

Alberta Court of Queen's Bench

Citation: Thomas v. Manufacturers Life Insurance Co.

Date: 2001-03-23

Docket: 9901-10105

Clark. J.

Counsel:

C. Rice, for Plaintiff;

D. Pick, for Defendant;

[1] We are here today to give judgment with respect to an application. It is an application in the action of *Lynne Thomas v. The Manufacturers Life Insurance Company, et al.* The application is brought by the Manufacturers Life Insurance Company, Manulife, one of the defendants, for summary trial of an issue pursuant to Rule 158.1 of the Alberta Rules of Court. The issue to be tried is whether a claim for payment under an insurance policy is barred by having been filed outside the applicable limitation periods provided by the terms of the policy of insurance and provided for under the Insurance Act of Alberta.

[2] The facts with respect to the various issues before the court are set forth in the affidavit of Jeannette Rousseau, who is an employee of Manulife. That affidavit was filed on February 11th, 2000.

[3] The facts material to this application can be more succinctly stated. Walter W. Thomas, the deceased, was insured under a Precision Drilling Corporation group policy issued by Manulife. On May 8th, 1996, the deceased, Mr. Thomas, applied to have optional life coverage added to his group insurance. Lynne Thomas, the plaintiff, is the wife of the deceased and the beneficiary named under the group policy and under the optional insurance. The deceased was included under the group insurance as an employee of the company, or a subsidiary of the company. The optional insurance was available upon application through the company under the group insurance. The deceased applied for optional insurance through the company.

[4] The deceased died on February 18th, 1997. The proceeds of the group insurance were paid to Thomas. Thomas filed a proof of claim with respect to the optional insurance on March 19th, 1997. Manulife took the position that the deceased made material misrepresentations in his statement of health with respect to the extent of his consumption of alcohol in the five years prior to his application for the optional insurance. Manulife has declined coverage under the optional insurance and maintains that there were material misrepresentations and that they had an effect on the insurability of the deceased. In defence of their position, they claim in addition, and it is a preliminary issue, that Thomas did not file her claim against Manulife within the applicable limitation periods.

[5] The statement of claim was originally initiated against Manulife, but was subsequently amended to name the company Precision Drilling Corporation as a third party defendant. The company is not taking an active part in this application, but I might note that Mr. Klassen,

counsel for the company, has been present for the application and was involved on a watching brief basis.

[6] In this application the court is asked to deal only with the limitation issue. It has been agreed amongst counsel that the question of misrepresentation is a separate triable issue. The relevant provisions of the insurance policy are as set forth in the brief of the applicant. Under the Submission of Proof section, it states:

Proof that benefits are payable must be submitted by or on behalf of the employee and receipt by Manulife Financial at its head office for Canadian operations or one of its groups claims offices within 90 days from the date of the loss for claims for life and accidental death and dismemberment benefits.

[7] Under the heading, Time Limit on Legal Action, it states:

No such action may be brought more than two years after the last day on which proof of claim would have been accepted under the policy.

[8] The pertinent dates that relate to this application, once again taken from the applicant's brief, are as follows:

The policy holder's death occurred on February 18th, 1997.

The proof of claim was filed on March 19th, 1997.

The 90-day expiry period occurred on May 19th, 1997.

The statutory limitation period, subject to argument, occurred on May 19th, 1999.

Formal denial of claim came forward in a letter dated June 22nd, 1998.

Denial of appeal was made on September 15th, 1998.

Arguably, the policy limitation period is May 20th, 1999.

The statement of claim was filed June 21st, 1999.

The statement of defence was filed August 19th, 1999.

[9] Manulife contends that the claim is barred for having been brought outside the applicable limitation period as set out in the policy under the Insurance Act. The claim was required to be filed no later than two years after the last day on which proof of claim would be accepted under the terms of the policy. The proof of claim was required to be filed by May 19th, 1997, which required the statement of claim to be filed on May 20th, 1999. That is the position of Manulife.

[10] The relevant provisions of the Insurance Act are Sections 272 and 275(1). For the purpose of this, I am not going to recite those particular provisions, but it is a matter of record in the fillings. Section 275 of the Insurance Act requires that an action be commenced within one year of the furnishing of the evidence required by Section 272. Section 272 sets out the evidence which must be provided to an insurer by a claimant before insurance money becomes payable.

[11] Manulife claims that the information to be provided under Section 272 was contained in the proof of claim form filed by Thomas on March 19th, 1998. There is no question that the information provided by Thomas was information contemplated by Section 272. However, it is clear from the evidence before the court that the information that was provided gave rise to questions on the part of Manulife, questions that precipitated a further investigation that was carried out for a very considerable period of time. It was not until June 22nd, 1998 that Manulife finally wrote to Energy Industries, the deceased's employer, advising that, based upon information uncovered during their investigation, the claim for optional life had been declined.

[12] Between the time of the filing of the proof of claim and the receipt of the letter declining coverage, Thomas had been in regular, sometimes daily, contact with representatives of Manulife. She appears to have been advised repeatedly that the investigation was ongoing and they had not yet made a decision with respect to payment under the policy. At no time did a representative of Manulife ever mention to Thomas that she was facing a limitation period. At no time was Thomas ever advised to initiate legal proceedings for payment of the insurance proceeds under the optional insurance.

[13] It is Thomas's position that Manulife did not have the evidence that they required, that they did not have, and I quote from the section, "sufficient evidence" to make a decision until shortly before the preparation of the letter of June 22nd, 1998.

