CITATION: Riggs Estate v. Intact, 2019 ONSC 6846
COURT FILE NO.: CV-19-59043
DATE: 20191127

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
THE ESTATE OF GERALD RIGGS, by its ESTATE TRUSTEE, CLARA RIGGS	)	S. Train, for the Applicant
Applicant	)	
– and –	)	
INTACT INSURANCE COMPANY	)	M. Lefave, for the Respondent
Respondent	)	
	)	**HEARD:** November 22, 2019

THE HONOURABLE JUSTICE ROBERT B. REID

REASONS FOR JUDGMENT

Introduction:

[1] The applicant ("the Estate") requests an order enforcing the purported settlement of an accident benefits claim made by Gerald Riggs against his insurer, the respondent ("Intact").

[2] After reaching an agreement to settle the claim, but before personally signing final documents, Mr. Riggs died.

[3] The settlement has not been paid by Intact because of the lack of personal signature by Mr. Riggs on the settlement documents.

[4] No material facts are in dispute. Therefore this is an appropriate matter for determination on an application pursuant to rule 14.05(3)(h) of the *Rules of Civil Procedure*[1].

The Facts:

[5] Gerald Riggs was involved in a motor vehicle accident on February 5, 2015. He filed an application to the Licence Appeal Tribunal (the "LAT") seeking entitlement to certain Statutory Accident Benefits ("SABs") following the denial of his claim by Intact. That claim included a request for rehabilitation benefits and costs associated with home modifications. He also began a tort action claiming compensation for damages suffered as a result of the accident.

[6] The LAT hearing was adjourned on consent pending private mediation which by agreement of the parties included the tort action. The mediation took place on December 17, 2018.

[7] At the mediation, a recommended settlement of both the SABs claim and the tort action was reached. The settlement of the SABs claim was conditional on settlement of the tort action. Counsel for the tort insurer needed to secure further instructions. Those instructions were received and communicated to all parties on December 19, 2018. Subsequent correspondence then confirmed the final global settlement as negotiated at the mediation.

[8] Terms of the global settlement were that the tort insurer pay Mr. Riggs the all-inclusive sum of $300,000 and that Intact pay Mr. Riggs the all-inclusive sum of $350,000 plus payment of attendant care, incurred treatment plans, physio, and the rehab support worker's invoices until January 31, 2019.

[9] In due course, Mr. Riggs signed a full and final release in the tort action and the sum of $300,000 was paid.

[10] In response to confirmation of the settlement, counsel for Intact advised counsel for Mr. Riggs on December 19, 2018 that he would provide a Settlement Disclosure Notice (an "SDN") and a Release for signature by Mr. Riggs that week and inquired whether Mr. Riggs had any preference as to how the $350,000 would be allocated on the SDN. The request was repeated on January 2, 2019. On that same day, counsel for Mr. Riggs advised that she did not require any specific breakdown of the benefits.

[11] On January 8, 2019, a draft Release and SDN were sent to counsel for Mr. Riggs for signature. In the meantime, on January 3, 2019 Mr. Riggs died unexpectedly. As a result, he was not able to personally sign the documents.

[12] The Release and SDN were signed by Clara Riggs, the spouse and Estate Trustee of Mr. Riggs and returned to counsel for Intact.

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[1] R.R.O. 1990, Reg. 194.

The Issues:

[13] The two questions that must be answered are:

a. Does the LAT have exclusive jurisdiction to determine whether a binding settlement was reached?

b. Was the personal signature of Gerald Riggs on the SDN essential to make the settlement binding and enforceable?

Jurisdiction:

[14] The Estate submits that the settlement created a contractual obligation enforceable in this court.

[15] Intact submits that pursuant to the *Insurance Act*[2], the LAT has exclusive statutory authority to deal with the question of whether the settlement is enforceable.

[16] As to the resolution of disputes concerning SABs, the *Insurance Act* provides at s. 280:

> (1) This section applies with respect to the resolution of disputes in respect of an insured person's entitlement to statutory accident benefits or in respect of the amount of statutory accident benefits to which an insured person is entitled.
>
> (2) The insured person or the insurer may apply to the Licence Appeal Tribunal to resolve a dispute described in subsection (1).
>
> (3) No person may bring a proceeding in any court with respect to a dispute described in subsection (1), other than an appeal from a decision of the Licence Appeal Tribunal or an application for judicial review.
>
> (4) The dispute shall be resolved in accordance with the *Statutory Accident Benefits Schedule*.
>
> (5) The regulations may provide for and govern the orders and interim orders that the Licence Appeal Tribunal may make and may provide for and govern the powers and duties that the Licence Appeal Tribunal shall have for the purposes of conducting the proceeding.
>
> (6) Without limiting what else the regulations may provide for and govern, the regulations may provide for and govern the following:
>
> 1. Orders, including interim orders, to pay costs, including orders requiring a person representing a party to pay costs personally.

