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ADJUSTERS ARE AGENTS OF THE INSURED IN RETAINING REMIEDIATION CONTRACTORS



In February, 2008 the British Columbia Court of Appeal considered and clarified whether an insurance adjuster who engages a contractor to effect repairs and reconstruction to damaged property, can be properly characterized as the property owner's agent in that transaction.

THE FACTS

The defendants Ingobert, Maria, Roman and Roswitha Seidler (the "Seidlers") owned property that was damaged by fire. The Seidlers were insured against property damage caused by fire under an insurance policy issued by Federation Insurance Company of Canada ("Federation").

Federation appointed BCAC Adjusting Ltd. ("BCAC") to administer the claim. BCAC prepared specifications outlining the work to be done and sought bids from contractors. After receiving two bids, BCAC asked the Seidlers if there were any others who should be invited to bid. The Seidlers gave two names, including Gebhard Hoelzler Construction Ltd. ("Hoelzler Construction").

Hoelzler Construction quoted BCAC a price of \$128,876.00 plus GST, and got the job.

Over the course of the project, the relationship between the Seidlers and Hoelzler Construction deteriorated. The Seidlers complained about the quality of Hoelzler Construction's work, were concerned about moisture in the walls and did not think they were getting full restoration of the building.

Hoelzler Construction, on the other hand, thought the Seidlers were making unreasonable demands, given the age and pre-existing condition of the building, and were trying to have the building improved, rather than simply restored to its pre-fire condition.

Eventually, one of the Seidlers phoned Hoelzler Construction to say that he didn't want anyone in the building. Hoelzler Construction considered that a dismissal from the job and returned the keys.

Hoelzler Construction then sued the Seidlers to recover approximately \$58,000.00 which it alleged was the balance owing for labour and materials at the time the work ceased.

In opposing the action the Seidlers denied having contracted with Hoelzler Construction. The Seidlers argued that BCAC did not act as their agent in hiring the plaintiff to do the work, and that BCAC had no authority to hire Hoelzler Construction.

At trial, the court found that BCAC had acted as agent for the Seidlers in contracting with Hoelzler Construction for the repair work and ordered the Seidlers to pay the amount claimed to Hoelzler Construction, less a set-off for the cost of repairing some deficiencies in Hoelzler's work. The Seidlers appealed.

THE BC COURT OF APPEAL'S DECISION

The Court of Appeal upheld the trial judge's decision and confirmed:

- a) the adjuster had acted as agent for the Seidlers in contracting with Hoelzler Construction for repair work; and
- b) there was a contract between the Hoelzler Construction and the Seidlers under which the Seidlers were liable to pay the balance owing.

The court confirmed that the adjuster in this case had a dual role. First, it was appointed by Federation to quantify the amount of the loss payable under the terms of the policy. Second, it acted as agent for the Seidlers and this role arose from the Seidlers' acceptance of and reliance upon the assistance provided by the adjuster in arranging for the repairs. The Seidlers had acquiesced in the adjuster's soliciting bids on their behalf from interested contractors and had in fact suggested additional contractors to whom the specifications might be sent. Under these circumstances, it was not open to the Seidlers to say that they had no contractual relationship with the contractor.

PRACTICAL IMPACT FOR THE INSURANCE INDUSTRY

Although most insurance policies only require the insurer to indemnify the insured for the cost of repairs (assuming the policy provides for replacement cost indemnification), most insureds have neither the cash flow nor expertise to engage a contractor, instruct the contractor on what constitutes proper replacement and pay for the repair work. For that reason, insurers routinely engage adjusters to manage such projects and pay for the work as it progresses.

This ruling preserves the pragmatic approach that has been adopted by most insurers in effecting repairs and confirms that notwithstanding the practical accommodation, it is the insured property owner (albeit by its agent, the insurance adjuster) who contracts with the remediation contractor.

Of course, it remains open to the insured to manage the repairs itself, and seek reimbursement from the insurer to the extent allowed by the policy.

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