

Claim No: SCCH - 470906 and 470907

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Citation: Mossa v. Economical Mutual Insurance Company,
2018 NSSM 19

BETWEEN:

GEORGE MOSSA and ZEINA ALSKEIF

Claimants

- and -

ECONOMICAL MUTUAL INSURANCE COMPANY

Defendant

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Halifax, Nova Scotia on March 27, 2018

Decision rendered on April 17, 2018

APPEARANCES

For the Claimants

self-represented

For the Defendant

Anthony Rosborough
Counsel

BY THE COURT:

[1] The Claimants are a husband and wife who own a home on Baha Court in Bedford, Nova Scotia.

[2] The Defendant is their property insurer.

[3] This decision concerns two claims brought by the Claimants against the Defendant, based upon their home insurance policy. One claim concerns alleged weather damage. The other claim alleges losses caused by theft. The parties agreed that the cases could be heard together.

The property loss claim

[4] On or about March 15, 2017, there was a strong wind storm in the Halifax area. Such storms are known to wreak havoc on roofs and other building structures. In the case of the Claimants, it blew off a small section of siding on their house, exposing the underlying materials to the elements. The Claimants informed their insurance company a day or two later, as it occurred to them that they might be able to make a claim for property loss.

[5] At the same time, the Claimants also reported that the balcony/deck at the rear of their property was loose and potentially unsafe, and they attributed that either to the windstorm or other weather damage. They proposed to make a claim in connection with that damage.

[6] The insurer promptly dispatched a company, Belfor Property Restoration, to assess the damage and report. That company specializes in restoration work for damage caused by weather and other events such as fires.

[7] The individual who attended observed the missing siding and took photographs of same. He noted that it was a relatively small section of siding that could simply be snapped back into place and estimated that the cost of doing so would be significantly less than the \$1,000.00 deductible on the Claimants insurance.

[8] The rear deck was also inspected. The conclusion was that any instability of the deck was long-standing and a product of structural deficiencies rather than any storm damage. The conclusion was that no claim for storm damage to the deck could be sustained.

The theft claim

[9] At or around the same time, the Claimants reported to the Defendant their contention that a number of items had been stolen from their backyard, and they advanced a property damage claim for these items. Those items were a barbecue, a lawnmower and a table. The Claimants placed significant value on these items. The Defendant investigated these claims and rejected them.

[10] In the result, the Claimants have brought these two actions in Small Claims Court. The one for property damage seeks \$25,000.00, which is the maximum allowable in this court. The original insurance claim was only slightly more. The other claim seeks \$6,850.00 for the items that were said to have been stolen, broken down as follows:

- a. \$1,890.00 plus tax for the BBQ
- b. \$740.00 plus tax for the lawnmower, and
- c. \$4,220.00 plus tax for the table.

[11] These amounts add up to \$6,850.00. The Claimants did not seek to add HST which would have logically been included and would add 15% to the total. If necessary, I would have allowed an amendment to the Claim.

The claims investigation

[12] In the aftermath of these claims, the Defendant investigated thoroughly, as is its right under the insurance policy, and had each of the Claimants testify under oath before a special examiner to answer questions about the claims. It is fair to say that the Defendant met these claims with intense skepticism. The transcripts of that testimony were entered before me, and the evidence given in that context has been considered.

[13] As I will elaborate upon below, my own index of suspicion was greatly raised by the evidence I heard.

[14] The Claimants did not help themselves. Their English language skills are rudimentary, yet they did not seek to have an interpreter to assist them. I elected to proceed, as I determined that the Claimants were able to make themselves understood.

[15] They appear to have had no legal assistance in preparing their case, despite the fact that they were in a court of law seeking an amount in excess of

\$30,000.00, which is a considerable sum of money by any measure. The evidence that they presented was rather inadequate. This was one of those cases where I could not help but think that legal representation might have made a difference. Although Small Claims Court is supposed to be accessible to ordinary people, there are simply cases that are difficult for ordinary people to advance. This was one of them. In the final analysis, as much as I am prepared to allow for, and even compensate for the Claimants' lack of sophistication, the case still must be decided on the evidence presented.

