

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: JOSEPH ADELARD SERGE DUTREMBLE and JESSICA SMITH, Plaintiffs

AND:

HEARTLAND FARM MUTUAL INC., Defendant

BEFORE: The Honourable Justice A. Kaufman

COUNSEL: Ashlee L. Barber, Counsel for the Plaintiffs

David Zuber, Counsel, for the Defendant

HEARD: July 7, 2026

ENDORSEMENT

- [1] The plaintiffs, Joseph Dutremble and Jessica Smith, move for summary judgment against Heartland Farm Mutual Inc. arising from a fire that destroyed their home on August 5, 2020. They allege that Heartland breached the insurance contract and its duty of good faith by failing to pay the amount required to rebuild the dwelling. They seek damages based on present-day reconstruction costs, together with aggravated and punitive damages.
- [2] Heartland maintains that it fulfilled its obligations under the policy and that the plaintiffs' claims raise disputed factual and legal issues requiring a trial.
- [3] The plaintiffs also seek leave to amend their statement of claim to expressly claim punitive damages.
- [4] The central issues raised by the motion are whether the action is suitable for determination by summary judgment, whether the defendant breached the insurance contract or its duty of good faith, and, if so, what damages, if any, are recoverable.

Background facts

- [5] The plaintiffs owned a dwelling that was under construction when it was destroyed by fire on August 5, 2020. At the time of the loss, the property was insured under a policy issued by the defendant.
- [6] Following the loss, the defendant retained an independent adjuster and obtained an appraisal prepared by MBC. The appraisal assessed the cost of rebuilding the dwelling at approximately \$477,000. The appraisal was received by the adjuster on November 2, 2020

and was subsequently provided to the plaintiffs. The defendant paid that amount to the plaintiffs and later increased the payment to address certain items that had initially been omitted from the appraisal.

- [7] The plaintiffs took the position that the appraisal did not adequately reflect the cost of rebuilding the dwelling. They maintained that they were unable to secure contractors willing to undertake the work for the amount appraised and expressed concerns regarding significant increases in construction costs during the Covid-19 pandemic. Throughout 2021 and 2022, the plaintiffs provided the insurer with information concerning rebuilding costs and sought reconsideration of the amount payable under the policy.
- [8] The record contains communications between the independent adjuster and the insurer concerning volatility in the construction market and the potential impact of Covid-19 on rebuilding costs. The plaintiffs rely on those communications as evidence that the insurer was aware of concerns regarding increased construction costs. The insurer ultimately maintained the position that the amount previously paid represented the extent of its obligation in respect of the dwelling claim.
- [9] The plaintiffs commenced this action on July 28, 2022. They allege that the defendant breached the insurance contract by failing to indemnify them for the actual cost of rebuilding their home and by failing to reconsider the claim in light of increased construction costs. They also allege that the defendant breached its duty of good faith in its handling of the claim. The defendant denies those allegations and maintains that it fulfilled its obligations under the policy.
- [10] Prior to the hearing of this motion, the defendant brought a motion seeking to stay the action and compel an appraisal process. That motion was dismissed. As a result, the parties proceeded before me on the plaintiffs' motion for summary judgment.

Issues

- [11] This motion raises the following issues:
 - A. Should the plaintiffs be granted leave to amend their statement of claim?
 - B. Does the record disclose a genuine issue requiring a trial?

A) Should the plaintiffs be granted leave to amend to claim punitive damages?
- [12] At the outset of the hearing, the plaintiffs sought leave to amend their statement of claim to expressly plead punitive damages. The proposed amendment does not introduce a new factual foundation. Rather, it seeks to formalize a remedy that the plaintiffs contend arises from the conduct already pleaded and relied upon in support of their allegations of bad faith.
- [13] Rule 26.01 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg 194, provides that, on motion at any stage of a proceeding, the court shall grant leave to amend a pleading on such terms

as are just, unless prejudice would result that could not be compensated by costs or an adjournment

