

CITATION: Augspols v. G. Bates Plumbing and Intact Insurance Co., 2018 ONSC 7038
COURT FILE NOS. CV-17-0058208 and CV-17-00582408,
DATE: 20181123

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: ARNIE AUGSPOLS, Plaintiff

– AND –

G. BATES PLUMBING and INTACT INSURANCE CO., Defendants

BEFORE: E.M. Morgan J.

COUNSEL: Arnie Augspols, in person
Jordan Black, for G. Bates Plumbing
Ryan Osbourne, for Intact Insurance Co.

HEARD: November 19-22, 2018

REASONS FOR JUDGMENT

I. The fraud allegations

[1] The Plaintiff is the co-owner, with his mother, of a house located at 16 Magwood Court. He claims that his house has suffered structural damage due to underground water leakage over the years. In this action, he seeks compensation for this damage from the Defendant, G. Bates Plumbing (“G. Bates”), the most recent in a series of plumbing companies that he has had work at or inspect the property.

[2] The Plaintiff also seeks compensation from his home insurer, the Defendant, Intact Insurance Co. (“Intact”), who has denied coverage for this damage. In addition, the Plaintiff states that he has been overcharged for insurance premiums by Intact and would like a refund of the premiums he has paid.

[3] I am compelled to observe that while the above description reflects an accurate reading of the Statement of Claim and of the overall evidence presented by the Plaintiff, it is also a very subdued way of framing the case. In fact, the Plaintiff spent a substantial portion of the trial accusing not only the two Defendants but numerous other parties of fraud and other criminal behaviour. I say this with more sympathy than criticism. The Plaintiff testified as to a number of personally very difficult circumstances and hardships that he has had to endure, the cumulative effect of which is to have made him somewhat despondent. Although he is an articulate and

intelligent man, he has become prone to conspiracy theories in which nearly everyone who deals with his house is imagined to be engaged in a coordinated effort to wrongfully deprive him and his mother of the value of their property.

[4] Those allegations are unsupported by the evidence. Indeed, most of the fraud allegations are so extreme that to describe them is to refute them. For example, the Plaintiff contends that it is a badge of fraud that Intact sent to his home an adjuster who works out of its Ajax, Ontario office rather than its Toronto or Mississauga office, since the Plaintiff's house is in Toronto's west end. He likewise indicates that the fact that counsel for G. Bates at one stage wrote to him proposing dates for a summary judgment motion, but then later decided not to bring that motion, is a sign of counsel's personal collusion in the Defendants' wrongdoing. During cross-examinations, he quizzed the Intact adjusters and G. Bates' plumbing manager about whether they have a personal relationship with the MPAC employee that did the tax assessment of his property in 2012.

[5] Having said that, it is also apparent that the Plaintiff has suffered from certain bureaucratic errors, including a faulty property tax assessment and some misunderstandings and miscommunication with respect to his Intact premiums and policy. These specific errors will be discussed in context below. While those errors were not the product of a conspiracy to defraud or anything of that nature, they have tended to exaggerate in his mind his sense that he is being harmed by forces that are out of his control.

[6] All that being said, there are three distinct, non-fraud claims raised by the Statement of Claim that merit consideration. These are: a) the plumbing negligence claim against G. Bates; b) the claim against Intact in respect of its denial of coverage for structural damage to the Plaintiff's home; and c) the claim against Intact for excessively and erroneously high premiums. Although they are all interrelated in the Plaintiff's approach to the case, each of these claims will be addressed here in turn.

II. The plumbing claim

[7] In March 12, 2007, the Plaintiff had water in his basement. He called Roto Rooter Plumber, who found a break in a pipe at the front of the house inside the basement. The property had to be excavated in order to repair the pipe. Roto Rooter charged the Plaintiff some \$5,000 for this work.

[8] In July 2010, the Plaintiff experienced more plumbing issues, this time with respect to a sewage backup in his basement. He has produced a number of photographs showing the sewage overflowing a floor drain and muddy sludge pooling on the floor of the basement.

[9] The Plaintiff in 2010 was convinced that Roto Rooter had acted incompetently back in 2007, in that they failed to remedy all of the house's plumbing problems. He therefore did not want to call Roto Rooter again. Instead, he called another plumbing company, Absolute Draining & Plumbing Inc. ("Absolute Plumbing"), who attended at the property. They did a full replacement of the sanitary drain line outside the house and a partial replacement of the sanitary drain line inside the house. Absolute Plumbing charged the Plaintiff over \$6,000 for this work.

