

Smith v. State Farm

May 27, 2015

ENDORSEMENT

This is an application for a declaration that there is an insurance policy binding the respondent State Farm to defend and indemnify the applicant. For the reasons that follow in this brief endorsement, the application is dismissed.

The facts have been outlined in the materials of both facta provided. I have reviewed the materials and have heard the submissions of counsel. The applicant provided an affidavit in support of her application and was cross-examined on her affidavit. Counsel agree that the record before me is the entirety of the evidence.

To the extent that authorities could assist me, I have considered the appropriate relevant jurisprudence as provided by counsel. In this case, the facts are not in dispute.

Unlike the case of *O'Connell v. Personal Insurance Co.*, 2014 ONSC 1469, the applicant was fully aware of the driver's (Mr. Cabanaw) licence status in this case and to the relevant time he was a "G-1" operator.

The applicant submits and deposed that she believed the *HTA* did not apply to roads situated on the Reserve. I accept respondent counsel's submissions that ignorance of the law, albeit in good faith, is not an excuse or a defence for the breach of a statutory condition. *Levis (City) v. Tetrault*, 2006 SCC 12 at para. 30.

Moreover, I find that the enquiries made by the applicant of the (now deceased) driver of her motor vehicle were inadequate in the circumstances. Reference is made to the

applicant's affidavit at para. 14 and the cross-examination, p. 18, Q129 to pp.20-21, Q143-148. The applicant submits that she was informed by Cabanaw that the passenger Jones had a proper licence. As to the word "proper" licence, there was no further enquiry made by the applicant in circumstances where she ought to have done so. Further, some reliance on a historical discussion about some understanding of the class of licence – referring to a time when Mr. Cabanaw received his G-1 licence (a date unknown or not specified) was in my view, not sufficient to the level of inquiry required in this case. See *Anwar v. Iqbal*, [2008] O.J. No. 1836 (Sup Ct) paras. 15-19.

The respondent's enquiries here were not sufficient to overcome the basis upon which she relies on the authorities to support her position – as provided in the jurisprudence and s.4(1) of the *OAP*.

I accept the propositions at law advanced by the applicant in her factum at paras. 21-23. However, I am persuaded and accept the submissions of respondent's counsel as found in his factum at paras. 21-26.

Once the applicant gave permission at the very outset to Mr. Cabanaw to permit him to drive her motor vehicle, outside the provisions of the policy, her enquires or lack thereof did not bring the situation back into compliance or within the four corners of the policy. Even a subsequent enquiry to the extent that was purportedly made in this case could not and did not re-establish compliance. The applicant has the obligation to primarily control the use of her vehicle and on the evidence here she was fully aware of the policy and its limitations, and Mr. Cabanaw's driver's licence status.

Having found that ignorance of the applicability of the *HTA* provisions was not a defence, absent an intervening event, the time to act and make relevant and informed enquiry was at the outset of the giving over of control over the vehicle. The nature of any further enquiry made by the applicant was insufficient with respect to Mr. Jones and his type or class of licence. I agree with the statement found at para. 27 of the respondent's factum in this regard.

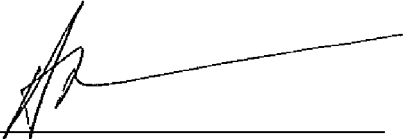
I find that the case falls under what Macdonald J. described in *Anwar* at para. 17 and is wholly applicable in the circumstances of this case.

For all of these reasons, the application is dismissed.

If the parties cannot agree on costs, the respondent shall serve and file its memorandum of costs within 15 days. The applicant shall serve her memorandum of costs within 15 days of receipt of the respondent's materials. The memorandums of costs shall not exceed three pages in length (not including any Bills of Costs or Offers to Settle).

NOTE: The original reasons were handwritten and to be provided to the parties orally.

Edited for clarity May 28, 2015

A handwritten signature in black ink, appearing to be 'AJG', is written over a horizontal line. The signature is stylized and cursive.

Justice A.J. Goodman