[14] There is some confusion as to whether Thomas ever received a copy of the policy, or if she did, when the policy was received. There is evidence that at no time was a policy of insurance issued by Manulife to Thomas.

[15] Manulife takes the position that the proof of claim filed by Thomas constitutes sufficient evidence under Section 272 of the Insurance Act, that the limitation period as stipulated in Section 275 began to run with the filing of the proof of claim and that the action commenced by Thomas is outside limitation period.

[16] The term, "sufficient evidence," as used in Section 272 of the Insurance Act, is not defined. There is surprisingly little case law on point. The cases that have dealt with the issue are in conflict with one another. Manulife suggests that when payment under the policy was not received within the 30-day period in the Act, it then became the responsibility of Thomas to initiate legal proceedings to enforce payment. She did not do so on a timely basis and her claim is thus barred.

[17] In support of this position, they have referred me to several Canadian decisions: *Vaillancourt v. Imperial Life Assurance Co. of Canada* [(1991), 2 Alta. L.R. (3d) 115 (Alta. Master)], a 1991 decision of Master Funduk, in Edmonton; *Deveau Estate v. Blue Cross Life Insurance Co. of Canada* [(1996), 443 A.P.R. 286 (P.E.I. T.D. [In Chambers])], a 1996 decision of Jenkins J. of the Prince Edward Island Supreme Court Trial Division; *Heath-Ranger Estate v. Canada Life Assurance Co.* [(1998), 27 C.P.C. (4th) 57 (Man. Q.B.)], a 1998 decision of Kennedy J. of the Manitoba Court of Queen's Bench; and *Kucher v. Seaboard Life Assurance Co.*, a 1997 decision of Justice Clarke of the Alberta Court of Queen's Bench [(1997) A.R. Uned. 116 (Q.B.)] [1997 CarswellAlta 440 (Alta. Q.B.)].

[18] Thomas, on the other hand, takes the position that Manulife did not have sufficient evidence until it completed its further investigations and finally wrote to Thomas, declining insurance coverage. This position finds support in *Ingram Estate v. Imperial Life Assurance Co. of Canada* [(1985), 53 O.R. (2d) 442 (Ont. H.C.)], a 1985 decision of Judge Killeen of the Ontario District Court. Judge Killeen concluded that the insurance company only had sufficient evidence when it concluded its investigation and wrote to the claimant declining coverage. This decision was upheld on appeal and is reported at (1986), 54 O.R. (2d) 762 (Ont. H.C.). It is noteworthy that this decision was considered by Jenkins in the Deveau Estate case, and Jenkins disagreed with this decision and went in a different direction than that decision.

[19] In this case, I find that Manulife did not have sufficient evidence within the meaning of Section 272 of the Insurance Act of Alberta until it completed its investigation and wrote to the employer, declining coverage. I have concluded that, in the circumstances of this case, Manulife initiated an investigation as a result of the filing of the proof of claim by Thomas and maintained regular and ongoing contact with Thomas, contact which was of such a nature as to lead Thomas to conclude that the company did not have sufficient evidence until it completed its investigation and wrote to the deceased's employer on June 22nd, 1998.

[20] I am satisfied that the actions of the representatives of Manulife led the claimant to conclude that the information set forth in the proof of claim was not sufficient and a further investigation was warranted. I am satisfied that, in the circumstances of the case, Manulife did not have sufficient evidence within the meaning of Section 272 until approximately June of 1998 and that the two-year limitation period did not commence to run until that time.

[21] I have great difficulty with the suggestion that the limitation period stipulated in Section 275 of the Insurance Act will start to run against a claimant without notice on an indeterminate date that is not communicated to a claimant when the insurance company decides unilaterally and internally that it has sufficient evidence within the meaning of the Act. The problem is aggravated in this case where the insurance company maintains regular contact with the claimant and leads the claimant, intentionally or not, to believe that they have not reached a decision and are continuing an investigation to permit them to come to a conclusion with respect to the claim. I am of the opinion that the limitation defence argument in that case borders on the unconscionable.

[22] There is another reason for my decision. The matter came before me under Rule 158(1) for a summary trial on a preliminary issue. Counsel agree that there is a separate substantive issue on the question of misrepresentation that is to be placed before the courts for trial of an issue. That being the case, I am of the opinion that I would be remiss were I to permit a limitation argument of the kind advanced in this case to deny Thomas the opportunity to have her claim for payment under the optional insurance policy heard on its merits.

[23] For those reasons, I deny the application of Manulife and direct that the matter proceed to trial.

[24] MR. RICE: My Lord, I am not sure what Mr. Pick's position may be with respect to costs. If we could leave that unaddressed this morning, I can discuss that with him.

[25] THE COURT: Okay. I left the question of costs open. I did not know whether it was to be in the cause or not, but it is up to counsel. There is no question that the plaintiff has been successful in this application, but I will leave it up to counsel to make a decision. If counsel have a problem with that, they should come back to me and I will deal with the question of costs.

[26] MR. RICE: Thank you.

[27] MR. PICK: Thank you, sir.

[28] THE COURT: I want to thank counsel. As I mentioned previously, it is an interesting point of law. There is no clear-cut authority on it and there should be, particularly because the provision in question is in most of the insurance acts right across the country, and the briefs were well prepared and well argued. Thank you very much.

Application dismissed.