IN FACT AND IN LAW

Insurance Law

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Is a hockey card collection covered as "moveable property usual to the occupancy of a dwelling"?

By Odette Jobin-Laberge

On February 11 of this year, the Court of Appeal in *Lusignan v. Compagnie d'Assurance Bélair Inc.*[1] granted the insured's appeal and held that a hockey card collection with a proven value of $28,408.86 was property covered under the insurance policy.

In that case, the insurer argued that the contract only covered property "usual to the occupancy of a dwelling" and that a hockey card collection of that value was not "usual". As a subsidiary argument, the insurer claimed that the hockey cards were "valuables" within the meaning of the insurance contract and, as such, subject to the coverage limitation of $500.00. The insurer also argued that at the time of subscribing to the insurance policy the insured had failed in its obligation to declare circumstances likely to have affected the insurer's appreciation of the insurable risk.

The Court of Appeal rejected the insurer's last argument as a piece of sophistry that had it known that the insurer had such a valuable collection it would not have agreed to the insurance. The insurer was aware of the risk of theft and had insured the property for up to $30,000. The nature of the insured property only serves to determine if the contractually stipulatd exclusions and specific limitations applied. The Court then turned to a consideration of the excluded property and the specific limitations contained in the contract and held that none applied in the case before it. The cards were neither a stamp collection, a coin collection nor valuables consisting of jewellery or precious stones etc., which were the subject of the exclusions.

Accordingly, the Court held that an insured could have any kind of collection and that collections *per se* can be property usual to the occupancy of a dwelling. This applies only where the contract does not specifically limit or exclude a particular kind of collection from coverage.

Although the Court made no reference to case law, the issue had previously arisen in a case where an insured had an unusual quantity of certain property. In *Le Groupe Desjardins, Assurances Générales v. Nolet*[2] the ensured stored a large number of auto parts in the basement of his property and his insurance policy defined contents coverage as covering property [translation:]"of any nature likely to be found in a dwelling place". Justice Bisson, speaking for the majority, held that these terms are very broad and accordingly, should be liberally interpreted. The insured was neither a garage man nor a mechanic and used these items for personal use. Accordingly, the judge of first instance had not erred in law by applying a subjective standard to characterize the use. In Justice Bisson's view, an objective interpretation would have found that entirely innocuous property, such as a handyman's equipment or an amateur huntsman's firearms would not be covered on the grounds that the majority of the population do not own such property and that they would not therefore be [translation:]"usual to the occupancy of a dwelling".

The Court of Appeal's position is consistent with a larger body of case law decided in the common law provinces where insurance policies covering personal property stipulate that the property must be "usual or incidental to the occupancy of a dwelling".

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[1] R.E.J.B. 2000-16427 and JE 2000-431, reversing R.J.Q. 446

[2] 1985 C.A. 262

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For example, in *Clover v. Canadian Home Assurance Co.*[3] which also dealt with the possession of a sizeable quantity of automobile parts that the insured kept in his garage, after finding that the terms were broad enough to include anything that a person would normally keep in his home in pursuit of a given hobby, the Court stated that the stock of auto parts was property usual or incidental to the occupancy of a dwelling.

In another case, *Poiron v. Advocate General Insurance Co. of Canada*[4] the insured had a large quantity of tools and equipment ranging from soldering tools and sanding equipment to upright drilling machinery, in fact practically everything a person would need to operate a sawmill; he also had a tractor. The judge of first instance came to the conclusion that in applying a subjective test and, to the extent that such property was used for private rather than commercial purposes, they were property covered under the policy. The Court of Appeal reversed this judgement only on the issue of *quantum*, adopting the subjective approach of the judge of first instance regarding how the property was to be characterized. The dissenting judge in the case was of the view that the quantity of the property in the case exceeded any objective standard regarding what is normally and incidentally found in a dwelling, but his opinion pertained basically to the appreciation of the facts and was not a rejection of the rule that a subjective test must be applied.

Accordingly, an insurer seeking to limit its liability must do so in appropriate terms, either by specifically excluding certain categories of property or by inserting specific limitations of liability, failing which the insured's claim will be admissible and the insured will be entitled to be compensated for the actual value of the property on the day the loss occurred, up the stipulated amount of coverage.

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[3] [1981] I.L.R. I-358 (Alberta C.A.)
[4] 12 C.C.L.I. 21

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