[10] In October 2016, the Plaintiff noticed a lengthy crack in his driveway. He had also begun noticing a slope to the basement floor in his house. He has confirmed on the witness stand that a carpenter's level placed on the floor verified for him that indeed the floor is not level and the house has a distinct slope as if its foundations are gradually sinking on one side.

[11] Thinking back on his two encounters with plumbing problems in past years, the Plaintiff became convinced that the problem was due to the foundation of his house deteriorating as a result of underground leakage of water, and concluded that this was because of the faulty workmanship of Absolute Plumbing several years earlier. Accordingly, although Absolute Plumbing had provided a full warranty for its work in 2010, the Plaintiff was unwilling to call that company again.

[12] Instead, the Plaintiff called his household insurance company, Intact, to complain about the problem. The interchange with Intact will be reviewed in the next section of this judgment; for now, it is relevant to note that, among other things, Intact referred the Plaintiff to a new plumbing company to perform an inspection and investigation of the problem, G. Bates. The Plaintiff contacted G. Bates, and spoke with its co-owner and manager, Frank Bader. He told Mr. Bader that his house was suffering from an underground water leak; according to the Plaintiff, Mr. Bader assured him, "Our guys will find it."

[13] The Plaintiff took Mr. Bader's words literally, treating them as if they were a guarantee that G. Bates would find a leak whether or not there actually was one. As it turns out, there was no underground leak. G. Bates did a camera inspection of the drain pipe starting from inside the house and snaking its way through the pipe 45 feet to the property line. The camera recorded this in a video which G. Bates transposed to a DVD and submitted into evidence. The 35 minute video was played for the court by Mr. Bader when he was on the witness stand.

[14] What the video revealed, conclusively, was that there were no blockages and no leakage from the sanitary pipe that Absolute Plumbing had installed in 2010. Similarly, G. Bates' employees, acting at the Plaintiff's request, cut a hole in a down spout and snaked the camera through the downspout as well. This video was also transposed onto a DVD, which was in turn adduced in evidence and played for the court by Mr. Bader. As with the more lengthy video of the sanitary pipe, this 5 minute video revealed there to be no obstructions or leakages from the down spout.

[15] In addition, Mr. Bader testified that his company performed a test of the incoming water pipe. Unlike the pipes that carry rain water or waste water, a camera cannot be snaked through a water pipe for sanitation reasons. Mr. Bader explained that leakages are tested in a water pipe by conducting a pressure test. As he described it, the water pressure running through the pipe is measured at various spots to determine whether there has been a loss of volume along the way. He testified that the water pressure test performed at the Plaintiff's home demonstrated that there was no underground leakage in that pipe. This evidence, although disparaged by the Plaintiff in argument, was not countered by any contrary evidence.

[16] In short, G. Bates did precisely what they were hired by the Plaintiff to do – i.e. conduct the relevant inspections and tests in order to determine where, and whether, there was an underground leak causing the structural issues about which the Plaintiff complained. In the result, they did not find a leak, leading inevitably to the conclusion that whatever damage had occurred to the Plaintiff's house was not a result of an ongoing plumbing, piping, drainage, or other water-related difficulty.

[17] To be clear, G. Bates was not hired by the Plaintiff to do any repair or other proactive plumbing work. Rather, its only role was to perform the inspections and tests necessary to determine the source of what the Plaintiff thought was a water leak. Although the Plaintiff is sorely disappointed that no leak was found, there is no evidence that G. Bates did anything substandard or improper. They performed their inspections and tests, billed the Plaintiff just over \$700, gave him a brief written report, and delivered to him two DVDs with the recorded pipe inspections, all in fulfillment of their contract.

[18] The Plaintiff also complains that the DVDs were delivered to him late – some 5 months after G. Bates completed its work on site. Mr. Bader testified that he was uncertain as to when the DVDs were delivered, and indicated that his employee had them with him in the company van and was instructed to drop them off at the Plaintiff's home a few weeks after the job was done. The Plaintiff testified that, in fact, he had to call back a second time months later and only then did he finally get the DVDs containing the inspection videos. It is the Plaintiff's view that this delay itself amounted to a breach of contract by G. Bates.

[19] It is not clear to me when the DVDs were in fact delivered or when the Plaintiff expected them to be delivered. It is possible that the G. Bates driver dropped them off shortly after the job was done in November 2016, and it is equally possible that the driver neglected to drop them off until the Plaintiff called to remind them sometime in the early spring of 2017. What is clear to me, however, is that it did not truly matter to the Plaintiff. He made a point at trial of saying that although he had possession of the two DVDs for a year and a half, he had never watched them. He viewed their contents for the first time when they were played during Mr. Bader's testimony. I asked the Plaintiff during his final submissions what he would have done with the DVDs had he gotten them earlier from G. Bates, and he had no real answer.