[2] *Insurance Act*, R.S.O., 1990, c. I.8.

2. Orders, including interim orders, to pay amounts even if those amounts are not costs or amounts to which a party is entitled under the *Statutory Accident Benefits Schedule*.

[17] In the recent case of *Stegenga v. Economical Mutual Insurance Company*[3], the Ontario Court of Appeal considered the court's jurisdiction to deal with a claim of bad faith against an insurer in administering accident benefits. In his review of s. 280 of the *Act*, Zarnett J.A. wrote at paragraph 22:

> Neither the legal characterization of the cause of action asserted against the insurer nor the relief claimed determines whether a claim falls within the scope of the dispute resolution provisions. If the dispute relates to the insurer's compliance with obligations to the insured concerning SABs, the timeliness of the performance of those obligations and/or the manner in which they were administered, it falls to the broad reach of the dispute resolution provisions, and within the jurisdiction of the LAT. The prohibition on court proceedings will apply.

[18] At paragraph 31 of *Stegenga*, the court held that the scope of s. 280 should be interpreted broadly and contextually. That scope was held to be beyond merely dealing with a claim for the payment of a benefit not paid or paid in an incorrect amount and was broad enough to include the issue in that case, namely the way in which the claim was handled. The court confirmed at paragraph 37 that the legislative intention was for the provisions of the *Insurance Act* to constitute a complete code for the resolution of disputes in respect of an insured person's entitlement to SABs or in respect of the amount of that entitlement.

[19] Parsing the language of s. 280(1), Justice Zarnett observed that the phrase "in respect of" connotes the broadest possible connection between two subject matters. That phrase connects "dispute" to "entitlement to statutory benefits" or their amount. He reviewed the dictionary definition of the noun "dispute" which he found to be broad. Similarly, he found the word "entitlement" to be a term of wide meaning referring to a right to do or receive something, which in the context of s. 280(1), includes SABs. As such, the words of section 280(1) "cover a wide array of disagreements connected in some way to the SABs to which an insured person was or is entitled"[4].

[20] In this case, the respondent submits that, in advance of the recommended settlement being reached, the parties had a dispute properly before the LAT relating to rehabilitation benefits. As such, the responsibility for payment of those benefits by Intact pursuant to the purported settlement is in fact a dispute in respect of Mr. Riggs' entitlement to statutory benefits or their amount.

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[3] 2019 ONCA 615
[4] *Stegenga*, at paras. 43-45

[21] I have considered that the parties had, by agreement, opted for a process of private mediation independently from the LAT. That process, also by agreement, included the parties to the tort action who were obviously outside the jurisdiction of the LAT. The fact that settlement of the tort claim was an essential prerequisite for settlement of the SABs claim reinforces what could be called the "extra jurisdictional" character of the mediation, as regards the LAT. Clearly, from the perspective of Intact, the conclusion of the tort litigation had value to Intact which would not have been available in a resolution of the LAT application alone. However, using the broad interpretation of the language of s. 280(1) of the *Act* as mandated by the court in *Stegenda*, the enforceability of the settlement as between the Estate and Intact does constitute a dispute in respect of entitlement to SABs.

[22] As a result, I conclude that the subject matter of this application, namely the enforceability of the settlement between Mr. Riggs and Intact, falls within the exclusive jurisdiction of the LAT.

Enforceability of the Settlement:

[23] Based on my decision as to jurisdiction, it is not necessary for me to answer the second question at issue, namely whether the personal signature of Gerald Riggs on the SDN was essential to make the settlement binding and enforceable. However, in the event it becomes relevant at a later stage of these proceedings, the following is my conclusion on that point.

[24] It is clear that Mr. Riggs and Intact had a meeting of the minds as to the terms of a final settlement. They confirmed through counsel that the contingency which existed at the conclusion of the mediation, namely settlement of the tort action, was satisfied when two days later that action did in fact settle and all were advised accordingly. There was a mutual intention to create a legally binding relationship and an agreement had been reached as to all the essential terms of the settlement.

[25] Although Mr. Riggs' imminent death was not contemplated at the time the settlement was reached, his life expectancy obviously would have been one of the contingencies considered when the quantum of the settlement was established.

