

ONTARIO

SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

R.S.J. ELLIES, SACHS, and BACKHOUSE JJ.

BETWEEN:)
)
GROUPONE INSURANCE SERVICES) *Howard Borlack*, for the Applicants
and LLOYD'S UNDERWRITERS)
)
Applicants)
)
- and -)
)
WENHAO (MELISSA) LI and DARKO) *Duncan M. Macfarlane*, Q.C., for the
STRUKAN) Respondents
)
Respondents)
)
) **HEARD at Toronto: June 3, 2019**

R.S.J. ELLIES (Orally)

[1] The Applicant insurers apply for judicial review of the decision of an Umpire made under s. 128(3) of the *Insurance Act*, R.S.O. 1990, c. I.8.

[2] The appraisers retained by the insured and the insurer were unable to agree on the amount of the loss suffered by the insured following a house fire. The appraiser for the insured appraised the loss at \$210,000, including the land value, and the appraiser for the insurer appraised the loss at \$185,000, including the value of the house, at \$154,500. The Umpire valued the Actual Cash Value of the loss at \$338,800.

[3] Both parties agree that the standard of review of the Umpire's decision is reasonableness and that significant deference is owed to his decision. The insurer submits that the Umpire's decision was unreasonable, nonetheless. We agree.

[4] As the Supreme Court of Canada held in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at para. 47:

In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process.

But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law.


[5] The Umpire's decision exceeds the range of the two other appraisals so significantly that, absent reasons, we are unable to conclude that it was arrived at in accordance with the provisions of the policy governing assessment of the loss. The provisions required that the value of the property be appraised at the least of the Actual Cash Value, the interest of the insured in the property, and \$380,000.

[6] The policy further provides that in determining the Actual Cash Value, market value must be taken into account. In this case, the maximum market value of the property put forward by either appraisal was \$210,000.

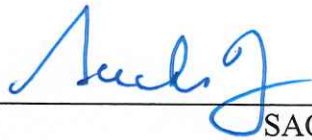
[7] We are also unable to determine whether the decision of the Umpire violated the fundamental principle of insurance law which is that a contract of insurance is meant to provide indemnity. It is not meant to provide a windfall to the insured.

[8] For these reasons, the decision of the Umpire is set aside and the matter is remitted to a new Umpire under s. 128(3) of the *Insurance Act*.

[9] I have endorsed the Application Record as follows: "Application is allowed for reasons delivered orally by Ellies R.S.J. The decision of the Umpire is set aside and the matter is remitted for decision before another Umpire. As agreed, the Respondents shall pay costs in the amount of \$5,600, all-inclusive."


R.S.J. ELLIES

I agree


SACHS J.

I agree


BACKHOUSE J.

Date of Reasons for Judgment: June 3, 2019

Date of Release:

JUN 04 2019

CITATION: Groupone Insurance Services v. Li, 2019 ONSC 3428
DIVISIONAL COURT FILE NO.: 475/18
DATE: 20190603

ONTARIO

**SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT**

R.S.J. ELLIES, SACHS, and BACKHOUSE JJ.

BETWEEN:

**GROUPONE INSURANCE SERVICES and
LLOYD'S UNDERWRITERS**

Applicants

– and –

**WENHAO (MELISSA) LI and DARKO
STRUKAN**

Respondents

ORAL REASONS FOR JUDGMENT

R.S.J. ELLIES

Date of Reasons for Judgment: June 3, 2019

Date of Release: JUN 04 2019