

Wednesday, May 14, 2014

## Insurer Denies \$1M Coverage for Renewing Ontario Driver's License 4 Months Late

**The Issue:** Many people have forgotten to renew their driver's license in time, being notified only when they are stopped by police on a routine traffic check or have to use their Driver's License as identification to apply for car insurance or some other service.

### Why This Matters

Most people would not imagine that their insurer would seek to void their insurance coverage - denying them \$1 million in insurance coverage - for this type of 'honest' mistake. Particularly when the payment of the car insurance premiums has been up to date.

How about if you renew 4 months late but get into an [accident with a motorcyclist](#) in Florida and your car insurance denies coverage, as was the case in: [Kozel v. The Personal Insurance Company, 2014 ONCA 130 \(CanLII\)](#).

### This Case

This was an aggressive denial by the insurer, given the circumstances. There was evidence that the insured defendant did receive the renewal package for her driver's license and plate sticker; she had the sticker affixed to her vehicle plate when she bought a new car just weeks before her driver's license was to expire. She did not renew her license until 3 days after the accident with the motorcyclist, after she had been charged by the Florida police for failing to have a valid driver's license (and, no doubt, receiving good legal advice to return to Ontario immediately and renew her driver's license).

The insurer was ordered, on an Application, to provide both a defence and coverage to the insured defendant driver. In this case, the insurer appealed to the Court of Appeal of Ontario and the appeal was denied - the insured driver is to receive the benefit of her insurance policy.

One factor in this dispute was that the renewal of the insured defendant's driver's license was performed when she bought a new car a few weeks before her driver's license expired.

In the end, the Court of Appeal found the insured did not make reasonable efforts to renew her license / avoid expiration - which overturned the Application Judge's finding.

But on the whole, the Court of Appeal found that this renewal was essentially an administrative / procedural action, as opposed to a substantive issue (i.e. the driver's skill and legal entitlement to a driver's license was not at issue with this renewal) and on that basis, the Court of Appeal found no prejudice to the insurer and a disproportionate and unnecessarily harsh result to the insured.

The appeal was dismissed and a defence and coverage was afforded to the 77 year old insured driver.

The Court's decision to allow relief from forfeiture is explained as follows:

***(c) Application of relief from forfeiture factors in this case***

*[59] Having resolved the two threshold questions in the respondent's favour, It remains to be decided whether she is entitled to relief against forfeiture. As noted above, the relief against forfeiture analysis is informed by three factors: (i) the conduct of the applicant, (ii) the gravity of the breach, and (iii) the disparity between the value of the property forfeited and the damage caused by the breach: Saskatchewan River Bungalows, at p. 504.*

*[60] The first factor focuses on the reasonableness of the breaching party's conduct. It might seem that a finding that the respondent acted reasonably here would be foreclosed by my holding that the respondent did not act with "all reasonable care" and therefore cannot make out a due diligence defence. However, this is not necessarily so, because the reasonableness inquiry in the relief against forfeiture analysis is a much broader one.*

*[61] As Doherty J.A. explained in 8477 Darlington Crescent, at para. 89, the first factor of the analysis "requires an examination of the reasonableness of the breaching party's conduct as it relates to all facets of the contractual relationship, including the breach in issue and the aftermath of the breach" (emphasis added). The scope of the*

*reasonableness analysis was also discussed by Osborne J.A. in Williams Estate v. Paul Revere Life Insurance Co. 1997 CanLII 1418 (ON CA), (1997), 34 O.R. (3d) 161, at p. 175:*

*The reasonableness test requires consideration of the nature of the breach, what caused it and what, if anything, the insured attempted to do about it. All of the circumstances, including those that go to explain the act or omission that caused the lapse (forfeiture) of the policy, should be taken into account. It is only by considering the relevant background that the reasonableness of the insured's conduct can be realistically considered.*

*[62] In my view, when "all facets of the contractual relationship" between the parties are taken into account, especially with the relevant background, the respondent in this case acted reasonably. Consider that, up until the respondent's birthday on October 7, 2011, her driver's license was valid, and as soon as she discovered that her license had expired she sought to renew it and had no difficulty doing so. Moreover, the respondent always paid her premiums in a timely manner and acted in good faith on all occasions.*

*[63] The cases in which courts have found that a breaching party failed to act reasonably involve conduct far removed from the respondent's actions here. For example, in Day Estate v. Pandurevic, 2008 ONCA 266 (CanLII), 2008 ONCA 266, 61 C.C.L.I. (4th) 50, the court found at para. 4 that the respondent could not obtain s. 98 relief even though he had no knowledge that his license was suspended. The court emphasized the fact that the respondent's license had been suspended twice before, and that on the day of the accident he picked up two letters from the Ministry of Transportation and continued driving without reading them. To the court in Day Estate, the facts indicated that the respondent acted with wilful blindness or recklessness.*

*[64] In Williams, supra, the court held at p. 176 that the appellant did not qualify for relief under s. 98 because his failure to pay his premiums in a timely fashion occurred due to his "ongoing negligence" and general inability to keep track of his personal finances.*

*[65] Finally, in Saskatchewan River Bungalows, the Supreme Court found, at p. 504, that the respondents did not act reasonably because, among other things, they learned that payment of a premium was nine months overdue but did not tender a replacement cheque until three months later.*

*[66] In short, I have no doubt that, for the purposes of the relief against forfeiture analysis, the respondent's conduct here was reasonable.*

*[67] The second factor is the gravity of the breach. This inquiry "looks at both the nature of the breach itself and the impact of that breach on the contractual rights of the other party": 8477 Darlington Crescent, at para. 91. If, for example, the forfeiture provision operated as a means of securing the payment required under a lease, the fact that the breaching party had paid all the amounts owing could obviate the need to resort to forfeiture and support a claim for relief.*

*[68] This second factor has received less judicial consideration than the first, partly because courts often end the analysis once it has been determined that the breaching party failed to act reasonably. One might argue that in this case, the breach was serious because the license had been expired for over four months at the time of the accident. However, the breach had no impact on the respondent's ability to drive safely or on the contractual rights of the insurance company. While the purpose of the forfeiture provision here was not a means of securing payment, which is typically a ground for finding this factor fulfilled,[2] the breach here was by no means grave.*

*[69] The third factor is the disparity between the value of the property forfeited and the damage caused by the breach. This factor entails "a kind of proportionality analysis": 8477 Darlington Crescent, at para. 92. In an insurance case, this inquiry involves comparison of the disparity between the loss of coverage and the extent of the damage caused by the insured's breach.*

*[70] For example, in Sage, the court found that the substantial disparity between the loss of insurance coverage - which required the plaintiffs to pay for damage to their car - and the value of the additional premium that the plaintiffs neglected to pay weighed in favor of granting relief against forfeiture.*

*[71] In the case at bar, the disparity is enormous: the respondent stands to lose \$1,000,000 in insurance coverage, while the breach of statutory condition 4(1) caused no prejudice to the insurance company.*

**V. CONCLUSION**

*[72] For the reasons stated above, I would reverse the application judge's holding on due diligence but grant the respondent relief against forfeiture under s. 98 of the CJA.*

*[73] In my view, the facts required to make out a due diligence defence are simply not present. At the same time, if this court were to allow the appeal, the insurance company would enjoy a large windfall at the expense of an individual who acted in good faith and whose breach caused no prejudice to the company. This result would be contrary to fundamental notions of equity. Accordingly, I would dismiss the appeal.*

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