12. In a civil claim such as this one Mr. Watson, as the applicant, must prove his claim on a balance of probabilities. Although he provided submissions, Mr. Watson has not provided any evidence in this dispute, despite being given the opportunity to do so. I have reviewed all submissions and evidence submitted, but I will only refer to that which explains and gives context to my decision.

13. Mr. Watson purchased a June 2019 trip to Europe through an online platform on January 12, 2019. At the same time, and through the same platform, Mr. Watson purchased trip cancellation insurance from the respondents. In the first half of March 2019 Mr. Watson was diagnosed with cancer. On March 22, 2019 he cancelled the June 2019 trip. Mr. Watson received a refund of most of his trip costs directly from the airline and hotels involved, but for the \$520 he claims in this dispute. On April 8, 2019 Allianz received Mr. Watson's claim for \$520. None of this is in dispute.
14. I find the contractual terms between Mr. Watson and the respondents are set out in the trip cancellation coverage insurance policy (policy) submitted in evidence by the respondents. The policy provides reimbursement for Mr. Watson's losses, up to \$10,000, if his trip is cancelled due to any serious injury or unforeseen illness. The policy defines illness as including a disease occurring during the coverage period (here January 12, 2019 to June 24, 2019), requiring emergency medical care, and which did not occur prior to the effective date (here January 12, 2019).

Did Mr. Watson submit a medical certificate, as required?

15. It is undisputed that Mr. Watson completed and signed his claim form on April 2, 2019. Dr. A, oncologist, certified that Mr. Watson was unable to travel from March 22, 2019 onward, due to his diagnosed cancer. Dr. A signed the form on April 2, 2019. I infer this is the medical certificate the respondents refer to.
16. The policy states that, for trip cancellation benefits, Mr. Watson must be physically examined by a doctor within 72 hours of cancelling the trip, and that doctor must recommend, in writing, that the trip be cancelled. The respondents say Mr. Watson did not comply with this requirement, as Dr. A's medical certificate is dated more than 72 hours after Mr. Watson's March 22, 2019 cancellation.
17. Mr. Watson says this policy provision only applies where an insured decides to cancel their trip without first consulting with a doctor, and not where a medical practitioner decides a trip must be cancelled, as is the case here. I disagree, as the

policy wording policy does not distinguish between trips cancelled before consulting with a doctor and after consulting with a doctor. I interpret “within 72 hours” to mean either before, or after, the trip cancellation. In this case the parties agree that Mr. Watson cancelled his June 2019 trip on March 22, 2019. I find that the insurance policy requires Mr. Watson to have attended at a doctor’s office and have obtained that doctor’s written recommendation to cancel the trip, between March 19 and 25, 2019. I find Dr. A’s April 2, 2019 medical certificate does not meet that requirement.

18. Mr. Watson says that he cancelled his vacation only after Dr. A told him that he could not travel. While this may have happened in the 72 hours before March 22, 2019, Mr. Watson has not provided any medical records or written recommendation of Dr. A about Mr. Watson’s travel, from within that time period. All parties are told to submit to the CRT all relevant evidence and are provided with an opportunity to do so. Without that evidence I find Mr. Watson has failed to prove that he complied with the insurance policy’s medical certification requirement.

Did Mr. Watson have a pre-existing condition under the policy?

19. The policy’s cover page states, in bold, that the policy contains a pre-existing condition exclusion, which may apply to a “medical condition and/or symptoms that existed prior to your trip” (all quotes reproduced as written). The policy sets out various age-dependent pre-existing condition exclusions, 2 of which are relevant to Mr. Watson and this dispute. First, no benefits are paid out as a result of a medical condition, or related condition, that was not stable in the 6 months prior to January 12, 2019. Second, no benefits are paid out where future investigation or treatment, other than routine monitoring, was planned for the medical condition prior to January 12, 2019. The policy defines a medical condition as “an accidental bodily injury or sickness (or a condition related to that accidental bodily injury or sickness), including disease”. I find Mr. Watson’s cancer is a medical condition. Based on the policy wording I find treatment includes diagnostic measures and medical advice.
20. The respondents say Mr. Watson’s diagnosed cancer was a pre-existing condition under the policy terms because he had dysphagia, which means difficulty

