

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN: )  
 )  
Vincenzo and Anna Greco )  
 ) Anna Greco, Plaintiff, Self-Represented  
Plaintiffs )  
 )  
- and - )  
 )  
 )  
Coseco Insurance Company ) Shanti Barclay, for the Defendant  
 )  
Defendant )  
 )  
 )  
 ) HEARD: February 26, 2015

RULING ON MOTION FOR SUMMARY JUDGMENT

**BIRD J.:**

[1] The defendant, Coseco Insurance Company, has brought a motion for summary judgment pursuant to rule 20.01 of the *Rules of Civil Procedure*, seeking a dismissal of the action. The defendant alleges that the issues between the parties were completely and finally dealt with through the appraisal process mandated by a statutory condition in the insurance policy.

[2] Briefly, the action arises out of damages to the plaintiffs' home caused by a sewer back-up resulting from a storm in August of 2009. In its statement of defence, the defendant disputes that all of the damage to the home was caused by one water leak. However, it proceeded through the appraisal process accepting that all of the damage was the result of one loss. After protracted negotiations and assessments of the home by various experts, the parties participated in the appraisal process, as required by the insurance contract. On September 26, 2013, an appraisal award was made in relation to three specific categories of loss:

- (a) Contents: (\$ 2,509.77)
- (b) Building: (\$127, 034.44)
- (c) Additional Living Expenses: (\$ 19, 839.54)

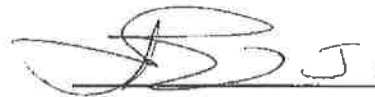
[3] On April 28, 2014, counsel for Coseco sent a letter to the plaintiffs' lawyer at the time, enclosing a cheque for the full amount of the appraisal award, less what had already been paid out. In the letter, counsel stated that Coseco was paying the full amount to the plaintiffs "without prejudice to their right to continue with this action".

[4] On this motion, the defendant takes the position that the appraisal award is binding and finally settles the matter between the parties, absent evidence that there was fraud, collusion, bias or partiality. I accept the defendant's submission that the appraisal process finally determines the amount of the loss on those issues that the umpire dealt with. In other words, the plaintiffs are not entitled to continue their action in an attempt to recover more money for the contents of their home, the physical damage to the building or for additional living expenses.

[5] However, that does not end the matter. The question remains as to whether the appraisal process dealt with all of the issues raised by the plaintiffs in their action. The defendant asserts that there are no issues in the statement of claim that were not dealt with by the umpire. If this is correct, then the defendant would be entitled to summary judgment as there would be no genuine issue requiring a trial.

[6] A review of the statement of claim makes it clear that the plaintiffs were seeking to recover damages for losses above and apart from the three areas dealt with through the appraisal process. For instance, in paragraph 6, the plaintiffs seek damages for the loss of enjoyment of their home and inconvenience. In paragraph 12, they plead that they have been put through a great deal of aggravation, travel time and expense and in paragraph 13 they seek damages for any "consequential losses" including time away from work. None of these alleged losses were considered by the umpire. As a result, notwithstanding the finality of the appraisal process, it cannot be said that there are no genuine issues for trial. The plaintiffs will not be able to dispute the value of the losses as determined by the umpire, but are entitled to pursue damages that were not dealt with by the appraisal. The defendant's motion for summary judgment is therefore dismissed.

[7] The plaintiffs were self-represented but clearly spent time and money to prepare for the motion and are entitled to costs. During submissions, counsel for the defendant submitted that a costs award in amount of \$2,000 would be appropriate if the motion was dismissed. I agree. Costs are payable to the plaintiffs by the defendant in the amount of \$2,000 forthwith.



Madam Justice L. Bird