[20] Accordingly, the issue of the DVDs is a non-issue. The delivery of them, whether earlier or later, was of no moment to the Plaintiff and caused no damage to the Plaintiff. Whenever they were or would have been delivered, they were destined to remain unopened until trial.

[21] There is no merit to the Plaintiff's claim against G. Bader. The plumbing company fulfilled its contract, there is no evidence that it did not act up to the standard expected of professional, competent plumbers, and it delivered their report and accompanying DVDs to the Plaintiff without causing him any harm. The Plaintiff is frustrated by the state of his house, which he himself describes in derogatory terms, but the cause of that frustration is unrelated to the inspections carried out by G. Bates.

III. The insurance claim

[22] The majority of the Plaintiff's time and energy in this action has been focused on his claim against Intact. Specifically, the Plaintiff alleges that Intact should cover the repair of the structural damage that he says afflicts his house; or, at the very least, Intact should have hired a structural engineering company to assess and report on the structural damage and make recommendations as to how to repair it. The Plaintiff is particularly focused on the fact that in October 2016 Intact sent a building contractor, Paul Davis Systems ("Davis"), to inspect his property rather than a structural engineer. He is extremely perturbed that Davis reported only on superficially visible damages and cosmetic repairs amounting to some \$14,000 rather on the deeper, hidden structural issues which the Plaintiff sees as being the real problem with his house.

[23] In a telephone conversation on October 3, 2016, an audio recording of which was adduced into evidence and played for the court by Intact, the insurance company's desk adjuster, Nicholas Bago, spoke with the Plaintiff and attempted to explain to him the situation. Mr. Bago indicated that the damage described by the Plaintiff appears to be outside the scope of coverage provided by his household insurance policy.

[24] Unfortunately, the message did not register with the Plaintiff. Frankly, I would not blame the Plaintiff for this. Mr. Bago is not what one would call an expansive talker or effective communicator. In one or two clipped, understated sentences spoken during the course of a lengthy phone call, Mr. Bago can be heard making the subtle observation that, "The shifting of the home typically is not covered under the insurance policy." At another point, he can be heard responding to the Plaintiff's complaint about Roto Rooter and Absolute Plumbing to the effect that, "We don't insure faulty workmanship as well." But he never really explained to the Plaintiff the scope of the coverage or why these matters were beyond the purview of Intact.

[25] When the Plaintiff clearly stated that what was needed was a structural engineer, Mr. Bago's response was, "I will upload Paul Davis Systems" – whatever that means. The Plaintiff had no idea who Davis was, and could be forgiven for assuming on the spur of the moment that a professional engineer was being dispatched to study the matter. Certainly, the verb "upload" suggested something more technical and complicated than sending a contractor out to recommend a new coat of paint. It was the kind of cryptic, in-house speak that would baffle a customer into thinking that his complaint was being attended to, when in fact it was being rejected.

[26] I know that the Plaintiff did not follow Mr. Bago's curt explanation because I heard the Plaintiff's testimony as well as his side of the October 3rd telephone conversation. More than that, however, I did not understand Mr. Bago's approach myself until final submissions at trial, when counsel for Intact took me to the terms and conditions in the household insurance policy and walked me through them. The Plaintiff, who has had this insurance policy for over 20 years and who was not sitting at home with the terms and conditions open in front of him when he called about damage to his home, did not have that advantage. If I had to try to comprehend what Intact was doing just by listening to its desk adjuster, I would have been as confused and frustrated as the Plaintiff.

[27] Once one focuses on the terms and conditions that form part of the Plaintiff's contract with Intact, it becomes clear that structural damage such as that complained of by the Plaintiff falls within an exclusion clause. Article 13 of those terms excludes damage caused by a movement of earth around or under the house, while art. 14 excludes "settling, expansion, contraction, moving, bulging, buckling, or cracking, except resulting damage to building glass". The terms go on to exclude, in art. 20, "wear and tear, inherent vice, latent defect, mechanical breakdown, deterioration" and, in art. 22, "the cost of making good faulty material or workmanship".

[28] Given that the Plaintiff was of the view that his structural problems were caused by an underground leakage of water, it is significant that art. 17 of the terms and conditions excludes damage "caused by water". And while the Plaintiff had actually paid an extra premium for additional coverage, including water damage, that additional coverage does not reach the type of issue that the Plaintiff described to Mr. Bago. The additional coverage is limited to flooding from storms and other sudden rushes of water. Art. i(ii) of the additional coverage terms states that, "We do not insure loss or damage...caused by continuous or repeated seepage or leakage of water".

