

Superior Court of Justice
Brampton Small Claims Court

Between:

MVC Towing and Storage Inc.

Plaintiff

and

Aviva Insurance Company of Canada and Deandra Naipaul

Defendants

REASONS

Jacqueline Omotayo, Paralegal for the Plaintiff

Alexander Lee, Counsel for the Defendant, Aviva Insurance Company of Canada
Deandra Naipaul, not represented, not appearing

This Motion was brought by Aviva Insurance Company of Canada (“Aviva”) for a declaration that the Defendant, Deandra Naipaul (“Naipaul”), has no entitlement to coverage under automobile insurance policy A21412079PLA with respect to the matters at issue in this Claim and, accordingly, that the Defendant, Aviva Insurance Company of Canada, be struck from the Plaintiff’s Claim. Aviva seeks substantial indemnity costs on this Motion.

A vehicle owned by Naipaul was involved in an accident on November 16, 2019. The vehicle was insured by Aviva.

Initially, Naipaul said that she and her boyfriend, O’Neil Francis (“Francis”) had attended a funeral. Naipaul said that she left the funeral, leaving her vehicle and the keys with Francis. She said that her boyfriend was assaulted and that the vehicle was

stolen. It was shortly thereafter involved in an accident, having rolled over a number of times.

The Ontario Provincial Police (OPP) attended when the vehicle was discovered damaged. No driver was present at the accident scene. The OPP contacted the Plaintiff, MVC Towing and Storage Inc. ("MVC") and requested that the vehicle be taken to the OPP pound for investigation.

Naipaul told Aviva on December 10, 2019 that she did not want the OPP inspecting the vehicle and that her boyfriend had been missing for over two weeks. Naipaul was told that her coverage situation was not assured and that Aviva would be making investigations about the matter. In a Defence filed by Naipaul February 11, 2026 (over 5 years after the Claim was issued), Naipaul acknowledged that *"my claim was on a without prejudice basis until Aviva can complete there [sic] part of the investigation when they gain access to my car."*

Discussions with the OPP led Aviva to believe that Naipaul may have allowed her boyfriend, Francis, to drive the car. The OPP further advised that Francis had been caught driving with a suspended licence and given a summons shortly before the accident. Allowing a suspended driver to operate the vehicle would contravene Section 4(1) of the Statutory Conditions, *"The 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."* On the other hand, if the vehicle had been stolen and driven by the thieves, there may have been coverage for theft.

The OPP completed their investigation and released the car to MVC on March 15, 2020. MVC picked up the vehicle and stored it for a considerable time. MVC and Aviva had a running dispute about an appropriate storage rate. MVC commenced proceedings under s. 23 of the Repair and Storage Liens Act. Aviva initiated proceedings under s. 24 of the Repair and Storage Liens Act. Ultimately, Aviva recovered the vehicle with the

assistance of the Sheriff. It was a complete loss and sold at auction.

The amount of storage to which MVC is entitled was not the subject of this Motion and no determination is made in that regard. The essence of the Motion was to determine who is responsible for the storage and towing. If there was insurance coverage, Aviva would be responsible. Otherwise, Naipaul is responsible.

Counsel for Aviva referred the Court to Remax Auto Inc. v Gore Mutual Insurance and Singh, 2017 CanLII 59231 (ON SCSM). Deputy Judge Fife stated at para. 11:

“It is trite, however not unimportant, to state that an insurance policy is a contract which is intended to reimburse an insured for insurable losses. There is no privity of contract between Gore and the Plaintiff. I recognize that there may be insurance industry practices that insurers deal directly with service providers however this does not give rise to a claim based on contract.” I agree; this is a succinct and accurate statement of the law.

In order to sort out inconsistencies in Naipaul’s statements, and particularly to determine whether the vehicle was or was not being driven by Francis, Aviva gave formal notice to Naipaul to provide her cell phone records, police reports – which may have shed light on both the accident and the investigation as to a stolen vehicle, and a standard Proof of Loss. Naipaul never did any of these. She did not attend this Motion to speak to the matter.