[26] The Ontario Court of Appeal in the case of *Wu v. Zurich Insurance Co.*[5] considered the enforceability of a settlement contract where the party died after the settlement was reached but before the court could approve it. In finding that the settlement was enforceable, the court stated, referring initially to its previous decision in *White (Litigation Guardian of) v. Godin*[6]:

[5] [2006] O.J. No. 1939
[6] [1997] O.J. No. 314 (Ont. C.A.) at para. 3

> "In agreeing to the assessment of damages, the defendants knew that there was a risk that their evaluation of the life expectancy of the plaintiff …might be proved wrong by future events." Parties under disability cannot re-open settled claims when unfavorable contingencies materialize [citation omitted]. Fairness requires similar treatment for insurers. The minutes of settlement could have provided that Rebecca Wu must be alive at the time of court approval but they do not. We do not agree that it would be just to imply a term that would, after the fact, materially alter the parties' allocation of the risk related to her life expectancy.[7]

[27] In this case, the settlement was not expressly contingent on the personal signing of the SDN and Release by Mr. Riggs.

[28] Intact required that the tort settlement occur as a condition of resolving the SABs claim. There must have been some value to Intact in doing so, and that value was realized when the tort action was resolved. Mr. Riggs may have agreed to compromise the tort claim in part based on his expectation of the SABs payment. It seems unjust that Intact received the benefit it sought through the tort settlement and then not have to pay its share of the global resolution, and equally unfair if Mr. Riggs receives no value from Intact for having compromised his tort claim.

[29] There was a delay on the part of Intact in preparing and forwarding the Release and SDN for signature by Mr. Riggs. By contrast, the tort insurer provided a release promptly and Mr. Riggs was able to sign it prior to his death. Intact should not be able to avoid its contractual obligation to its insured in part because of its own delay in forwarding the usual file documents for signature.

[30] Intact did not dispute the legal capacity of the Estate to sign documents which would be binding and which would thereby prevent any further claims against Intact arising from Mr. Riggs' injuries.

[31] The focus of Intact's submission was that the settlement is not binding pursuant to the specific terms of the Regulation under the *Insurance Act*[8] if the insured person does not personally sign the SDN.

[32] Subsection 9.1(1) of the Regulation defines settlement as "an agreement between an insurer and an insured person that finally disposes of a claim or dispute in respect of the insured person's entitlement to one or more benefits under the *Statutory Accident Benefits Schedule*". Subsection (2) requires the insurer to give the insured person a signed disclosure notice (the SDN) with respect to the settlement and subsection (3) sets out the required contents of the SDN. The clear purpose of that legislatively mandated document is to ensure that the insured person fully appreciates the terms of the settlement. In effect, it is a matter of consumer protection.

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[7] *Wu* at para. 24
[8] O. Reg 664, s. 9.1

[33] Intact relied on the text of the SDN which presumes signature by the insured person. For example, on the first page of the form is a "Notice and Caution" directed to the insured which states in part: "your insurer is required to give you this settlement disclosure notice if you have both agreed on a cash settlement…". On page 3 of the form is a section entitled "What does it mean if you settle your claim?" The pronoun "you" appears frequently, making it clear that the instructions are directed to the insured. Likewise, above the space for the insured's acknowledgment and signature on page seven of the SDN is a box with the heading: "If you change your mind and want to rescind the settlement".

[34] Although Intact submits that the Regulations provide that the insured person must execute the SDN personally, I do not find that to be the case. At most, there is a presumption that the insured person will sign. The fact that there is no statutory provision to allow for a signature on behalf of the insured is not determinative. It is not uncommon for a recipient of SABs to be either under the age of majority, or suffering a physical or mental disability. In neither case could the person complete the SDN without the assistance of a personal representative. If Intact is correct in its position, there would be no possibility for such a person to conclude a settlement. That cannot be a reasonable interpretation of the legislation or the legislative intent behind it. I see no distinction between an insured under a disability who cannot sign an SDN and a deceased insured. In both cases, an authorized personal representative must be able to sign for the person.

[35] For the foregoing reasons, but for my conclusion that the court does not have jurisdiction to determine the issue, I would have found that the settlement between Gerald Riggs and Intact is binding and enforceable.

Costs:

[36] I encourage the parties to resolve the issue of costs of the motion consensually. In the event that they are not able to do so, I am prepared to receive written submissions according to the following timetable:

- The respondent is to serve the applicant with written costs submissions, maximum three pages and bill of costs on or before December 4, 2019.

- The applicant is to serve the respondent with written costs submissions, maximum three pages and a bill of costs on or before December 11, 2019.

- The respondent is to serve the applicant with any responding submissions on or before December 18, 2019.

[37] All submissions are to be filed with the court no later than December 20, 2019. If submissions are not received by that date, or any agreed extension, the matter of costs will be deemed settled.

Reid J.

Released: November 27, 2019

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R. B. Reid J.

Released: November 27, 2019