CASE SUMMARY: APPEAL FROM PARTIAL SUMMARY JUDGMENT IN WHICH COURT MADE A DECLARATION RELATING TO THE INTERPRETATION OF A SECTION OF A BANKER’S COMPREHENSIVE LIABILITY POLICY ALLOWED

Appeal from partial summary judgment in which court made a declaration relating to the interpretation of a section of a banker’s comprehensive liability policy allowed.

Insurance law – Liability insurance – Directors and officers liability insurance – Interpretation of policy – Statutory provisions – Practice – Appeals – Summary judgments


The insurer appealed a partial summary judgment granted in relation to an insurance policy.

The insured bank had a banker’s comprehensive crime, professional indemnity, and directors and officers liability policy with the insurer. The insurance policy had two parts. The first part provided a financial institutions bond and professional liability policy. The second part provided directors and officers with liability coverage.

A Florida lawyer and customer of the insured ran a Ponzi scheme involving the fraudulent sale of non-existing interests in structured settlements supposedly handled by his law firm. After the scheme collapsed, about 19 investor groups sued the insured. One investor group obtained judgment against the insured and the insured settled the remaining claims. The insured then sought indemnity under both the professional liability coverage and fidelity coverage sections of the policy. The insurer denied coverage.

In the action, the insured sought a declaration that it was entitled to indemnity under the professional liability section of the policy. The insured brought a motion for partial summary judgment seeking a declaration concerning the interpretation of one element of the preamble to the fidelity coverage section of the policy.

The motion judge granted partial summary judgment finding the insured had “sustained ‘direct financial loss’ within the meaning of the…Policy.”

On appeal, the Court found the motion judge erred in failing to properly interpret Rule 20 (of the Ontario Rules of Court), in failing to interpret the policy as a whole, in adopting a theory of liability not advanced by the parties, and in misconstruing the relief sought by the insurer.