[29] All of these exclusions are printed in the 'terms and conditions' booklet that accompanies the Plaintiff's insurance policy. They are in force and are enforceable. The Plaintiff purchased the policy through an insurance broker who was not called as a witness, but there is no suggestion that the broker failed to advise him of the terms or to provide him with a copy of the terms and conditions. There is no legal reason not to enforce the policy as written, including the various exclusion clauses. Long term structural damage to a 60-year old house such as the Plaintiff's – whether this damage is caused by shifting and settling of the house or the slow and continuous seepage of underground water – is not covered by the policy. For that reason, there was no obligation on Intact to hire a structural engineer to study and report on the problem.

[30] If the Plaintiff had received a more fulsome and accessible explanation of the various exclusions in his policy, he would have been no further ahead in having his house repaired; but he might have been saved considerable aggravation. Indeed, he might not have sued at all. As it is, however, the response he received from Intact only fed his sense that the world is conspiring against him.

IV. The Intact premiums

[31] The evidence in the record clearly establishes that the insurance premiums charged to the Plaintiff by Intact have been escalating in recent years. Despite the fact that he had never before made a claim, the Plaintiff's premiums went from \$721.44 in 2012 to \$2,170.80 in 2017 – a 200% increase. No one knows why. Intact's witnesses at trial were the desk adjuster and the field adjuster that handled the Plaintiff's claim. They understandably do not deal with, and know nothing about, how premiums are arrived at.

[32] As indicated, the Plaintiff originally purchased the insurance policy, and automatically renewed it each year, through an insurance broker. That broker was neither sued by the Plaintiff nor produced as a witness.

[33] It is therefore difficult for the court to make much of the Plaintiff's claim with respect to overcharging of premiums. Counsel for Intact points out that insurance premiums reflect a combination of factors which go to the assessment of risk. The value of the house, the age and condition of the house, the level of upkeep of the house, etc. might all be factored into the premium calculation.

[34] The Plaintiff testified that his neighbour, who shares the other half of the Plaintiff's semi-detached house, pays considerably less in annual premiums for his homeowner's insurance. According to the Plaintiff, the neighbour pays \$700 a year for insurance from Belair Direct, a subsidiary of Intact. The Plaintiff asks rhetorically how it could be that his neighbour, the owner of the identical, mirror-image house to that of the Plaintiff, can pay so much less for the same product.

[35] As Intact's counsel points out, we do not know whether the neighbour has the same type of insurance as the Plaintiff. There is nothing in the record to show what kind of policy the neighbour has, what coverage he has opted for, etc. The hearsay comparison to the neighbour's supposed premium does not get the Plaintiff very far in proving his claim.

[36] What the Plaintiff has focused on, and what has upset him about this, is the fact that the insurance premiums have increased in roughly the same years as his municipal taxes have increased. The tax increases, in turn, are premised on an increase in the assessed value of his home. That assessment, conducted by MPAC in 2012 and subsequently upheld by the Assessment Review Board ("ARB"), is arguably riddled with errors.

[37] I hasten to say that the assessment is not before me and I make no authoritative determination in that regard. However, some mistakes are patently obvious. The ruling by the ARB in the Plaintiff's case records his municipal address wrong. While the cover page contains the Plaintiff's correct home address, the reasons for decision state the address as being on an altogether different street. Although this has been brought to the ARB's attention, it has not been rectified or otherwise addressed. The Plaintiff understandably suspects that the assessment of his house has been confused with the assessment of some other house in his neighbourhood.

[38] This feeling is exacerbated by the fact that the ARB has identified the Plaintiff's house as being renovated, and has valued it in comparison with other renovated houses on the streets surrounding him. However, the Plaintiff's house has never been renovated. It is a house built in the 1950's and has not been updated or improved since that time. The Plaintiff has testified as to the sagging floors, deeply cracked cement driveway, etc. that prompted his claim against G. Bates and Intact in the first place. Nothing about the Plaintiff's house suggests that it has been renovated at all.

[39] Despite its dilapidated condition, in 2012 MPAC upgraded the Plaintiff's house from a "Quality Class 5" to a "Quality Class 6" property. This led to a reassessment of the Plaintiff's

home to a value of just over \$650,000. It is this value that was upheld by the ARB in its judgment that compared the Plaintiff's house to fully renovated houses and that misstated his street address.

[40] The self-evident errors in the assessment and appeal process led the Plaintiff to bring a small claims action against MPAC. Much to his disappointment, although probably correct as a matter of law, the Small Claims Court dismissed the action for want of jurisdiction. In the process, however, the judge issued reasons for judgment that, in *obiter*, indicated that it is indeed perplexing as to why the Plaintiff's property should have been re-assessed as a "Quality Class 6" property when nothing had been done to improve it.