swallowing, which was under investigation prior to January 12, 2019. Mr. Watson's medical records submitted in evidence by the respondents show that Mr. Watson first reported dysphagia to his family doctor, Dr. S, in December 2018 and that Dr. S ordered investigative tests including a fluoroscopy and an upper gastrointestinal (GI) endoscopy. The records also show Mr. Watson's symptoms worsened and Dr. S requested that the endoscopy be scheduled on an urgent basis. I find the investigative tests and medical advice are treatment under the policy wording.

21. Mr. Watson says the treatment was not planned for the cancer condition but, rather, to investigate dysphagia, which he says is a symptom and not a medical condition under the policy terms. I disagree. Based on the March 5, 2019 surgical report in evidence, I find the endoscopy revealed malignant adenocarcinoma, or cancer, in Mr. Watson's upper gastrointestinal tract. It is undisputed that Mr. Watson's dysphagia was related to, or caused by, the cancerous tumour found in his upper GI tract. As such, I find dysphagia constitutes a related condition under the policy terms. I further find that, under the policy, the upper GI fluoroscopy and endoscopy constitute future investigations or treatments planned for the related condition of dysphagia. I also find Mr. Watson's dysphagia was not stable under the policy terms, as it was a new condition, it worsened, and Dr. S referred Mr. Watson to a specialist for further investigation. So, I find Mr. Watson's related condition of dysphagia constitutes a pre-existing and not stable condition under the policy terms.
22. I acknowledge Mr. Watson's argument that he cancelled his trip because of the cancer, and not the dysphagia. However, under the policy terms, benefits are not payable if either the medical condition (cancer), or related condition (dysphagia), is not stable within the 6 months prior to January 12, 2019. As I have found Mr. Watson's dysphagia pre-existed January 12, 2019 and was not stable, I find he is not entitled to trip cancellation benefits under the policy terms.
23. Mr. Watson says his losses should be covered under the policy, as they fall within the broad definition of losses set out in the policy introduction. The introduction says the policy covers losses resulting from "sudden and unexpected conditions and

events” and not from “conditions that are previously either known to you or likely to occur”. Mr. Watson says this broader interpretation of the policy should apply, under the *contra proferentum* rule.

24. The legal rule of *contra proferentum* requires that ambiguity in a contract must be interpreted against the person who drafted the contract and relies on it. The rule only applies if there is ambiguity in the contract and only after looking to the whole of the contract to determine the parties’ intention (see *Turpin v. The Manufacturers Life Insurance Company*, 2013 BCCA 282, referencing *Consolidated-Bathurst v. Mutual Boiler*, 1979 CanLII 10 (SCC)). I find the *contra proferentum* rule does not apply to this dispute as the pre-existing condition exclusion is not ambiguous, for the following reasons.
25. The policy’s cover page clearly warns of a pre-existing condition exclusion which may apply to symptoms existing prior to the trip. After that warning, the policy’s introduction sets out the general losses covered, as noted by Mr. Watson. After the introduction the policy defines, in more detail, the pre-existing condition exclusions. I find, reading the policy as a whole, it is not the policy’s intention to cover losses resulting from pre-existing, not stable, conditions even where that condition had not yet been formally diagnosed. I find Mr. Watson’s cancer, although not formally diagnosed, pre-existed the January 12, 2019 purchase date, as he had been assessed by Dr. S with the related condition of dysphagia, which was not stable and was under investigation. For these reasons I find Mr. Watson is not entitled to payment of trip cancellation benefits under the insurance policy. I dismiss his claim for \$520.
26. Under section 49 of the CRTA and tribunal rules, the CRT 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. As Mr. Watson was unsuccessful in this dispute, I dismiss his claim for CRT fees. The respondents did not claim any CRT fees or dispute-related expenses.

ORDER

27. I dismiss Mr. Watson's claims and this dispute.

Sherelle Goodwin, Tribunal Member