

NOVA SCOTIA COURT OF APPEAL
Citation: *Walsh v. Unum Provident*, 2013 NSCA 124

Date: 20131108
Docket: CA 405527
Registry: Halifax

Between:

Douglas Walsh

Appellant

v.

Unum Provident, a body corporate

Respondent

Judge: The Honourable Chief Justice J. Michael MacDonald

Appeal Heard: October 15, 2013, in Halifax, Nova Scotia

Subject: Disability insurance; duty to disclose; material misrepresentation; fraudulent misrepresentation; *contra proferentem*

Summary: The respondent provided disability coverage to the appellant, dating back to 1993. In 2000, a claim for “major depression disorder” was filed and, for a time, honoured. Then Unum questioned the appellant’s ongoing disability and stopped paying. This prompted the present action.

In preparing for trial, the insurer secured and reviewed the appellant’s medical records. It noted a litany of undisclosed health problems that pre-dated the application for coverage. The list included heart problems, headaches, seizures, anxiety, and back problems. Furthermore, the insurer concluded that these problems, had they been known, would have affected its decision to offer coverage. It ultimately viewed these as fraudulent material misrepresentations prompting it to then challenge the actual coverage. It therefore counterclaimed

seeking (a) a declaration that the policy was void from the outset, (b) the return of its money with interest, and (c) legal costs.

The Supreme Court of Nova Scotia heard the matter and found entirely in Unum's favour (2012 NSSC 86). Specifically, it accepted the insurer's counterclaim in its entirety including the return of all benefits paid plus interest. Alternatively, the Court also found that the appellant was not disabled under the policy, thereby affording the insurer a full defence to the claim proper. The appellant asks this Court to overturn this ruling.

Issue: Did the judge err in his approach to the coverage and disability questions?

Result: Appeal dismissed. The Court adopts the trial judge's reasoning on the coverage issue. It represented a correct articulation of the law upon which unassailable factual findings were applied. As a result, there is no need to consider the disability issue.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 23 pages.