- [14] The defendant opposes the amendment. It submits that the request was brought shortly before the hearing of the motion and argues that further pleadings, particulars and procedural steps would be required if the amendment is permitted. The defendant further submits that the summary judgment motion was scheduled on the basis of existing pleadings and that the proposed amendment alters the landscape of the litigation
- [15] I am not persuaded that the amendment would cause non-compensable prejudice. The plaintiffs have alleged bad faith from the outset, and the facts said to support punitive damages have long been known to the defendant. Those allegations were addressed in the parties' motion materials and oral submissions. The defendant has not established that further discovery or any material delay would result from the amendment.
- [16] Leave to amend is therefore granted. The amendment is deemed to have been made as of the date of the hearing.

Principles Governing Summary Judgment

- [17] Rule 20 of the *Rules of Civil Procedure* permits the court to grant summary judgment where there is no genuine issue requiring a trial.
- [18] In *Hryniak v. Mauldin*, 2014 SCC 7, the Supreme Court of Canada emphasized that summary judgment is designed to provide fair and just adjudication in a timely, affordable and proportionate manner. The court must determine whether the motion record permits it to make the necessary findings of fact, apply the law to the facts, and reach a fair and just determination on the merits.
- [19] There will be no genuine issue requiring a trial when the summary judgment process allows the judge to reach the necessary findings of fact and law on a motion record that provides a sufficient basis for doing so. Conversely, summary judgment must be refused where the record reveals genuine disputes of material fact, credibility issues, or other matters that cannot fairly be resolved without the advantages of a trial.
- [20] The court may weigh evidence, evaluate credibility, and draw reasonable inferences. Those powers should be exercised only where the motion record provides a sufficient basis for a fair and just adjudication and summary judgment is a proportionate alternative to trial.
- [21] I will now apply these principles in considering the plaintiffs' claims and the remedies sought.

B. Does the record disclose a genuine issue requiring a trial?

- [22] The plaintiffs submit that Heartland breached the policy by failing to pay the amount required to rebuild their home. They contend that Heartland was repeatedly advised that the MBC appraisal did not reflect pandemic-era construction costs and that its independent

adjuster recommended further review. They also rely on evidence that Heartland later agreed to consider COVID-related construction increases for other insureds.

- [23] Heartland responds that it paid the full amount owing under the policy, including additional amounts for items initially omitted from the appraisal. It submits that replacement-cost benefits were conditional on the plaintiffs rebuilding within a reasonable time and incurring the relevant costs.
- [24] Heartland further submits that the reasonable time for rebuilding, the amount of the loss, the recoverability of subsequent cost increases, and whether the plaintiffs' estimates reflect materials of similar kind and quality are all disputed issues requiring a trial.
- [25] For the reasons that follow, I am satisfied that the record raises genuine issues requiring a trial.
- [26] In *J.I.L.M. Enterprises & Investments Limited v. Intact Insurance*, 2017 ONSC 357, Newton J. summarized the principles governing an insurer's obligations in handling a claim. An insurer must act promptly and fairly when investigating, assessing and resolving claims made by its insured. It must assess the merits of a claim in a balanced and reasonable manner, conduct a reasonable investigation, and pay a claim in a timely manner where there is no reasonable basis to withhold payment. An insurer must also give as much consideration to the interests of its insured as it does to its own interests and exercise reasonable care in the adjustment and settlement of claims.
- [27] The insurance policy provided replacement-cost coverage for the dwelling to a limit of \$671,000. Heartland does not dispute that the fire of August 5, 2020 resulted in a total loss of the dwelling or that the policy was in force at the time of the loss.
- [28] Shortly after the loss, Heartland retained independent adjusters and obtained a replacement-cost appraisal from MBC, which initially assessed the rebuilding cost at approximately \$477,000. The plaintiffs disputed that amount, maintaining that contractors were unwilling to rebuild for the appraised sum and that the estimate did not reflect pandemic-related increases in construction costs.
- [29] The plaintiffs communicated these concerns to the independent adjuster and advised that they had been unable to find a contractor willing to rebuild the dwelling for the appraised amount. On February 3, 2021, the adjuster expressed concern regarding "the actual potential rebuild cost for this house," noting that there was "a lot of volatility in the construction market now due to Covid-19." This evidence supports the plaintiffs' position that the MBC appraisal may not have accurately reflected the cost of reconstruction at the relevant time.
- [30] On May 3, 2021, the independent adjuster advised Heartland that the "ICF + Slab quote may represent an actual Covid-19 related construction cost increase." Heartland's adjuster responded the same day that he had previously advised that "we weren't interested in any inflationary increases in costs."

