

Case Name:

Sholidis v. Economical Mutual Insurance Co.

Between

Panagiotis Sholidis, (plaintiff/appellant), and
Economical Mutual Insurance Company and Roger R. James
Insurance Brokers Limited, (defendants/respondents)

[2005] O.J. No. 2155

Docket: C40222

Ontario Court of Appeal

Toronto, Ontario

K.N. Feldman, J.C. MacPherson and R.J. Sharpe JJ.A.

Heard: May 24, 2005.

Judgment: May 24, 2005. Released: May 31, 2005.

(7 paras.)

Insurance — Applicant's duty of disclosure — Disclosure, what constitutes — Default in duty to disclose — Payment of insurance proceeds — Actions, defences — Intentional act by insured to bring about loss or damage (public policy rule) — Failure to disclose — Appeal by plaintiff from decision reported at [2003] O.J. No. 2242 dismissed.

Appeal by the insured from the dismissal of his action. The insured brought an action against the insurer for losses for non-payment of the replacement cost of his house, personal property and additional living expenses. He also claimed damages against the insurer for treating him in bad faith and for punitive damages. The insurer counterclaimed against the insured to recover \$77,278 it paid to the insured's mortgage company for the value of the building. The insurer defended on the basis that the insured did not disclose on the application form that he had had three previous claims for losses in the last five years and that another insurance company had refused him coverage. Secondly, the insurer claimed that the insured had either set the fire himself or had an agent do so. The insured denied that he was in any way responsible for the fire. The insurer claimed that the insured had a motive because he had financial difficulties. The insurer's counterclaim was allowed and the insured's action was dismissed. The court found the insured deliberately withheld information about prior losses and cancellation at the time of the application. The insurer had the right to treat the policy as void and not pay the claim as submitted by the insured. The court also found the insured had sufficient motive and appropriate opportunity to start the fires. As a result, regarding the arson ground of denial of coverage, the insurer was reasonable in its actions and was legally and contractually able to deny coverage.

HELD: Appeal dismissed. First, the judge did not err in his findings regarding the insured's financial status at the time of the fire. The insured's evidence concerning this issue was vague. Second, the judge did not err in disbelieving the insured's testimony regarding what was said between him and the broker. Third, the judge did not err in finding that the fire was caused by arson. There was overwhelming support for that finding. Fourth, the conclusion that the insured or an agent of the insured

set the fires was reasonable.

Appeal From:

On appeal from the judgment of Justice Gordon I. Thomson of the Superior Court of Justice dated May 23, 2003.

Counsel:

Alfred Kwinter for the appellant

Thomas J. Hanrahan for the respondent, Economical Mutual Insurance Company

Mark Barrett for the respondent, Roger R. James Insurance Brokers Limited

APPEAL BOOK ENDORSEMENT

The following judgment was delivered by

¶ 1 **THE COURT** (endorsement):— The appellant appeals the judgment of Thomson J. dated May 23, 2003 dismissing the appellant's action against the respondent insurance company and the respondent insurance broker. He does so on five bases.

¶ 2 First, the appellant asserts that the trial judge made a palpable and overriding error in his assessment of the appellant's financial status at the time of the fire. We disagree. The appellant did not produce any income tax returns, his admitted expenses far outstripped his declared income, his \$70,000 savings from Greece (if he had it) would be rapidly depleted, and his explanation in his evidence at trial about his income and expenses was exceptionally vague. The trial judge was fully entitled to conclude, as he did, that the appellant was not a credible witness and that he had a motive to set the two fires in his house.

¶ 3 Secondly, the appellant contends that the trial judge erred by focussing only on whether the broker had asked questions and the appellant had provided answers regarding past losses and the cancellation of a previous policy. Moreover, the trial judge ignored the fact that the respondents could have called Zurich, the previous insurer, and discovered this information. We disagree. The trial judge carefully reviewed the testimony of the broker Murphy and the appellant. He believed Murphy and disbelieved the appellant. On the basis of the contents of the completed form, this was an entirely supportable conclusion. In addition, there was no duty on the respondents to call Zurich; they were entitled to rely on the honesty of the responses of their potential new client.

¶ 4 Third, the appellant submits that the trial judge's conclusion that the fire was caused by arson was a very weak one and flowed, in part, from acceptance of the testimony of Jack Armitage, whom the

trial judge had refused to qualify as an expert on the causes of fires. We disagree. Even if reliance on Armitage's testimony was misplaced, the evidence of arson was overwhelming, coming from a fire captain, the fire marshal, an electrical engineer and a recognized private expert.

¶ 5 Fourth, the appellant contends that, on the question of opportunity, a previous tenant may have had a key to the premises and that the trial judge erred by not attaching weight to this evidence. We disagree. The trial judge carefully reviewed the evidence about the locked premises and concluded that "Sholidis or someone acting on his behest had the best opportunity to set the fires". This is a reasonable conclusion.

¶ 6 Fifth, the appellant contends that the appraisal process was unfair. In view of the foregoing, we need not deal with this issue. However, we note that the appellant provided no evidence at trial on this issue. Accordingly, there is no basis for interfering with the trial judge's decision on this issue.

¶ 7 The appeal is dismissed with costs to the respondent Economical fixed at \$15,000 and to the respondent James Insurance fixed at \$8000, both inclusive of disbursements and GST.

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