

REASONS FOR JUDGMENT

Mazin Tobchi and Sally Khangaro v. Economical Mutual Insurance Company

Brampton Small Claims Court; File No. SC-20-00004525-0000

1. The Plaintiffs Mazin Tobchi and Sally Khangaro have brought a claim against the Defendant Economical Mutual Insurance Company, and a contested trial was held before me on April 30, August 6 and October 15, all in 2024. The case arises out of a denied auto insurance claim.
2. The brief background is as follows. Mr. Tobchi and Ms. Khangaro are a married couple who owned two motor vehicles in 2019. Both vehicles were insured under a policy with Economical Mutual Insurance Company (hereafter generally referred to as “Economical”). It appears that the automobile insurance covering the vehicles of the Plaintiffs switched from Travelers to Economical in February of 2019. Mr. Tobchi is the named insured party, and the primary address on the policy is 1021 Ivanhill Avenue, Windsor, Ontario, N8P 0B4. At the relevant time period of this case, the two insured vehicles were that of a Mazda3 Four-Door Sedan (hereafter generally referred to as “the Mazda”) and a Range Rover Velar minivan (hereafter generally referred to as “the Range Rover”). It seems that the Mazda was generally driven by Mr. Tobchi and the Range Rover was generally driven by Ms. Khangaro.
3. The Ivanhill Avenue address in Windsor is the home of Ms. Khangaro’s sister Suha Yacob.
4. Ms. Khangaro was involved in a motor vehicle accident on November 27, 2019 in Mississauga near the intersection of Erin Mills Parkway and The Collegeway. She was driving the Range Rover Velar vehicle. At that time, Ms. Khangaro had started training for a position as an office manager at Sunway Dental located at 3015 Winston Churchill Blvd. in Mississauga. She had left her office and was enroute to pick up her daughter at a nearby daycare facility. The daycare was approximately five minutes driving time from the dental office.
5. I was not provided with a description of the accident during the trial, but it seems that Economical initially determined that Ms. Khangaro was 25% responsible for the accident, and it may have increased its determination to 50% fault for Ms. Khangaro following the commencement of this litigation.
6. The Plaintiffs submitted a claim to Economical following the accident. The Range Rover vehicle was not a write-off, but there was significant damage, and it cost

approximately \$31,000 to repair the vehicle. The Plaintiffs paid for the repairs after obtaining a loan from Mr. Tobchi's parents, and then essentially asked their insurance company (Economical) to reimburse them for the costs. The claim was denied, as Economical took the position that the vehicle was primarily operated and garaged in Mississauga as opposed to Windsor. Economical saw this discrepancy as a material misrepresentation, and hence the right to indemnity of Mr. Tobchi (as the insured party) was forfeited pursuant to s. 233 of the *Insurance Act*, R.S.O. 1990, c. I.8.

7. Economical provided testimony from Mr. Gerald Knight, who is an underwriting and billing specialist with the Defendant insurance company (now known as Definity). Mr. Knight testified that there is a "significant difference" between the premium for a Mississauga address when compared to a Windsor address, with Mississauga premiums being about 40% higher.

8. The Plaintiffs Mr. Tobchi and Ms. Khangaro now claim for damages against Economical. Their position essentially is that they paid for an insurance policy and made their required payments to keep the policy in good standing, yet they were denied coverage when they needed it.

Analysis

9. Section 233(1) of the *Insurance Act* provides that if an applicant for a contract "knowingly misrepresents or fails to disclose" in an application for insurance any facts required to be stated therein. commits fraud or wilfully makes a false statement in respect of a claim, "a claim by the insured is invalid and the right of the insured to recover indemnity is forfeited."

10. The problem for the Plaintiffs is that their policy was based on a falsehood, namely that the insured party Mazin Tobchi lived with his wife in Windsor. The Ivanhill Avenue address in Windsor was listed on the Certificate of Automobile Insurance with Economical that had a policy effective date of March 19, 2019. Indeed, the Windsor address was also listed on a previous certificate with Travelers that had an effective date of February 7, 2018. Furthermore, the Automobile Proof of Loss declaration that was sworn by Mr. Tobchi on March 2, 2020 lists 1021 Ivanhill Avenue, Windsor, Ontario, N8P 0B4 as his address.

11. There is a plethora of evidence pointing to the fact that Mr. Tobchi at all material times primarily resided in Mississauga. Amongst the documents filed by the Defendant was a letter dated July 24, 2018 from GM & Associates to confirm the intention of the Plaintiffs to continue with a rental lease for an apartment at 35 Trailwood Drive in Mississauga until December 4, 2019. The document provided to the court was not signed by the Plaintiffs, but I take it that this is not an issue because the Plaintiffs were clear in their evidence that they

rented the Trailwood Drive apartment until moving early in 2020 to 3211 Edwyna Drive in Mississauga.

12. In cross-examination pertaining to the Ivanhill Avenue address, Mr. Tobchi stated that “I never live in there”, but rather that he visited his wife Ms. Khangaro there.

13. When further questioned in cross-examination as to why the Windsor address was given to the insurance company, Mr. Tobchi’s explanation was that he planned to move to Windsor because life was too expensive in Mississauga. This explanation makes no sense and seems to be consistent with Economical’s theory that the Plaintiffs were attempting to deceive the insurance company. It is common-sense logic that when filling out important legal documents, a person must give the address where he currently lives as opposed to an address where he might like to reside at some point in the future.

