

2017 CarswellOnt 7575  
Financial Services Commission of Ontario (Appeal Decision)

Drakoulis Estate v. Dominion of Canada General Insurance Co.

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**Estate of PETROS DRAKOULIS (Appellant) and DOMINION  
OF CANADA GENERAL INSURANCE COMPANY (Respondent)**

Jeffrey Rogers Dir. Delegate

Heard: April 19, 2017  
Judgment: May 8, 2017  
Docket: P17-00007

Counsel: Mr. Gary Mazin, for Estate of Petros Drakoulis  
Ms Lisa Armstrong, for Dominion

***Jeffrey Rogers Dir. Delegate:***

1 Under section 283 of the *Insurance Act*, R.S.O. 1990 c. I.8 as it read immediately before being amended by Schedule 3 to the *Fighting Fraud and Reducing Automobile Insurance Rates Act, 2014*, and Regulation 664, R.R.O. 1990, as amended, it is ordered that:

1. The Arbitrator's order of December 19, 2016 is rescinded and replaced with the following: The parties reached an enforceable agreement to settle in January 2015.
2. If the parties are unable to agree about expenses of this appeal, an expense hearing may be arranged in accordance with Rule 79 of the *Dispute Resolution Practice Code*.

***Jeffrey Rogers Dir. Delegate:***

**I. NATURE OF THE APPEAL**

2 This appeal challenges the Arbitrator's decision in which he found a settlement invalid because, unknown to the solicitor who negotiated it, his client was dead at the time. For the reasons that follow, I find that the Arbitrator misapprehended the facts and he therefore decided the wrong issue. In fact, the settlement was negotiated when both parties were aware that Mr. Drakoulis had died. The settlement was subject to conditions that would remedy the solicitor's lack of authority. The solicitor met those conditions. There was therefore a binding settlement. As a result, the appeal is allowed.

**II. BACKGROUND**

3 Petros Drakoulis was injured in a motor vehicle accident on February 2, 2013. He sought accident benefits from Dominion. When disputes arose regarding his entitlement to further benefits, he applied for mediation and, after mediation failed to resolve the dispute, he applied for arbitration.

4 Mr. Drakoulis was represented by solicitor Gary Mazin throughout the process. On November 14, 2014, Mr. Drakoulis died intestate, of causes unrelated to the accident. Settlement discussions between the parties commenced in December 2014. At that time, Mr. Mazin was apparently unaware that his client had died. The parties later agreed to settle the matter on a full and final basis.

5 The question that came before the Arbitrator was whether the parties had negotiated a binding settlement. He described it as follows:

Was an enforceable settlement reached in December 2014?

6 The Arbitrator found that an enforceable settlement was not reached because neither party was aware that Mr. Drakoulis had died when it was negotiated. Since Mr. Mazin's authority to represent Mr. Drakoulis ceased at his death, he had no authority to negotiate a settlement.

### III. ANALYSIS

7 This matter came before the Arbitrator as a preliminary issue hearing. The pre-hearing Arbitrator described the issue as follows:

The issue in the preliminary issue hearing is whether a binding full-and-final settlement was previously agreed to between the parties.<sup>1</sup>

8 The Arbitrator answered a different question and the difference was critical to the outcome. As I noted earlier, the Arbitrator saw the issue to be:

Was an enforceable settlement reached in December 2014?

9 The facts, as the Arbitrator misapprehended them, were that Mr. Mazin negotiated a settlement with Dominion on December 31, 2014, unaware that his client had died about 7 weeks earlier. The Arbitrator stated:

On December 31, 2014, Mr. Mazin restarted settlement discussions with the Insurer. Both parties agreed to settle all issues in dispute, in addition to future medical benefits, for a total amount of \$26,000.00. Mr. Mazin then attempted to contact his client. Unbeknownst to Mr. Mazin, his client had passed away 7 weeks prior, on November 20, 2014.<sup>2</sup>

10 The Arbitrator then applied the principle that an agent's authority ceases on his principal's death. He stated:

Therefore, Mr. Mazin was in no legal position of authority to negotiate on behalf of his former client, who was deceased at the time settlement was agreed to on December 31, 2014. His authority was severed upon his client's death. The general rule of law is that an agency is terminated by the death of the principal.

11 The Appellant does not challenge the legal principle that an agent's authority ceases on his principal's death. The appellant submits that the principle is irrelevant to the real question before the Arbitrator. That is, whether a binding settlement was reached when both parties knew that Mr. Drakoulis had died. I agree. I find that this was the real question before the Arbitrator. I agree that the principle that the Arbitrator applied is irrelevant to the real issue. The Arbitrator erred in law when he answered the wrong question, based upon no evidence.

