

CITATION: Northbridge General Insurance Corporation v. RBC General Insurance Company,
2017 ONSC 3580
COURT FILE NO.: CV-16-563660
DATE: 20170727

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Northbridge General Insurance Corporation, Applicant

AND:

RBC General Insurance Company, Respondent

BEFORE: Pollak J.

COUNSEL: *Daniel M. Himelfarb*, for the Applicant

Jeffrey E. Naganobu, for the Respondent

HEARD: June 8, 2017

ENDORSEMENT

[1] The Applicant, Northbridge General Insurance Corporation ("Northbridge"), appeals the arbitration decision of Arbitrator Cooper, dated September 27, 2016. The Arbitrator found that Northbridge was higher in priority to pay Maria's statutory accident benefits claim than the Respondent insurer RBC General Insurance Company ("RBC"). This decision was based on a finding that Maria was not principally dependent on her daughter Ornella at the time of her accident. Northbridge submits that the Arbitrator erred in his interpretation of the facts and in his application of the facts to the law, resulting in an unreasonable Decision.

Background

[2] Maria has advanced dementia and has resided at a long-term care facility for seniors, Villa Leonardo Gambin Long Term Care Facility ("Villa Leonardo"), since May 23, 2007. On April 23, 2014, she was involved in a motor vehicle accident while being transported to or from Villa Colombo, a company which runs day programs for seniors. She was a passenger in a vehicle owned by Villa Charities Inc. at the time of the accident.

[3] The Applicant, Northbridge, is the automobile insurer for Villa Charities Inc. The Respondent, RBC, is the automobile insurer for Ornella.

[4] The Arbitrator explained that in this case Maria has recourse under s. 268(2) of the *Insurance Act*, R.S.O. 1990, c. I.8 against either the insurer of an automobile in respect of which she is an insured, or against the insurer of the automobile in which she was an occupant. Whether or not she is an 'insured person' with respect to her daughter Ornella's insurance policy

depends on whether she is a dependant of Ornella, per s. 3(1) of the *Statutory Accident Benefits Schedule - Effective September 1, 2010*, O. Reg. 34/10 (“SABS”). In this case, Maria is Ornella’s dependant if she is principally dependent on Ornella for care, per s. 3(7)(b) of SABS.

[5] If Maria is principally dependent on Ornella for care, Ornella’s insurance policy with RBC will be in higher priority than Northbridge to pay Maria’s accident benefits. If she is not principally dependent on Ornella for care, she will not be insured under Ornella’s insurance policy, and Northbridge will be higher in priority to pay her accident benefits.

[6] The Respondent submits that Northbridge had the onus of proving that Maria was “principally dependent for care on Ornella” for RBC’s policy to apply. Both parties also agreed on this onus at the arbitration.

[7] The Arbitrator found that Northbridge did not meet the burden of establishing that Maria was principally dependent for care on Ornella.

Standard of Review

[8] In the recent case of *Intact Insurance Company v. Allstate Insurance Company*, 2016 ONCA 609, 131 O.R. (3d) 625 [*Intact*], the Court of Appeal confirmed that appeals from insurance arbitrations are generally reviewable by the Superior Court on a standard of reasonableness, even if they are extricable questions of law regarding SABS (at para. 53). The Court also confirmed that questions of mixed fact and law “must be reviewed for reasonableness” (at para. 53).

[9] This appeal involves questions of mixed fact and law. To succeed in this Appeal, Northbridge must prove that the Arbitrator's decision was unreasonable.

[10] In *Intact*, the Court of Appeal provided the following guidance at paras. 63-65 for assessing the reasonableness of an arbitrator’s decision:

“[63] In *Dunsmuir*, at para. 47, Bastarache and LeBel JJ. explained that

[a] court conducting a review for reasonableness inquiries into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[64] When reviewing a decision for reasonableness, a court must consider the reasons proffered and the substantive outcome in light of the legal and factual context in which the decision was rendered: *Re Carrick*, 2015 ONCA 866, 128 O.R. (3d) 209, at paras. 25-26; *Loewen v. Manitoba Teachers' Society*, 2015 MBCA 13, 315 Man. R. (2d) 123, at paras. 74-75.