The theft claim

[16] The evidence supporting the claim for the stolen items is fairly thin. The Claimants could not identify precisely when the items were taken, though they claim to have discovered them missing from their backyard on March 17, 2017, which happens to be roughly when the property damage claim was initially being assessed.

[17] The Claimants say that they bought both the barbecue and lawnmower new from a Canadian Tire store, but they were not able to find any receipts or other written documentation such as owner's manuals. There are no credit card records because they claim to have paid cash. There were no bank records showing large withdrawals because they say that the cash derived from gifts of cash made by family and friends. There were no family photographs in which any of the items might have made an inadvertent or incidental appearance. In short, there was no objective evidence that the Claimants ever possessed these items.

[18] The Claimants identified the BBQ as a Napoleon LEX30RSBIPSS gas grill. The lawnmower was said to have been a Honda HR 216 model. As for the stone

table which was allegedly also taken, the Claimants say they purchased it privately on Kijiji. They relied on a photo taken from the Amazon web site showing something that they say is similar.

[19] One of the puzzling aspects of this claim is that according to Mr. Mossa, the stone table was so heavy that it took five people to carry it into his backyard. It is difficult to believe that a group of people could have gotten into the Claimants backyard, in the dead of winter, and carried off this extremely heavy table without being noticed. But, that is the claim.

[20] Mr. Mossa said that he noticed these items missing when he went to the back of his house to retrieve some other items which he stored under the deck. And these items were simply missing, he claims. So were the mats for his car, though no claim was made for them.

[21] Mr. Mossa claimed that he paid cash for all of the items, which partly explains why there are no paper records of the transaction. In support of the claim, during the initial investigation he submitted a photo from the Amazon website of what he believed were a comparable barbecue and lawnmower. He also supplied a photo from Amazon showing what he believes was a comparable table which he valued at \$4,220.00 plus tax. Although this was not disclosed in the initial claim, he says he paid \$2,500.00 to a woman in Fall River who was selling the table on Kijiji. He claimed replacement value of all items.

[22] In an email follow up to the initial claim, Mr. Mossa was very specific in his description of the lawnmower to the insurer, describing it as a Honda HR 216 self-propelling lawnmower. He claimed that it cost \$740.00 plus tax, having been

purchased from the Canadian Tire store in Clayton Park, which has since relocated to Bayers Lake.

[23] At trial, one of the witnesses for the Defendant testified that she made investigations at the Canadian Tire store and determined that it had never sold Honda lawnmowers. In his reply evidence, Mr. Mossa attempted to explain that what he had meant was that the lawnmower contained a Honda engine, but was not a Honda brand lawnmower.

[24] I have a great deal of trouble with that explanation. In both the claim form and in follow-up correspondence, Mr. Mossa made clear representations that what had been taken was a Honda lawnmower and, in particular, an HR 216 model, which is a specific line of Honda brand lawnmowers. I find that this was a deliberate misrepresentation by Mr. Mossa, which seriously undermines any credibility that he might have. It is one thing to lack proof, but another thing entirely to fabricate evidence.

Property Damage

[25] The claim for weather-related damage was supported by estimates that the Claimants got from Kent Building Supplies. A Kent employee attended at the Claimants' property on April 4, 2017, about two weeks after the windstorm, and prepared two separate estimates. One of the estimates was for repairing the siding, and the other was for complete replacement of the entire siding to the home. The lesser of the estimates was for \$5,711.20, while the larger estimate was for \$16,036.83. The estimator was not called as a witness to support either of these estimates, nor to explain why such extensive work might be necessary to remedy a situation that began with the loss of a small section of siding.

