

Siena-Foods Limited, a Bankrupt, by its Trustee Deloitte & Touche Inc. (applicant/appellant) v.
Old Republic Insurance Company of Canada and Intact Insurance Company
(respondents/respondent)
(C54769; 2012 ONCA 583)

Indexed As: Siena-Foods Ltd. (Bankrupt) v. Old Republic Insurance Co. of Canada et al.

Ontario Court of Appeal
Laskin, Sharpe and Epstein, JJ.A.
September 10, 2012.

Summary:

Siena-Foods Ltd. rented a truck from Ryder Canada to transport a machine. The machine was damaged when the truck was involved in a collision. Siena sought compensation from Ryder's insurer, Old Republic, which denied coverage. Siena sued Old Republic.

The Ontario Superior Court, in a decision reported at [2011] O.T.C. Uned. 7250, dismissed the action. Siena appealed.

The Ontario Court of Appeal allowed the appeal, setting aside the order below.

Insurance - Topic 704

General - What constitutes an insurer - [See first **Insurance - Topic 4148**].

Insurance - Topic 1443

The insurance contract - Termination by insured - What constitutes - [See third **Insurance - Topic 4148**].

Insurance - Topic 4062

Automobile insurance - Property damage policy - Risk - Extent of collision coverage - [See first and second **Insurance - Topic 4148**].

Insurance - Topic 4143

Automobile insurance - Vehicle rentals - Lessee's duty of disclosure - [See third **Insurance - Topic 4148**].

Insurance - Topic 4148

Automobile insurance - Vehicle rentals - Extent of coverage under lessor's policy - Siena-Foods Ltd. rented a truck from Ryder Canada to transport a machine - The machine was damaged when the truck was involved in a collision - Siena sought compensation from Ryder's insurer, Old Republic, which denied coverage - A motion judge dismissed Siena's action against Old Republic - On appeal, Siena asserted, inter alia, that the motion judge had erred in holding that s. 247(b) of the Insurance Act and s. 3.5.1 of the Ontario Automobile Policy (the policy) excluded coverage - Siena asserted that those provisions applied to third party liability coverage and not to direct compensation for property damage - The Ontario Court of Appeal agreed - Section 247 dealt with an insured's

liability to another person - Section 247(b) permitted an insurer to exclude liability coverage for loss or damage to property carried in the insured vehicle - Section 3.5.1 of the policy tracked s. 247(b) - An endorsement in the policy between Ryder and Old Republic extended the s. 3.5.1 exclusion to property owned by a lessee who had rented the insured vehicle - However, that section of the policy, including s. 3.5.1, dealt with third-party liability coverage - Siena's claim was for damage to its own property - Instead, the applicable provision was s. 263, a direct compensation scheme for property damage claims - Under s. 263 and the corresponding provisions in the policy, Ryder was entitled to coverage from its own insurer, Old Republic, for damage to its truck and contents - An endorsement to the policy between Ryder and Old Republic extended that coverage to lessees - Thus, Old Republic was Siena's insurer under s. 263(2) of the Act - See paragraphs 11 to 27.

Insurance - Topic 4148

Automobile insurance - Vehicle rentals - Extent of coverage under lessor's policy - Siena-Foods Ltd. rented a truck from Ryder Canada to transport a machine - The machine was damaged when the truck was involved in a collision - Siena sought compensation from Ryder's insurer, Old Republic, which denied coverage - A motion judge dismissed Siena's action against Old Republic - The Ontario Court of Appeal allowed Siena's appeal - Having found that Old Republic was Siena's insurer for the purposes of s. 263(2) ("direct compensation") of the Insurance Act, the court found that the terms and conditions in the rental agreement did not limit Siena's recovery - The rental agreement included a liability protection plan, but s. 5.A provided that the plan did not cover damage to Siena's property - The court disagreed with the motion judge's conclusion that this precluded Siena's recovery - Old Republic was not a party to the rental agreement - The rental agreement was not part of the automobile insurance policy between Ryder and Old Republic - Therefore, s. 5.A could not alter Old Republic's obligation to Siena under the terms of Ryder's automobile policy - See paragraphs 28 and 29.

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very least, written notice - Siena's conduct alone could not automatically terminate its coverage - See paragraphs 30 to 33.

Insurance - Topic 4339

Automobile insurance - Exclusions - Loss of or damage to property owned or controlled by insured - [See first and second **Insurance - Topic 4148**].

Cases Noticed:

Clarendon National Insurance et al. v. Candow (2007), 229 O.A.C. 277; 887 O.R.(3d) 728 (C.A.), refd to. [para. 22].

McCourt Cartage Ltd. et al. v. Fleming Estate et al. (1997), 38 O.T.C. 230; 35 O.R.(3d) 795 (Gen. Div.), refd to. [para. 23].

Aube v. Royal Insurance Co. of Canada (1998), 8 C.C.L.I.(4th) 84 (Ont. Div. Ct.), refd to. [para. 32].

Statutes Noticed:

Insurance Act, R.S.O. 1990, c. I-8, sect. 247(b) [para. 13]; sect. 263(2) [para. 20].

Counsel:

James H. Cooke, for the appellant;

John J. Jones and Cynthia A. Aoki, for the respondent.

This appeal was heard on June 6, 2012, by Laskin, Sharpe and Epstein, J.J.A., of the Ontario Court of Appeal. On September 10, 2012, Laskin, J.A., delivered the following judgment for the court.

Appeal allowed.

Editor: Sharon McCartney

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Insurance - Topic 4062

Automobile insurance - Property damage policy - Risk - Extent of collision coverage - Siena-Foods Ltd. rented a truck from Ryder Canada to transport a machine - The machine was damaged when the truck was involved in a collision - Siena sought compensation from Ryder's insurer, Old Republic, which denied coverage - A motion judge dismissed Siena's action against Old Republic - On appeal, Siena asserted, inter alia, that the motion judge had erred in holding that s. 247(b) of the Insurance Act and s. 3.5.1 of the Ontario Automobile Policy (the policy) excluded coverage - Siena asserted that those provisions applied to third party liability coverage and not to direct compensation for property damage - The Ontario Court of Appeal agreed - Section 247 dealt with an insured's liability to another person - Section 247(b) permitted an insurer to exclude liability coverage for loss or damage to property carried in the insured vehicle - Section 3.5.1 of the policy tracked s. 247(b) - An endorsement in the policy between Ryder and Old Republic extended the s. 3.5.1 exclusion to property owned by a lessee who had rented the insured vehicle - However, that section of the policy, including s. 3.5.1, dealt with third-party liability coverage - Siena's claim was for damage to its own property - Instead, the applicable provision was s. 263, a direct compensation scheme for property damage claims - Under s. 263 and the corresponding provisions in the policy, Ryder was entitled to coverage from its own insurer, Old Republic, for damage to its truck and contents - An

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