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COURT OF APPEAL FOR ONTARIO

**RE: PANAGIOTIS SHOLIDIS (Plaintiff/Appellant) – and –
ECONOMICAL MUTUAL INSURANCE COMPANY AND
ROGER R. JAMES INSURANCE BROKERS LIMITED
(Defendants/Respondents)**

BEFORE: FELDMAN, MACPHERSON and SHARPE JJ.A.

**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**

**HEARD &
ENDORSED: May 24, 2005**

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

APPEAL BOOK ENDORSEMENT

[1] 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.