- [31] The plaintiffs sought quotes from a number of contractors to rebuild the dwelling. According to the plaintiffs, none of the quotes approximated Heartland's adjusted rebuilding estimate. On March 8, 2021, the plaintiffs obtained a quote in the amount of \$697,991, plus HST, an amount that slightly exceeded the policy limit of \$671,000. They provided that quote to the independent adjuster.
- [32] On April 4, 2021, the plaintiffs received a revised rebuilding estimate of \$501,438.90. They maintained that the revised estimate remained inadequate because it did not account for increases in the cost of materials arising from the pandemic.
- [33] On April 7, 2021, the independent adjuster advised the plaintiffs that Heartland would maintain its position and would not pay more than the amount reflected in the MBC estimate. The adjuster acknowledged that the plaintiffs disputed the adequacy of the appraisal and advised them that they might wish to invoke the appraisal process under the Statutory Conditions of the policy.
- [34] Statutory Condition 11 provides the following:

APPRAISAL

In the event of disagreement as to the value of the property insured, the property saved or the amount of the loss, *those questions shall be determined* by appraisal as provided under The Insurance Act before there can be any recovery under this contract whether the right to recover on the contract is disputed or not, and independently of all other questions. There shall be no right to an appraisal until a specific demand therefor is made in writing and until after proof of loss has been delivered. (emphasis added).

- [35] The plaintiffs did not invoke the appraisal process when the dispute arose. The record does not explain why. Their disagreement with Heartland concerned the amount of the loss and the cost of reconstruction, matters that Statutory Condition 11 expressly provides "shall be determined" by appraisal. Heartland ultimately invoked the process on November 21, 2024.
- [36] Before this motion was heard, Heartland moved to compel an appraisal. The plaintiffs opposed that motion unless the appraisal used a present-day valuation date.
- [37] In dismissing the defendant's motion, Justice Doyle acknowledged the mandatory nature of the appraisal mechanism. However, she observed that courts have declined to order an appraisal where the dispute extends beyond the determination of quantum. In this litigation, the parties disagree not only on the amount of the loss, but also as to the appropriate valuation date, an issue that fell outside the scope of the appraisal process. Justice Doyle considered the parties' inability to agree on the valuation date to be fundamental: *Dutremble et al. v. Heartland Farm Mutual Inc.*, 2026 ONSC 3230, at para. 29.
- [38] The plaintiffs submit that their damages should be assessed based on present-day reconstruction costs. In support of that position, they rely on a rebuilding estimate prepared

by Brayman Construction in April 2023, which assessed the cost of rebuilding the dwelling at \$748,997.73, inclusive of HST. The plaintiffs have also filed the affidavit of Benjamin Brayman, the owner of Brayman Construction, who states that the cost had increased by a further 15 percent by the time of the hearing.