On September 3, 2020, Aviva formally advised Naipaul that coverage was denied. On September 15, 2020, Naipaul replied, *“I will try and get the car myself thanks.”*

Was there any relief from forfeiture under Section 129 of the Insurance Act which allows relief *“Where there has been imperfect compliance with a statutory condition as to the proof of loss to be given by the insured or other matter or thing required to be done or omitted by the insured....”*

The Court is cognizant of the “Liscumb” test which consists of three elements:

- a) Was the insured’s conduct reasonable?
- b) Was the breach grave?
- c) Is there a disparity between the value of the property forfeited and the damage caused by the breach?

“Liscumb” does not apply as, in this case, there was no flawed compliance. There was no compliance with Section 5(3) of the Statutory Conditions, which state:

“5(3) The insured shall, whenever requested by the insurer, aid in securing information and evidence and the attendance of any witness and shall co-operate with the insurer, except in a pecuniary way, in the defence of any action or proceeding or in the prosecution of any appeal.”

The representative for MVC referred the Court to a number of cases where the insurer was found liable. However, none of these involved the same circumstances as this case, that is, they were not cases where coverage was denied on the basis of the contravention of the Statutory Conditions.

The most compelling of the arguments for MVC was the argument that Aviva’s continuing involvement in negotiating and disputing payment to MVC constituted an estoppel which prevented Aviva from denying liability to MVC. Another way of looking at this would be to ask if there was some kind of waiver of Aviva’s right to deny coverage implicit in Aviva’s dealings with MVC. It’s an understandable question for MVC to ask, but the short answer is - no, there is no such waiver nor estoppel. An insurer in seeking to minimize an insured’s liability or damages is looking after its own interests if there is coverage, but it is also looking after the insured’s interests if there is not. If there was a waiver or estoppel in doing so, insurers would refrain from actively involving themselves in seeking to minimize liability or damages. Those whose coverage ends up denied, as

legitimately happens in some cases such as the current one with Ms. Naipaul, would be worse off.

If it is found that there is no coverage, Aviva asks that the Claim against it be struck. Rule 12.02(1)(a) and 12.02(2)(1) provide:

“12.02 (1) The court may, on motion, strike out or amend all or part of any document that,

(a) discloses no reasonable cause of action or defence;

(2) In connection with an order striking out or amending a document under subrule (1), the court may do one or more of the following:

1. In the case of a claim, order that the action be stayed or dismissed.”

There is no privity between MVC and Aviva, nor any other legal obligation between them. There is no reasonable cause of action against Aviva. It is appropriate, and it is hereby ordered that the Claim as against Aviva be struck and the action against them dismissed.

Rule 15.07 restricts costs on a Motion to \$100.00 unless there are special circumstances. Without a doubt, this Motion has involved special circumstances. It is the culmination of affairs between MVC and Aviva that have been going on since the commencement of this litigation over 5 years ago. The preparation leading up to this Motion is as much as leading up to a trial and, indeed, this matter was set for trial last October and did not proceed when Ms. Naipaul did not show up (as she also did not do for this Motion). Both parties prepared extensive Factums. Aviva's Factum is very well done and of Superior Court quality. Undoubtedly, both parties put in many hours preparing the materials for this day long Motion.

The amount claimed by the Plaintiff is \$28,786.75. At trial, a 15% representation fee or \$4,318.01 plus disbursements would be an appropriate award of costs and that is what the Court would order on this Motion, save for the fact that Aviva had made a Rule 14 Offer which was better than the outcome for MVC on this Motion. Aviva is entitled to ask for double costs or an award of approximately \$9,000.00. Considering the intention of Rule 15.07 and the general philosophy of the Small Claims Court that it should be a forum where matters may be tried without the risk of very substantial costs but, at the same time, acknowledging that Aviva's Rule 14 Offer warrants increased costs, it is the Order of this Court that MVC pay Aviva costs fixed at \$6,000.00.

Dated: April 22, 2026

Ross C. McLean,
Deputy Judge