

CITATION: TD Insurance Company v. Skrinjar, 2025 ONSC 266
DIVISIONAL COURT FILE NO.: 523/24 JR
DATE: 20250130

ONTARIO

**SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT**

SACHS, BACKHOUSE, FAIETA, JJ.

BETWEEN:)	
)	
TD INSURANCE COMPANY and)	<i>Dean Melamed, for the Applicants</i>
SECURITY NATIONAL INSURANCE)	
COMPANY)	
)	
Applicants)	
)	
– and –)	
)	
STEVE SKRINJAR)	<i>Matthew J. Sutton, for the Respondent</i>
)	
Respondent)	
)	
)	
)	HEARD at Toronto: January 6, 2025

REASONS FOR DECISION

Sachs J. (Orally):

Overview

[1] This is an application for judicial review seeking to set aside a determination/valuation by an umpire made within the purview of Statutory Condition 11 which, pursuant to section 148 of the *Insurance Act*, R.S.O. 1990, c I.8, is deemed to be part of every fire loss insurance policy in Ontario.

[2] This proceeding arises out of a fire loss at the Respondent’s property. The Respondent had a homeowner’s insurance policy with the Applicant, TD Insurance Company, that provided coverage of up to \$5,000,000, for loss or damage arising out of a fire. Provided certain conditions were met [there is no dispute that these conditions were met], the insurer was obligated to pay the cost to repair or replace, whichever is lower.

[3] After the fire, the Respondent submitted his proof of loss statement to TD Insurance, which was denied. The Respondent invoked the appraisal process under s. 128 of the *Insurance Act*. The Applicant’s and TD Insurance’s appraisers mutually agreed upon Peter Volaric as the Umpire for the appraisal (the “Umpire”).

[4] Prior to the appraisal hearing, each party obtained costs estimates from their respective experts. There was a fundamental disagreement between the appraisers as to whether the repair of the indoor pool in the property was a “viable option.” TD Insurance’s appraiser argued that it was. The Respondent’s appraiser submitted that it was not.

[5] As conceded by TD Insurance’s appraiser at para 49 of his Affidavit, “[TD Insurance] must only pay the less expensive option between repairing and replacing the damaged property if the former is a viable alternative”. In other words, if repair is not a viable option, then the indoor pool damage would be evaluated on the basis of replacement cost.

[6] The appraisal hearing proceeded on August 7, 2024. The first issue that was addressed and considered by the two appraisers and the Umpire was whether repair was a viable option. After reviewing the material filed in advance of the hearing, which consisted of over 700 pages, and after having a discussion with the appraisers, the Umpire made a determination that repair was not a viable option and made an award based on replacement cost.

[7] TD Insurance challenges the Umpire’s Award on three bases:

[1] It alleges that the Umpire exceeded his jurisdiction when he determined whether the pool could not be repaired but had to be replaced.

[2] The Umpire demonstrated a reasonable apprehension of bias in the process leading to and the findings made in his appraisal award dated August 7, 2024. (the “Award”)

[3] The Umpire demonstrated a lack of procedural fairness in the process leading to the findings contained in the Award.

Standard of Review

[8] There is no issue that the Award must be reviewed on a standard of reasonableness. However, as set out by this court in *Birmingham Business Center Inc. v. Intact Insurance Company*, 2018 ONSC 817, at para. 5, the appraisal process that led to the Award exists within a unique statutory scheme with a result that the court has recognized the following:

[1] The purpose of the process is to provide an expeditious and easy manner for the final and binding settlement of claims. As a result, the process is not adjudicative in nature; it is based on discussion and on the sharing of valuation expertise. An umpire can arrive at their decision based on their own knowledge and expertise. An appraisal requires neither a hearing nor a consideration of the evidence nor reasons. An appraisal is not subject to the provisions of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22.

[2] Courts have accorded substantial deference to an appraisal award and to the choice of process used. Unless there is proof of misconduct or that the appraiser or umpire exceeded their jurisdiction, courts have been reluctant to intervene.