[65] A decision may be unreasonable where a decision maker fails to carry out the proper analysis or where the decision is inconsistent with underlying legal principles: *Halifax (Regional Municipality) v. Canada (Public Works and Government Services)*, 2012 SCC 29, [2012] 2 S.C.R. 108, at paras. 43 and 47. A decision may also be unreasonable where the outcome ignores or cannot be supported by the evidence: *Halifax*, at paras. 47-49.”

The Parties' Submissions

[11] Northbridge submits that the Arbitrator made the following errors of mixed fact and law:

- (a) Arbitrator Cooper erred by making a quantitative and qualitative finding that the Villa Leonardo staff provided emotional and social support to Maria without sufficient evidence to make such a finding;
- (b) Arbitrator Cooper failed to give adequate or any weight to the emotional and social support provided by Ornella to Maria; and,
- (c) Arbitrator Cooper erred in his application of the facts to the law by failing to adequately consider both the quantitative and qualitative ways in which Ornella provided social, emotional and physical support for Maria.

[12] Northbridge also argues the Arbitrator did not give appropriate weight to the evidence before him about Maria's dependency on Ornella and improperly made inferences about the support given to Maria by Villa Leonardo.

[13] The Applicant submits that this Court should find that Maria was principally dependent for care on Ornella.

[14] RBC submits that the Arbitrator's decision fell within a range of possible, reasonable decisions and that Northbridge has not met its burden of proving that the decision was unreasonable.

[15] The Arbitrator concluded that Maria's physical and social needs were, for the most part, provided for by a combination of Villa Leonardo and her visits to Villa Columbo. He stated that he could not make a finding regarding Maria's emotional needs because she suffered from dementia. Northbridge argues that he could not have made a finding that Maria was for the most part dependent on Ornella for emotional support. His findings were based mostly on Ornella's evidence.

[16] Ornella worked full time and relied on Villa Leonardo to provide care for her mother on a 24-hour basis.

[17] The evidence was that Maria was familiar with, trusted, and listened to staff at Villa Leonardo. They were involved in care and cueing during Maria's waking hours. Villa Leonardo ensured there was consistency with Maria's nurses, personal support workers and family doctor

so that she would be comfortable and have a good relationship with staff, which in turn assisted with her listening and taking daily direction.

[18] RBC emphasizes that the Arbitrator made findings of fact involving Ornella's contributions towards Maria. These included both quantitative and qualitative aspects of her involvement. He considered her evidence at the arbitration and considered both of her examinations under oath.

[19] RBC submits that the Arbitrator considered all aspects of support provided by Ornella to Maria and evaluated the support provided by Ornella reasonably.

[20] The Arbitrator considered both the qualitative and quantitative aspects of care provided through Villa Leonardo and to a lesser extent, Villa Colombo. The evidence was that Villa Leonardo provided almost every aspect of daily care and important supervision, cueing and activities.

[21] The evidence was that Maria cannot live independently. Ornella talked to her daily, controlled her finances, and visited for a few hours each week. RBC submits that the laundry, meal preparation, housekeeping, assistance with bathing/dressing, constant cueing and 24 hour supervision provided by Villa Leonardo is much greater quantitative care than the banking and other activities provided by Ornella.

[22] Northbridge submits that the Arbitrator's finding that Maria received socialization while participating in activities at Villa Leonardo and Villa Columbo and with her Villa Leonardo staff interactions was unreasonable.

[23] I disagree. I accept the submissions of RBC that the Arbitrator's decision was within the reasonable range. There was, in my view, sufficient evidence by the Arbitrator to arrive at his conclusion. I agree that his finding that Maria was not principally dependent on Ornella was reasonable.

[24] For the reasons set out above, the appeal is dismissed.

Costs

[25] If the parties are unable to agree on costs, they may make brief written submissions to me no longer than three pages in length. The Respondent's submissions are to be delivered by 12:00 p.m. on August 11, 2017, and the Applicant's submissions are to be delivered by 12:00 p.m. on August 18, 2017. Any reply submissions are to be delivered by 12:00 p.m. on August 25, 2017.



Pollak J.

Date: July 27, 2017