

Who is Insured in the Blended Family Era?

By Jonathan Lacoste-Jobin

On September 27, 2007, Mr. Justice Jean-Guy Dubois of the Superior Court rendered a judgment interpreting the definition of the word “insured” in an insurance policy, more particularly as regards the exclusion of damages caused to a [Translation] “person living under the same roof”.¹

The facts

The parents of plaintiff Hugo Bérard divorced in 2000. Nathalie Gravel, his mother, who was also a plaintiff, had custody. On August 29, 2004, Hugo was visiting his father, Michel Bérard, who lived with his common law spouse, Carole Tremblay and her son, Anthony Tremblay. During the visit, Anthony Tremblay allegedly fired a “paintball” gun at Hugo, hitting him in the right eye and causing serious injuries. Following the incident, Hugo and his mother instituted proceedings against Michel Bérard, Carole Tremblay and Anthony Tremblay.



Michel Bérard was insured with Promutuel Verchères, Société mutuelle d’assurance générale (“Promutuel”) under a tenant’s liability insurance policy in which he was the named insured. Under the definition of the word “insured” contained in section 1 of the policy, Anthony Tremblay and Carole Tremblay were also insured. Promutuel denied coverage and the defendants Michel Bérard, Carole Tremblay and Anthony Tremblay therefore filed a motion for forced intervention, requiring that Promutuel assume their defence in the suit by Hugo and his mother.

The insurance policy

The “General Agreement” section of the policy contained the following definition of the word “insured”:

[Translation] “The words “YOU” and “YOUR” pertain not only to you as designated insured in the Summary of Coverage, but, provided that he/she lives under your roof: your spouse, the members of your family, the members of your spouse’s family and the persons under 21 years of age in your custody or in the custody of the other aforementioned persons.”

The policy also stated the following:

[Translation] “Moreover, WE DO NOT INSURE damage caused:

(...)

d) to the persons insured by this policy (...)

¹ *Bérard v. Bérard*, 2007 Q.C.C.S. 4430, September 27, 2007, number 765-17-000539-066, Honourable Jean-Guy Dubois.



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The judgment

The defendants pleaded that Hugo did not live under the same roof as Michel Bérard and that he thus must not be considered as an insured within the meaning of the policy. Therefore, the insurer would have to assume the defendants' defence. Promutuel Verchères contended, on the other hand, that Hugo was an insured because he lived with his father one weekend out of two, as well as one week during the Christmas period and one week during the summer. Because he lived under the same roof as his father, the damages he suffered were not covered, since he himself was insured within the meaning of the policy.

The Court concluded that Hugo was not an insured within the meaning of the policy. Mr. Justice Dubois pointed out that there was no shared custody between Hugo's father and mother; only his mother had legal custody of him. Hugo thus did not live under the same roof as his father; he only visited him from time to time, in accordance with the divorce judgment regarding his father and mother.

To rule in this way, the Court based itself on the Court of Appeal's decision in *Bélair Compagnie d'assurance v. Martin Moquin*². In that case, Mr. Justice Delisle concluded that to consider a person as living under the same roof as another, this must [Translation] "usually" be the case. In this sense, a person who is only passing through, for example, visiting for a few days, cannot be considered as living under the same roof as the insured. It therefore must be determined [Translation] "whether the person usually, normally and

ordinarily lives with the insured to the point that this person can be considered, in one capacity or another, as part of the regular group of persons inhabiting the dwelling involved".

Mr. Justice Dubois concluded that Hugo did not fall within the scope of this definition because he usually lived with his mother and was only with his father for a few days. Since Hugo Bérard was not an insured within the meaning of the policy but rather a third party, the defendant Promutuel Verchères had to assume the defendants' defence in the suit by Hugo Bérard and his mother, Nathalie Gravel.

Comments

This restrictive interpretation of the definition of "insured" allowed Hugo Bérard to sue his father, which he could not have done if his parents had shared custody. This decision offers useful criteria for analyzing recourses between members of disunited families.

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² 500-09-001268-929, July 5, 1996, Mr. Justice Jacques Delisle.

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