- [39] The defendant relies on the affidavit of John Valeriote, Executive General Adjuster and Director of Mediation and Appraisal Services at Crawford & Company. Mr. Valeriote states that he has worked as an adjuster for 33 years. Having reviewed the MBC appraisal, he expresses the opinion that the funds paid by the defendant were sufficient to permit the plaintiffs to rebuild the dwelling. He further opines that the Brayman reconstruction estimate overstates the cost of rebuilding because labour and material costs have declined since the peak of the Covid-19 pandemic. In his view, the amount paid by the defendant remains sufficient to cover the cost of labour and materials required to reconstruct the dwelling. Mr. Valeriote was not cross-examined on his affidavit. In a supplementary affidavit, Mr. Brayman disagrees with his conclusions.
- [40] On the present record, I am unable to reach a fair and just determination of the plaintiffs' claim for consequential damages. Neither Mr. Valeriote nor Mr. Brayman adequately explains the methodology or assumptions underlying their opinion, and neither was cross-examined. The record therefore does not permit me to determine whether the amount paid remains sufficient to rebuild and, if not, the extent of the shortfall.
- [41] On the record before me, it appears likely that the plaintiffs were unable to secure a contractor willing to rebuild the dwelling for the amount reflected in the MBC appraisal. There is also evidence that the defendant was unwilling, at least initially, to consider whether increased construction costs associated with the Covid-19 pandemic warranted an adjustment to the claim. Nevertheless, the plaintiffs had available to them a statutory and contractual mechanism specifically designed to resolve disputes concerning the amount of the loss and they chose not to invoke it.
- [42] In my view, that failure is relevant to the issues of causation and mitigation. Had the appraisal process been invoked when the dispute first arose, the amount of the loss could have been determined years before this motion was heard. While the outcome of such a process cannot now be known, the plaintiffs have not established that the substantial increase in rebuilding costs they now claim was caused solely by the defendant's conduct.
- [43] Even if I were to accept that the MBC appraisal understated the cost of rebuilding the dwelling, and there is compelling evidence capable of supporting that conclusion, a genuine issue requiring a trial remains with respect to the plaintiffs' claim for consequential damages. The plaintiffs contend that their damages should be assessed based on present-day reconstruction costs. The record, however, does not permit me to determine whether the reconstruction estimates advanced by the plaintiffs accurately reflect the cost of rebuilding the dwelling, whether the plaintiffs could have mitigated those losses through the appraisal process, or the extent of any present-day shortfall. Those issues are central to the plaintiffs' claim for consequential damages and cannot be fairly resolved on this motion.

- [44] A similar conclusion applies to the plaintiffs' claim relating to the contents of the dwelling. The plaintiffs maintain that they were unable to replace many of the destroyed items within the time contemplated by the policy because they lacked a permanent residence in which to store them. They submit that, as a result of the defendant's failure to pay sufficient funds to permit the reconstruction of the dwelling, they were effectively prevented from replacing the contents and recovering their full replacement value.
- [45] The plaintiffs' position is not without force. If the defendant failed to provide sufficient funds to permit reconstruction of the dwelling, that failure may have had consequences extending beyond the building claim itself.
- [46] That claim however depends upon a series of disputed factual and legal issues, including whether the funds paid by the defendant were insufficient to permit reconstruction, whether the plaintiffs could reasonably have mitigated their loss, and whether any inability to replace the contents was caused by the defendant's conduct. On the record before me, those issues cannot be fairly and justly determined through the summary judgment process.
- [47] Finally, I am unable to fairly determine the plaintiffs' claims for aggravated and punitive damages on the present record. Those claims are premised on allegations that the defendant acted unreasonably and in bad faith in the handling of the claim. As discussed above, the evidentiary record discloses genuine issues requiring a trial which bear directly on the plaintiffs' claims for aggravated and punitive damages and cannot be resolved on a motion for summary judgment.

Disposition

- [48] For the foregoing reasons, the plaintiffs' motion for leave to amend the claim is allowed, but their motion for summary judgment is dismissed.
- [49] In the circumstances, I would exercise my discretion to order costs in the cause. The outcome of this motion turns on the existence of genuine issues requiring a trial rather than findings on the substantive merits of the parties' claims. It is therefore appropriate that responsibility for the costs of the motion abide the ultimate disposition of the action.

A. Kaufman J.

Date: October 9, 2026