Legal update

The Superior Court of Québec examines the duty to collaborate of an insured in property insurance

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Insurance
Dispute resolution and litigation

On February 24, the Court of Appeal of Québec dismissed an appeal of the Superior Court of Québec's decision in an action for indemnity brought by Charles Anderson (Insured) against his insurer, Intact Insurance Company (Intact).

The Court of Appeal's ruling in *Anderson v. Intact, compagnie d’assurance*¹ is relevant for several reasons, but is especially noteworthy for what the court has to say about the scope of the insured's duty to collaborate and the consequences when this duty is breached.

Background and trial judgment

In 2013, the Insured acquired a building in the Montreal borough of Verdun that he intended to renovate and convert into condominiums.² At the time of the immovable’s acquisition, Hariolus, a company the Insured created in 2010 whose sole shareholder was his mother, indicated on its website that it had signed a purchase agreement for a project in Verdun.³

In February 2014, the Insured was informed by the borough that he did not meet the conditions allowing the building to be converted into condominiums.⁴ Also in February 2014, the Insured took steps to insure the building, which had been without insurance since the summer of 2013. On March 10, 2014, Intact accepted the insurance proposal and the policy came into effect.⁵ Just a few days after Intact's policy came into effect, the building was destroyed in a fire.⁶

On March 18, 2014, a first meeting was held between the Insured and the claims adjuster mandated by Intact. Discussions continued after this meeting until May 2015. In December 2015, the Insured filed an action against Intact. One month later, the Insured sent a letter informing him that it refused the insurance claim.⁷

At trial, the Superior Court's Honorable Frédéric Bachand dismissed the Insured’s action on the ground that he had failed to collaborate with Intact after the fire.

The Insured’s duty to collaborate in property insurance

The court opens with a reminder of the general principles that apply to the Insured's duty to collaborate. Under article 2471 of the *Civil Code of Québec*, the Insured must “inform the insurer as soon as possible of all the circumstances surrounding the loss, including its probable cause, the nature and extent of the damage, the location of the insured property, the rights of third persons, and any concurrent insurance”, and provide the insurer with “vouchers and attest under oath to the truth of the information.” A breach of these obligations will result in the forfeiture of the right to indemnity if the insurer suffers injury therefrom and the insured acted in bad faith.⁸
The Court of Appeal of Québec upheld the trial judge’s analysis. In the court's opinion, the trial judge was well founded in concluding that the Insured had acted in bad faith in terms of his duty to collaborate “[TRANSLATION] when he sought to keep his insurer in the dark regarding his insurable interest and the involvement of third persons in the building’s acquisition”. Similarly, the court concluded that the evidence adduced at trial allowed the trial judge to find that Intact was adversely affected when the Insured prevented it “[TRANSLATION] from knowing all of the circumstances of the fire and from determining whether its insured held a real insurable interest”.

Conclusion

This decision reminds us the importance for insureds to collaborate fully with their insurers. If an insured breaches this obligation by voluntarily keeping its insurer in the dark by, say, refusing to grant access to certain documents that would allow it to determine whether the insured is entitled to an indemnity, an insurer could claim to have been adversely affected by such conduct and demand forfeiture of the insured’s right to indemnity.

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Footnotes

1. 2020 QCCA 318.
2. Id., paras. 6-7.
3. Id., paras. 9-11.
4. Id., para. 16.
5. Id., paras. 18-19.
6. Id., para. 20.
7. Id., paras. 22-23.
8. Id., para. 36.
9. Id., para. 43.
10. Id., para. 44.