The Jurisdiction Issue

[9] TD Insurance submits that there is nothing that gives an appraiser or an umpire the jurisdiction to deal with a disputed legal question. Their power is only to quantify “value” in a disputed insurance claim. According to TD, instead of determining the value of the loss, the Umpire exceeded his jurisdiction by incorrectly interpreting the insurance policy in question to arrive at the decision that he could award the replacement value of the pool. In making this submission, TD Insurance relied upon a statement that the Umpire made during the course of the discussions between the appraisers to the effect that the subject insurance policy was a replacement cost policy.

[10] In his Award, the Umpire described his role within the appraisal process as “to assess the amount of the loss.” This is consistent with the wording in Statutory Condition 11 that states:

11. In the event of disagreement as to the value of property insured, the property saved or the amount of the loss, the questions shall be determined by appraisal... (emphasis added)

[11] In *Aviva Insurance Company of Canada v. Friedman*, 2024 ONSC 2886 (Divisional Court), this court found that determining the amount of the loss encompassed determining whether the property damage could be repaired or necessitated replacement. In that case, *Aviva* had made the same submissions that TD is making in this case, namely that the Umpire exceeded his jurisdiction when he determined that question.

[12] The fact that the Umpire at one point characterized the policy as “replacement cost policy” became irrelevant when it was brought to the attention of the Umpire that the policy did have a repair option if that option was viable. The Umpire, after reviewing the record and considering what he had heard, ultimately concluded that it was not. Having done so, it was within his jurisdiction and reasonable to proceed to value the loss on the basis of the replacement option.

Bias

TD asserts the following with respect to bias:

1. The Umpire failed to remain impartial throughout the appraisal process and the hearing.
2. The Umpire did not allow TD’s adjuster to attend the hearing.
3. The Umpire did not allow TD’s appraiser to give evidence in support of repairing the pool.
4. The Umpire favored the Respondent’s witnesses even though there were significant errors in their reports and testimony.

[13] The allegation that the Umpire failed to remain impartial arises from the fact that at a certain point the Umpire decided that repair was not a viable option. Therefore, he refused to hear any more evidence about that option. There is no evidence to suggest that the Umpire made his decision about the viability of the repair option based on anything other than reviewing and weighing the extensive material that had been filed before the hearing and listening to the submissions made to him by the appraisers at the appraisal hearing. Failing to allow evidence on an option that the Umpire determined was not viable does not demonstrate bias.

[14] With respect to the Umpire's decision to exclude TD's adjuster from the hearing, there is nothing to suggest that the adjuster's attendance was necessary to determinations that had to be made at that hearing. Further, in *Arvanitopoulos v. Wawanesa Mutual Insurance Company*, 2024 ONSC 3718, the Divisional Court found, at para 45, that the "umpire's control of the oral hearing was within the scope of his discretion" and that "limiting the participation of the parties... is not a sign of bias".

[15] The allegation that the Umpire displayed bias in preferring the Respondent's evidence over that of TD Insurance's is simply an attempt by TD to reargue the merits of the case under the guise of bias.

[16] In the end, because of the presumption of impartiality, establishing bias requires a high evidentiary threshold. The evidence in this case does not come close to meeting that threshold.

Procedural Fairness

[17] TD's procedural fairness arguments essentially stem from the Umpire's decision not to allow TD's appraiser to give evidence about the repair option once the Umpire had determined that that option was not a viable option. There was nothing unfair about refusing to allow a party to continue to make submissions on an issue that the Umpire had determined had no chance of success. As previously noted, the Umpire had very wide discretion to control his own process so as to focus the hearing in a way that allowed him to arrive at a just result in an expeditious manner.

[18] TD also alleges that the Umpire requested further material at one point in the hearing and then made his decision without allowing time for that material to be produced. In *Friedman supra* at para 45, this court determined that there is no lack of procedural fairness if an umpire requests additional material and then makes the decision without obtaining the documents that he had requested. It is not uncommon for matters to seem relevant at one point in a hearing but then, as matters progress, it becomes clear that they are no longer necessary.

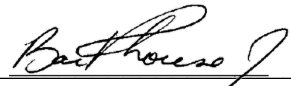
Conclusion

[19] For these reasons, the application is dismissed. As agreed by the parties, the Respondent, as the successful party, is entitled to his costs fixed in the amount of \$7500.00.



Sachs J.

I agree:



Backhouse J.

I agree:



Faieta J.

Oral Reasons Released: January 6, 2025

Written Endorsement Released: January 30, 2025

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ORAL REASONS FOR DECISION

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