

Insurance & Reinsurance - Canada

Living the insured life: court interprets residential insurance policy and exclusions

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Facts
Insurance policy
Decision
Comment

Residential insurance is a fact of life for many. However, few take the time to review their insurance policies until it is too late. A recent case illustrates the importance of understanding residential insurance policies and highlights the need to ensure that the policy accords with the risks and the intended coverages.

Facts

Zoran Zlatic was a tour organiser and tour guide who lived in a condominium in Montreal. For many years he travelled to countries such as Serbia, Montenegro and Mexico, and collected ground beetles as a hobby. He would then sell or trade his beetles with other beetle collectors or wholesalers. Once Zlatic captured a beetle, he would preserve it in formaldehyde, dry it out and pin it on a display board.

However, the storage of his beetles was a problem. As he did not have his own storage locker at his condominium, he rented the locker of another resident. When this locker was no longer available, he sought assistance from his condominium building's manager, Lyne Duval. Duval told him that a storage room in a common area of the building was available for rent. A one-year, renewable lease for this room was signed between the condominium syndicate and Zlatic. However, two months into the lease, Duval told Zlatic that the lease would terminate at the conclusion of the one-year term because the rental of a common area would be a violation of building policy. Zlatic requested and received an extension of this term, as he would be on an extended trip. He advised Duval that he would move his belongings and explicitly requested that fragile items not be moved from the locker until he returned.

While Zlatic was away, he received a note from Duval warning him that the storage locker would need to be vacated by the revised due date, failing which the stored belongings would be removed and brought to Zlatic's condominium. Even though Duval knew that Zlatic was away, the note was left for him at the front desk of the condominium building.

When Zlatic returned, he found his stored belongings - including trunks containing drying beetles - stacked in the hallway near his condominium unit. Some of the containers were on their sides, which resulted in almost all of the 15,000 beetles having their legs and/or antennae damaged. Zlatic estimated the loss at nearly US\$130,000.

Insurance policy

Zlatic had a 'condominium comprehensive' policy that provided property and liability coverage. He claimed against his insurer for C\$53,045, the policy limit for personal property. The insurer denied coverage on the grounds that:

- the collection of beetles did not fall within the policy requirements that the contents were "usual to the ownership or maintenance of a unit"; and
- the collection of beetles fell within the policy exclusion that applied to "fragile or brittle articles, unless caused by a specified peril".

Decision

The court first assessed whether the beetle collection was "usual to the ownership or maintenance of a unit". If it were usual, it would therefore fall within the personal

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property coverage. The insurer argued that few residents were engaged in the serious collection of insects as a business or a hobby; therefore, beetle collecting could not be considered usual. However, the court agreed with Zlatic, who argued that certain collections, such as stamps, coins and manuscripts, were mentioned in the insurance policy, and that by extension the policy contemplated residents having collections of rare objects. The court then went on to note that an argument that a beetle collection was not usual to the ownership or maintenance of a unit would require drawing an arbitrary line between an activity undertaken by few people (eg, stamp collecting) and an activity undertaken by fewer people (eg, beetle collecting). The court determined that the beetle collection was to be considered usual to the ownership or maintenance of a unit.

The court also concluded that the beetles were "fragile or brittle", and that the policy exclusion applied to this collection. Nevertheless, the court found that the "specified peril" exception to the exclusion also applied. One such specified peril was "vandalism or malicious acts", which comprised intent to cause prejudice and no lawful reason for the conduct. The court found that Duval's actions in moving Zlatic's belongings were deliberate and unjustified. She was aware of Zlatic's hobby and that there were fragile goods in the storage locker, but, in the court's view, did not take the appropriate steps to ensure that these goods were well cared for. As the condominium management did not have judicial authorisation to take control of the goods, Duval's act of moving them was unlawful.

Therefore, the court found that the damage to Zlatic's beetle collection was within the insurance policy and ordered the insurer to pay Zlatic the full amount of the policy limit, minus the deductible.

Comment

Insureds are advised to:

- review their insurance policies with their brokers and insurers to ensure that the appropriate risks are ensured;
- assess the goods that they want to insure to confirm that coverage limits reflect the value of the insured items;
- advise potential movers and handlers of goods that are fragile or otherwise sensitive (eg, to temperature or heat); and
- consult with a lawyer to ensure that their rights are adequately protected.

For further information on this topic please contact [Hartley Lefton](#) at [McMillan LLP](#) by telephone (+1 416 865 7000), fax (+1 416 865 7048) or email (hartley.lefton@mcmillan.ca).

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