12 The only evidence before the Arbitrator regarding a settlement was that the parties negotiated a settlement when both parties knew that Mr. Drakoulis had died intestate. The settlement was conditional upon Mr. Mazin taking certain steps to remedy his lack of authority. Those conditions have been satisfied. There is therefore a binding settlement.

13 Dominion confirmed the settlement by e-mail from its lawyer to Mr. Mazin on January 9, 2015:

Gary,

I am instructed to accept **the estate's offer** to resolve this matter on a full and final basis for \$26,000 all in, in exchange for documentation to my client's satisfaction. We will need the certificate of appointment, the order to continue in the name of the estate and an authorization and direction from the estate trustee allowing us to deal with you. In the meantime, I will

send you the disclosure notice and full and final release so you can get everything signed at once. We wont [sic] be able to send settlement funds until we have all of the documents.<sup>3</sup>

14 Dominion was certainly aware that Mr. Drakoulis had died, since it accepted the offer from the estate. Because Mr. Mazin had informed Dominion that Mr. Drakoulis had died and he purported to be acting on behalf on the estate, the real question before the Arbitrator was whether the settlement was enforceable in those circumstances. I find that it was, based upon the common law doctrine of "relation back". That doctrine allows the administrator of an intestate's estate to enforce a contract made on the estate's behalf, before the grant of administration.

15 In *Bittan v. CGU Insurance Co. of Canada* [2002 CarswellOnt 5588 (F.S.C.O. App.)], Director Draper cited with approval the summary of this doctrine as set out in *Bodger v. Arch*.<sup>4</sup>

... whenever anyone acting on behalf of the intestate's estate, and not on his own account, makes a contract with another before any grant of administration, the administration will have relation back, in order not to lose the benefit of the contract, so that the administrator may sue upon it, as made with himself.<sup>5</sup>

16 In its acceptance of the offer, Dominion appeared to be aware of the doctrine. It imposed the conditions required to validate Mr. Mazin's authority. The only conditions were providing "the certificate of appointment, the order to continue in the name of the estate and an authorization and direction from the estate trustee allowing us to deal with you." There was no agreed or imposed time limit. There was nevertheless incentive to move the matter forward. No funds would be paid until the conditions were met and no interest would accrue.

17 Mr. Mazin encountered some difficulty in meeting the conditions. He did not satisfy them until about 14 months after Dominion confirmed the settlement. The relevant documents were not available until March 17, 2016. Mr. Mazin did not provide them to Dominion until March 22, 2016. Meanwhile, Dominion had lost patience.

18 On July 24, 2015, having received no timetable for the conditions to be met, counsel for Dominion wrote to the Commission (at ADR Chambers) asking that the arbitration be dismissed for delay. The pre-hearing was reconvened on December 21, 2015 to address the issue. The pre-hearing Arbitrator adjourned the pre-hearing to March 21, 2016. Although there was no agreed deadline, the pre-hearing Arbitrator imposed March 21, 2016 as a deadline for compliance with the conditions of the settlement and he threatened dismissal of the arbitration without a hearing, if the conditions were not met.<sup>6</sup>

19 The other conditions were met by the time the pre-hearing again resumed on March 21, 2016. The pre-hearing Arbitrator granted the order to continue, thereby satisfying the final condition. He adjourned the pre-hearing once more to May 24, 2016.<sup>7</sup>

20 Two days after the last condition was met, counsel for Dominion wrote to Mr. Mazin advising that ""all previous settlement discussions are off the table."<sup>8</sup> However, there was nothing further to discuss after the agreement was made in January 2015. The Arbitrator should have made that finding when the matter came before him at the Preliminary Issue Hearing. Instead, the Arbitrator answered an irrelevant question. I have therefore rescinded the Arbitrator's order and replaced it with an order confirming a valid settlement.

21 One final comment: In its written submissions, Dominion requested an award of the expenses it incurred in moving the matter forward in arbitration, if this appeal were successful. Dominion did not file an appeal, so I doubt that I have jurisdiction to consider its request. In any event, the result of the appeal shows that there were no grounds for Dominion's efforts to rescind its settlement, so there could be no award of expenses in its favour.

#### **IV. EXPENSES**

22 If the parties are unable to agree about expenses of this appeal, an expense hearing may be arranged in accordance with Rule 79 of the *Dispute Resolution Practice Code*.

## Footnotes

- 1 Appellant's written submissions, Tab 14
- 2 At page 2
- 3 Appellant's written submissions, Tab 1
- 4 [\(1854\)](#), [10 Exch. 333](#), [156 E.R. 472](#) (Eng. Exch.)
- 5 (FSCO P01-00058, May 30, 2002), at page 10
- 6 Respondent's Appeal Record, Tab 7
- 7 Respondent's Appeal Record, Tab 19
- 8 Appellant's written submissions, Tab 13.