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CASE SUMMARY: INSUREDS UNDER HOMEOWNER'S POLICY DID NOT MAKE ANY MISREPRESENTATIONS MATERIAL TO RISK

Insurance law – Homeowner's insurance – Proof of loss – Void Ab Initio – Material change in risk – Misrepresentation in obtaining insurance – Practice – Summary judgments

Nagy v. BCCA Insurance Corp., [2019] B.C.J. No. 1063, 2019 BCSC 930, British Columbia Supreme Court, June 11, 2019, V. Jackson J.

The defendant insurer brought a summary trial application seeking a dismissal of the insureds' claim, including a declaration that the policy of insurance between the insureds and the insurer was *void ab initio* and a corresponding declaration that there was no coverage available under the policy.

The insureds purchased homeowner's insurance for their residence on Mayne Island. The residence and its contents were completely destroyed by fire. The insureds sought coverage under their homeowner's policy. The insurer denied coverage on the basis that the insureds had failed to disclose that a previous insurer had declined to renew insurance coverage on the residence, as well as an attempted break-in and two previous claims. Further, the insurer claimed the insureds had failed to disclose a material change in risk relating to the occupancy of the residence. Specifically, the insurer claimed the insureds had represented that they would be living in the residence full time. The insureds denied making this representation.

In addition to raising these defences on the summary trial application, the insurer also claimed the insureds had sworn a fraudulent proof of loss. This argument was ultimately abandoned in the course of the hearing.

The application turned on the evidence adduced at the summary trial. The court held the insureds had not failed to disclose a change in the occupancy of the residence and that, in any event, the alleged change in occupancy was not material to the risk. The court also held that the clear and cogent evidence required to establish a fraudulent misrepresentation (by omission) was lacking. As such, judgment was granted in favour of the insureds.

This case was digested by [Cameron B. Elder](#), and first published in the LexisNexis® Harper Grey Insurance Law Netletter and the Harper Grey Insurance Law Newsletter. If you would like to discuss this case further, please contact Cameron B. Elder at celder@harpergrey.com.