14. Mr. Tobchi’s employment was also in Mississauga in 2019. He commenced employment at Super-Pufft Snacks Corp. on May 27, 2013 as a machine operator. The company is located at 880 Gana Court in Mississauga. Mr. Tobchi testified that his employment was never full-time with this company, but he would always be at work in Mississauga on Monday to help start up the factory for the week. He would then stay in Mississauga at the Trailwood apartment until his work week was finished. Once the work week was finished, he would then typically go to be with his wife in Windsor. Mr. Tobchi also testified that both the Mazda and the Range Rover vehicles were used for his drives back and forth between Mississauga and Windsor.

15. The Plaintiffs’ son Baidar was also enrolled at a school in Mississauga, and hence he was with his father in Mississauga during the work/school week. Baidar was nine years old in 2019, and his school was about a one-minute driving distance from the Trailwood apartment. In response to questions from the court as to how much school time Baidar missed, Mr. Tobchi testified that he generally went back to Windsor on Thursday or Friday night, and thus Baidar at most would only miss one day of school per week. In other words, it seems clear that father and son were generally in Mississauga at least Monday to Thursday, and sometimes Monday to Friday.

16. Mr. Tobchi also confirmed in cross-examination that the physicians used by his family have all been located in Mississauga.

17. Mr. Tobchi also confirmed in cross-examination that there is a history of the Mazda vehicle being brought for service and maintenance to a location in Mississauga.

18. Mr. Tobchi further confirmed in cross-examination that he did most of his shopping in Mississauga.

19. With respect to Ms. Khangero, I accept that she spent time in Windsor commencing in approximately 2017 at her sister's address of 1021 Ivanhill Avenue in Windsor. I understand that she stayed with her sister in 2017 due to domestic issues with her husband, and she also spent time at her sister's home in Windsor due to the birth of the couple's daughter Nayia in April of 2018.

20. I am unable to determine how much time she spent in Windsor prior to the accident. I asked Ms. Khangero while she was giving evidence to clarify when she moved full-time to Windsor, and her answer was that even after the birth of Nayia she was still "back and forth" between Windsor and Mississauga.

21. Ms. Khangero was extensively cross-examined by Mr. McNerney (Economical's counsel) on the debit and credit card statements of the Plaintiffs, and it was pointed out to her that there is only minimal evidence of transactions occurring in Windsor. I found Ms. Khangero to be evasive when cross-examined on her spending habits, as she attempted to provide various and sometimes conflicting explanations of saying either that she could not remember certain transactions, that her sister and other family members were making purchases for her in Windsor, or that her Windsor purchases tended to be by cash. It was never clearly explained why purchases in Windsor tended to be by cash but purchases in Mississauga were more likely to be done through a debit or credit card.

22. If Ms. Khangero had resided anything close to full-time in Windsor following the birth of Nayia, I would have expected that she could point to multiple examples in 2018 and 2019 of her using a debit or credit card to purchase baby supplies in Windsor.

23. What is clear is that in approximately September of 2019 Ms. Khangero received a job offer to become an assistant manager at Sunway Dental located at 3015 Winston Churchill Blvd. in Mississauga. She commenced training in September, and the training was on-site at the office in Mississauga. Ms. Khangero confirmed that the training was generally about three days per week, although there was no set schedule. The training could be for a full week Monday to Friday, or it might be fewer than three days.

24. To enable Ms. Khangero to be in Mississauga for the training, she enrolled her young daughter Nayia in a nearby daycare facility. The daycare registration was full-time, as the facility did not accept part-time registration.

25. It thus seems clear that Ms. Khangero was primarily residing in Mississauga by September of 2019 (if not sooner), at least two months prior to the accident on November 27, 2019. Both Ms. Khangero and Mr. Tobchi were living primarily in Mississauga in September of 2019, but their insurance policy and the claim that was submitted following the accident were based on the premise that the Plaintiffs resided in Windsor.

26. I have no doubt that the Plaintiffs have “knowingly misrepresented” their primary address to Economical since the time when Economical became the automobile insurer for the Plaintiffs.

27. The Plaintiffs have raised the issue that the policies may well have been created by their broker, and hence the Plaintiffs are not liable for what the broker did on their behalf.

28. The court did not hear evidence from the broker during the trial. I was advised by Mr. Freed (the legal representative of the Plaintiffs) that the broker was subpoenaed, but he did not attend court when the Plaintiffs wanted him to be present. The Plaintiffs did not wish to delay the trial, and hence I was not requested to take steps to enforce the broker’s compliance with the subpoena.

29. I do not accept that the Plaintiffs can credibly take the position that the misrepresentation was done without their knowledge. At the very least, they must have reviewed their insurance documents and noticed that the Windsor address was listed on the forms. Furthermore, the Plaintiffs presented no evidence that they exercised due diligence by making inquiries of the broker as to why he did not insert the Trailwood Drive address on the insurance documents.

30. In hindsight, it might have been advisable for the Plaintiffs to have added the broker as a Defendant to their Plaintiff’s Claim if their position was that the broker is responsible for the misrepresentation that was made to the insurance company. But unfortunately, that was not done.

Conclusion

31. For the reasons as set out above, there shall be an order as follows:

- (a) The Plaintiff’s Claim of Mazin Tobchi and Sally Khangaro against the Defendant Economical Mutual Insurance Company is dismissed.
- (b) If the parties are unable to agree on costs, written submissions can be made, although the submissions will be limited to five pages (not including copies of offers to settle that were served on the other side prior to trial, and should now be attached to the costs submissions). The Defendant Economical Mutual Insurance Company may serve and file its costs submissions any time before October 10, 2025, and the Plaintiffs Mazin Tobchi and Sally Khangaro may serve and file their costs submissions any time before October 17, 2025.

September 22, 2025

Deputy Judge John Silvester

RELEASED ON : SEPTEMBER 25TH, 2025.