

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Valentyne Estate v. The Canada Life Assurance Company*,
2017 BCSC 1444

Date: 20170817
Docket: S152111
Registry: Vancouver

Between:

**Vanessa Valentyne, Administrator of the Estate of
Kevin Valentyne, Deceased**

Plaintiff

And

**The Canada Life Assurance Company
La Compagnie D'Assurance du Canada sur la Vie**

Defendant

Before: The Honourable Madam Justice Murray

Reasons for Judgment

Counsel for the Plaintiff:

M.G. Bolda

Counsel for the Defendant:

E.B. Lyall, Q.C.
J. Suderman

Place and Date of Hearing:

Vancouver, B.C.
July 26, 2017

Place and Date of Judgment:

Vancouver, B.C.
August 17, 2017

Background

[1] On August 4, 2011 Mr. Valentyne was granted a mortgage by the TD Bank in the amount of \$415,000. At the same time he successfully applied for life insurance on the mortgage which was issued by the defendant to the TD Bank.

[2] The plaintiff in this summary trial seeks judgment against the defendant for payment of the mortgage life insurance she claims the defendant owes the estate of her deceased son Kevin Valentyne. In addition she claims court order interest and costs. Alternatively she claims damages for breach of contract.

[3] The defendant takes the position that it is not responsible to pay the mortgage life insurance as Mr. Valentyne was murdered as a result of his involvement in criminal activity and as such falls under the exclusion clause that reads:

We will not pay a life... insurance benefit if:

- your death is a result of or while you were committing criminal offence.

Background

[4] From 2007 to January 7, 2013, Mr. Valentyne was a mid-level cocaine and heroin dealer in Greater Vancouver. He was associated with an organized crime group.

[5] On January 7, 2013, Mr. Valentyne and his girlfriend were driving downtown to go out for lunch when he received a six second call on his cell phone from two known lower level drug dealers. He turned his car around and drove to a house associated to the two dealers. Telling his girlfriend that he would be right back, Mr. Valentyne left the car with the engine running. He left his wallet in the vehicle.

[6] Mr. Valentyne never returned to the car. He has not been seen or heard from since. None of his assets including his bank account have been accessed. His body has never been found. His blood was found in house he had gone into.

[7] Prior to his disappearance, Mr. Valentyne was selling drugs to lower level drug dealers at under market prices to expand his customer base. This activity drew the ire of rival drug groups to the point that police warned Mr. Valentyne that his life was in danger. He did not heed those warnings.

[8] On May 30, 2013, Master MacCallum declared Mr. Valentyne a missing person within the meaning of s. 1 of the *Estates of Missing Persons Act*, R.S.B.C. 1996, c. 123.

[9] On July 16, 2014, Master McDiarmid declared that Mr. Valentyne be presumed to have died on January 7, 2013.

Analysis

[10] The pertinent facts are not in dispute. The claim turns on the interpretation of the exclusion clause.

[11] The plaintiff argues that in order to fall under the clause the defendant has to prove on a balance of probabilities that the deceased was actually committing a criminal offence at the time of his death. Because there is no direct evidence as to what happened when Mr. Valentyne went into the drug house, the plaintiff says that it would be speculative to find that he was dealing drugs. At the time of his disappearance Mr. Valentyne was also selling vitamin supplements. The plaintiff says that it is equally possible that he was conducting that business when he made the stop.

[12] The defendant submits that the exclusion clause excludes the payment of benefits under the policy in either of two scenarios:

- a) when death is a result of a criminal offence; or
- b) when death occurs while the insured was committing a criminal offence.

[13] I agree with the defendant. In my view the clause clearly covers both situations. As such, I am satisfied based on the wording of the clause that I do not

have to find that Mr. Valentyne was actually selling drugs at the time of his death; I need only be satisfied on a balance of probabilities that his death was a result of his involvement in criminal activity.

[14] The distinction between the two types of triggering events has been described as follows in David Norwood and John P. Weir, *Norwood on Life Insurance Law in Canada*, 3d ed. (Toronto: Carswell, 2002) at page 462:

Causal connection would not seem to be required where the provision excludes death while committing or attempting to commit a criminal offence, but it would appear to be necessary where the exclusion is for death resulting from committing or attempting to commit such an offence. If a bank robber rushes onto a roadway in the course of making a get-away and is knocked down by a car, the causal connection would be established, but if he is casually strolling on the sidewalk away from the scene of the crime, and a brick falls on the robber's head, it would seem clear that the claims for the accidental death insurance benefit may still be made.

[15] The phrase “a result of” therefore imports some type of causal connection although the phrase is broader than a clause requiring that death be “caused by” a stated activity: *Raywalt Construction Co. Ltd. v. Allstate Insurance Company of Canada*, 2010 ABCA 320 at paras. 11 and 14.

[16] Taking into consideration all of the evidence and all of the circumstances, I find on a balance of probabilities that the only rational conclusion is that Mr. Valentyne was murdered as a result of his involvement in drug trafficking, a criminal offence.

[17] Accordingly, I find that the exclusion clause applies and that the plaintiff is not entitled to the mortgage life insurance.

Conclusion

[18] The plaintiff's action is dismissed.

[19] The defendant is entitled to costs.

“The Honourable Madam Justice Murray”