[41] In any case, the coincidence of the increase in municipal property taxes with the increase in home insurance premiums did not escape the Plaintiff's attention. Unfortunately, it did not lead him to bring evidence of how insurance premiums are assessed, or to produce an expert report demonstrating that property values for the purposes of home insurance premiums can be shown to track municipal tax assessments; indeed, it did not prompt him to produce as a witness his immediate neighbour with whom he compared his premiums. Moreover, the Plaintiff did not manage to identify someone from Intact's own premium department to call or summons as a witness. Instead, he focused his efforts on elaborating various conspiracy theories about MPAC and Intact being in collusion with one another.

[42] There is nothing in the record to establish that Intact looked at MPAC's assessment of the Plaintiff's house in arriving at the Plaintiff's annual insurance premiums. Indeed, there is some suggestion, although nothing definitive in the record, that the Plaintiff's neighbour's MPAC assessment is in in roughly the same range as the Plaintiff's, which would in turn suggest that the neighbour's lower insurance premiums are unrelated to the assessment of value for property tax purposes (although, again, the record does not reveal whether or not the neighbour's house has been renovated, etc.).

[43] In short, when it comes to the Plaintiff's claim that he has been overcharged by Intact, there is only speculation and conjecture. As Intact's counsel points out, the insurance premiums are doubtless a result of a number of risk factors, and there is nothing before me to establish that Intact has wrongly assessed those factors. The comparison with the Plaintiff's neighbour is inconclusive, and the MPAC and ARB errors are necessarily a separate matter. I cannot simply jump from visible errors in the municipal assessment process to a conclusion that Intact has borrowed or adopted those errors.

V. Disposition

[44] The Plaintiff's claim is dismissed. The Defendants may dispense with the need to obtain the Plaintiff's consent as to form and content of the formal judgment.

VI. Costs

[45] At the conclusion of the trial I was advised by counsel for G. Bates that there have been settlement offers that I might want to take into account in fixing costs. Having been so advised, I

did not ask for submissions at that time but rather told the parties that I would consider what to do about costs when I write up my reasons for judgment, and might invite written submissions.

[46] The Defendants have been successful in the result of this trial, and in the ordinary case would be entitled to costs against the unsuccessful party. However, that rule of thumb does not apply in every case. Costs are always discretionary under section 131(1) of the *Courts of Justice Act*, and that discretion is wide enough to allow me to deviate from the standard pattern in the appropriate case.

[47] In my view, Intact has brought this case on itself. The poor customer relations that it has exhibited in continually raising premiums without explanation and in denying coverage without a comprehensible explanation, all converged to egg the Plaintiff on in what he thought was a pursuit of justice.

[48] The Plaintiff turns out to have been wrong about the coverage and in the dark about the premiums. Intact has the law on its side when it comes to the merits of the claim. But under the circumstances it would be a step too far to award costs to Intact. It is incumbent on an insurer to treat insureds in a way that does not exacerbate the problems that they are already facing when they contact them for a home insurance problem. I am therefore not inclined to award any costs to Intact.

[49] The Plaintiff's claim against G. Bates is a different matter. The plumbing company did its job and was dragged into a law suit through no fault of its own.

[50] Unfortunately, it is pretty clear that G. Bates will not be compensated for its outlays no matter what I order. The Plaintiff has repeatedly stated that he has no money. Not only has he been self-represented throughout when a lawyer would have helped his case tremendously, but he has indicated all along that he cannot even afford the most basic of items. He has no computer and so cannot be communicated with by email. He has no fax machine and so all court documents, including this judgment, must be mailed or delivered to him personally. His insurance records indicate that the roof on his house has not been replaced for over 20 years, and he has informed the court that if he does not win this case he is likely to lose his home. Even if I award no costs against him, he is likely to be disappointed that he is not being compensated for the disbursements which he has had to incur in bringing this unsuccessful claim.

[51] While this puts G. Bates in an unfortunate position, I do not want this Court's order to be the straw that breaks the Plaintiff's financial back.

[52] I will take this opportunity to say, in case it is not already clear, that my concerns about costs should not be taken as a reflection on either of the Defendants' legal counsel or the way they conducted the case. They both did excellent work representing their respective clients, and were very helpful to me during the course of the trial. Furthermore, counsel for each of the Defendants had to endure unfounded personal allegations and criticism by the Plaintiff, and they both responded with great patience and professionalism.

[53] I will exercise my discretion not to award costs for or against any party.

Morgan J.

Date: November 23, 2018