Ontario Court of Appeal confirms coverage despite breach of a statutory condition

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In its recent decision in *Pridmore v Drenth,* the Court of Appeal confirmed that a breach of a statutory condition must occur at the time of an accident in order to ground a coverage denial. In other words, an insured's noncompliance with a statutory condition does not necessarily "taint the whole trip" and disentitle them to coverage.

Background

The action arose out of an ATV accident in Dunnville, Ontario on March 29, 2014. The plaintiff, Breanne Pridmore, was a passenger on the four-wheeled ATV driven by the defendant, Tyler Drenth, and owned by the defendant Theodore Drenth.

Theodore purchased two ATVs in 2013. He insured them under a standard Ontario automobile policy. Theodore was insured, as was his son Tyler when he operated the ATVs with Theodore's consent. Tyler had a G1 license.

The Drenth home borders rural Dunnville and was a half-block from the fields and trails where the Drenths liked to ride. They began and ended their trips by driving on Central Lane, which was behind their home and provided access to the trails and fields. While technically a highway under the *Highway Traffic Act,* Theodore and Tyler assumed it was a private laneway or alley.

On the date of the accident, Tyler obtained Theodore's permission to take the larger of the two ATVs to a field to help extract his friend's ATV from mud. Theodore understood that Tyler would drive directly on Central Lane to the field, help his friend and then return home. Instead, Tyler first drove the ATV to Breanne's apartment, a block from the Drenth home, and the two then drove along Central Lane to various trails until he reached his friend's ATV. After successfully extracting his friend's vehicle, Tyler and Breanne had lunch at the friend's home where Tyler consumed "a beer or two" and then they departed. Due to a snow squall, Tyler decided to drive along the shoulder of Bird Road, rather than the trails. While driving on the shoulder, he hit a culvert, causing the ATV to roll over, injuring himself and Breanne. Breanne was paralyzed as a result of the accident.

It was conceded by the Plaintiff that Tyler was not entitled to coverage because he violated the conditions of his G1 license by driving the ATV on a highway and having consumed a beer. G1 license holders are not permitted to drive on highways without a fully licensed driver seated next to them and are prohibited from consuming any alcohol while operating a motor vehicle.

The issue before the Ontario Superior Court was whether Theodore had coverage. Statutory condition 4(1) in the policy provided that "[t]he insured shall not drive or operate or permit any other person to drive or operate the automobile unless the insured or other person is authorized by law to drive or operate it." If a driver breaches a condition of their driver's license, then they are not authorized by law to drive, within the meaning of the insurance policy.

The motion

The Plaintiff brought a summary judgment motion against the insurer, a third party, seeking a declaration that the full third-party liability limits were available to Theodore Drenth.

The insurer took the position that Theodore permitted Tyler to drive the ATV on a highway, in breach of Tyler's G1 license conditions and, therefore, in breach of the statutory condition in the policy. Having breached the statutory condition, the insurer was entitled to deny coverage to Theodore.

The Motion Judge first found that Theodore "ought to have known that a person driving alone on an ATV on Central Lane and holding a G1 driver's licence, was a breach of statutory condition 4(1)." However, this was not dispositive of the motion.

The Motion Judge next considered the nature of the consent given by Theodore to Tyler. The Judge noted that Theodore gave "a very specific and limited consent" for Tyler to drive on Central Lane; however, neither Tyler nor Theodore considered Central Lane to be a highway, so Theodore had not consented to Tyler driving on a highway.

The question, then, was whether Theodore's breach of statutory condition 4(1) by allowing Tyler to drive on Central Lane "tainted" the entire trip. The Motion Judge, relying on the reasoning in *Becamon*, found that it did not. The breach of a statutory condition must occur at the time of the accident for coverage to be void. While Theodore breached statutory condition 4(1) by permitting Tyler to drive on Central Lane, the accident did not occur on Central Lane. Theodore did not know and ought not to have known that Tyler would drive on another highway. Rather, Tyler drove on the shoulder of Bird Road (a highway) without Theodore's consent, so Theodore was not in breach at the time of the accident. The Judge granted summary judgment in favour of the Plaintiff. The full policy limits were available to Theodore.

The Motion Judge further held that, had he not already found in favour of the Plaintiff, he would have granted relief from forfeiture.

The appeal

The insurer raised three issues on appeal, arguing that the Motion Judge:

- Made a palpable and overriding error in finding that Theodore did not give Tyler permission to drive on the shoulders of roads;
- Erred in finding that Theodore was entitled to coverage despite having breached statutory condition 4(1); and
- Erred by, alternatively, granting Theodore relief from forfeiture.

The Court of Appeal found that the Motion Judge's reasoning was sound and dismissed the appeal. The Court analyzed issues (1) and (2) together and found that the Motion Judge correctly approached the issue of the terms of the permission that Theodore gave Tyler for using the ATV. The Motion Judge made the necessary factual findings as required by the applicable legal principles. Accordingly, the insurer had failed to establish that the Motion Judge made a palpable and overriding error.

With regard to the third issue, the Court of Appeal saw no basis for appellate interference in the Motion Judge's exercise of discretion in granting relief from forfeiture.

Commentary

Though not directly discussed in the decisions, this case is consistent with the principle that when interpreting insurance policies, coverage provisions will be construed broadly, while exclusion clauses and limits will be construed narrowly. While Theodore did breach a statutory condition by permitting his son to drive on a highway (Central Lane), the breach did not have far enough reach to disentitle Theodore to coverage when Tyler had an accident on a different highway, Bird Road. The Motion Judge and Court of Appeal were persuaded by the reasoning in *Becamon* that a breach must occur at the very time of an incident to ground a coverage denial. Given that the statutory conditions apply to all contracts of automobile insurance entered into or renewed since 1994, their interpretation is instructive for insurers, insureds, and coverage counsel across Ontario.

Further, the Court provided another useful example of the proper application of relief from forfeiture.

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