[26] A separate estimate was provided for repairing the deck, which came to \$4,845.85. This amount appears to cover the removal and complete replacement of the deck with a new one. Again, the estimator was not called to explain why the deck needed to be entirely replaced, nor to offer any opinion as to what might have made the deck unstable.

[27] The Claimants admit that they did not advise the individual from Kent that these estimates were being sought in connection with a possible insurance claim.

[28] The Defendant called as a witness Luke Lynch, the estimator employed by Belfor who was initially dispatched to look at the claimed property damage. He testified in support of his report which was in evidence. It was his view that the siding could have been replaced at minimal cost. He inspected the deck but did not find any evidence of damage.

[29] The Defendant also called Sean Lockyer, a structural engineer, who was dispatched somewhat later, in June 2017, to inspect the deck. His opinion also was that there was no evidence of weather damage. He measured the deck with a laser level and found it to be reasonably level. He noted that there was a cracked post which could easily be repaired. He had some concerns about the structural capacity of the deck relating to its design and construction, but not to any weather damage. In particular, he thought that no more than two people should be on the balcony at the same time.

Additional facts

[30] Although the facts surrounding this are a bit sketchy, it appears that the Claimants initially tried to make a claim for a fence that was said to have been

broken by a falling tree. This claim was investigated when the representatives of the Defendant first went to the property. It was soon discovered that the Claimants had once made such a claim to TD Insurance, their previous insurer, and that such claim had been paid, although no remedial work was done. This only came to light because Belfor had been dispatched to investigate that earlier claim, and it was flagged by their system when the address came up in connection with the current claim. Although the matter was not pursued any further, I find that this attempt to advance the claim negatively impacts on the credibility of the Claimants.

[31] This prior claim was not disclosed on the application for insurance that resulted in the subject policy being issued. I make no inferences about this non-disclosure because the Claimants may well have misunderstood what the question was asking, because of language issues.

Discussion

[32] The Claimants bear the burden of proving their losses. Their evidence must be of a sufficient quality for me to be satisfied that they are entitled to be compensated.

[33] There are unfortunately several facts that call the credibility of the Claimants into serious question.

[34] The claim for damage to the siding of the house suffers from being an obvious and gross exaggeration. The piece of siding that blew off was perhaps the size of two auto licence plates, representing a tiny fraction of the total area. As a matter of common sense, it should just have been snapped into place. There is no evidence that it caused leaking into the house. Nor was there any

reason to be alarmed about the underlying structures being exposed, as it is well known that siding is not designed to be waterproof; rather, its function is to reduce the amount of water that gets to the outer membrane. To escalate this minor bit of damage to a project to replace the entire siding of the home is pure hyperbole and has no credibility.

[35] The issue with the balcony/deck suffers from a lack of proof that there has ever been any damage caused by wind or snow, and in particular any damage during the time when the policy was in effect. Such damage, if it existed, could have been caused years ago. Even so, I find that there is simply a poorly constructed or deteriorated deck and that the Claimants sought to capitalize on this by escalating it to an insurance claim.

[36] The theft claim is seriously undermined by the fact that the Claimants have shown themselves to be willing to advance false or exaggerated claims for property damage. Mr. Mossa has the further problem that he clearly lied about the lawnmower being a Honda of the model specified, and when caught in this lie he attempted to explain that he only meant that it contained a Honda engine.

[37] I am further suspicious of the fact that the Claimants appeared to be planning to make a second claim for the same section of fence that had been destroyed by a fallen tree.

[38] All in all, I find myself having difficulty accepting anything that the Claimants have said. All of the claims suffer from a lack of objective proof. As I have mentioned, sometimes all that a Claimant has is their word. In such cases, the claim can succeed if the testimony has credibility. I find here that the Claimants' credibility is so damaged that they have failed to satisfy me that they have proved any losses.

[39] In the result, I am obliged to dismiss both claims.

Eric K. Slone, Adjudicator