



Ontario Court of Appeal Clarifies the Meaning of “Living in the Same Household” for Purposes of Coverage Under a Homeowners Policy

As all insurance coverage attorneys know, how courts interpret certain words and phrases in insurance policies is significant since one word can make the difference between a claim being covered or not. On January 28, 2019, the Court of Appeal for Ontario, in the *Ferro v. Weiner*¹ decision, clarified the jurisprudence on the meaning of “living in the same household” in the context of homeowners policies.

Background Facts

Ms. Enid Weiner owned a lakeside home which was insured under a homeowners policy through Intact Insurance Company (the “Intact Policy”). The Policy listed only Enid Weiner as the Named Insured, but provided coverage to her relatives “while living in the same household” for liability for unintentional bodily injury arising from an insured’s “personal actions anywhere in the world.” Although the lake house was used as a vacation home when Ms. Weiner’s children were small, it was her primary residence for about ten years before she moved into a nursing home. While she never permanently moved back, her three grown children and their families used the house as a cottage, with Enid occasionally accompanying them.

In 2010, a young man drowned at the lake house during a high school graduation party while Scott Weiner (Enid’s son) and his daughter Regan were present. Scott, Regan, and Scott’s wife Sandy (collectively, the “Weiner Defendants”) were sued by the young man’s estate (the “Underlying Lawsuit”).

Procedural Background

Scott Weiner’s own insurer, TD Insurance Company (“TD”), settled with the estate in the Underlying Lawsuit. TD then filed for summary judgment, seeking a declaration that Intact owed defense and indemnity to the Weiner Defendants for the estate’s claims. The motion judge ordered a declaration that Scott, Sandy and Regan were insureds under the Intact Policy, and ordered Intact to pay 50% of the settlement in the Underlying Lawsuit. Intact appealed.

The Court’s Analysis

On appeal, Intact argued (and the Court of Appeal agreed) that the motion judge erred in concluding that, because Scott was not a visitor and behaved more like an owner, an expansive reading of the term “household” qualified him and his family as an insured under the Intact Policy. This, the Court concluded, was the wrong analysis because it concentrated on Scott’s relationship to the house instead of his relationship to Enid. The Court then reviewed the governing Canadian law on the definition of “household” in the insurance coverage context:

Although “household,” in ordinary speech, can refer either to a residence or a type of community, in the context of insurance law it is the latter... The “household,” in the broad sense of a family, is a collective group living in a home, acknowledging the authority of a head, the members of which, with few exceptions, are bound by marriage, blood, affinity or other bond, between whom there is an intimacy and by whom there is felt a concern with and an interest in the life of all that gives it a unity. It may, for example, include such persons as domestic servants, and distant relatives permanently residing within it. To some degree they are all admitted and submit to the collective body, its unity and its conditions, particularly that of the general discipline of the family head. They do not share fully in the more restricted family intimacy or interest or concern, but they participate to a substantial degree in the general life of the household and form part of it.²

¹ 2019 ONCA 55.

² *The Wawanessa Mutual Insurance Company v. Bell*, [1957] S.C.R. 581, 584.

The Court described “household” as analogous (though not synonymous) to a family unit, with focus on the ways in which its members share the intimacy, stability, and common purpose. To underscore this element of the “household” analysis, the Court pointed to an updated construction of the term from a 2010 case: “the term ‘household’ connotes a family like group of people living together with an element of intimacy or community in the relationship.”³

The key inquiry in determining whether someone qualifies as a member of a household is “not how the household is structured, but the degree to which the choices and actions of all members of the household are motivated by ‘an interest in the life of all that gives it a unity.’”⁴ One must look at the members’ settled intentions in belonging to a household. This can be evidenced by a continued self-identification as a member of the household, despite a lengthy absence from the home. The membership in the household must be evaluated holistically, based on the totality of the parties’ relations and intentions towards each other.

Applying this framework, the Court concluded that Scott, Sandra and Regan Weiner did not have the requisite common life and intimacy with Enid Weiner to be considered as “living in her household.” At the time of the accident, Enid was living in a nursing home, and Scott and his family lived in the city where he had organized his life around his urban household. Prior to entering the nursing home, Enid lived with Scott’s brother, and not with Scott and his family. In the words of the *Bell* opinion, Scott maintained a “separate identity of life” from his mother Enid.⁵ There was no compelling evidence that either Scott or Enid organized their lives in conjunction with each other to the degree described by *Bell* and the subsequent cases. In light of this, the Court concluded that Scott and his family were not insureds under the Intact Policy.

Takeaways

The *Ferro* opinion is important because it provides clarity to policyholders on when a person is considered “living in a household” for purposes of insurance coverage under a homeowners policy by reconfirming the long-standing Canadian case law on this topic. Interestingly, the Court left open a possible narrow avenue under which a person (other than minor children of divorced parents) could be a member of two households at the same time. If the right facts present themselves, creative policyholder counsel can use the Court’s thoughtful analysis in *Ferro* when arguing in favor of coverage under such circumstances.

For additional information about this case alert or about our International Group, please contact [Stella Szantova Giordano](mailto:Stella.Szantova.Giordano@sdvlaw.com) at ssg@sdvlaw.com.

³ *Tannahill v. Lanark Mutual Insurance Co.*, 2011 ONCA 123, (“*Tannahill ONCA*”), aff’d 2010 ONSC 3623, 86 C.C.L.I. (4th) 69, *Tannahill ONCA* at par. 6

⁴ *Ferro v. Weiner* at par. 17 (quoting *Bell*, [1975] S.C.R. at 584)

⁵ *Bell* at 585