

SAINT LUCIA

IN THE COURT OF APPEAL

HCVA 2007/13

BETWEEN:

NEW INDIA ASSURANCE COMPANY LIMITED

Appellant

and

EDWARD SLIM FRANCIS

Respondent

Before:

The Hon. Mde. Janice George-Creque

Justice of Appeal

The Hon. Mr. Michael Gordon, QC

Justice of Appeal [Ag.]

The Hon. Frederick Bruce-Lyle

Justice of Appeal [Ag.]

Appearances:

Mr. Dexter Theodore for the Appellant

Ms. Veronica Barnard for the Respondent

2010: June 14;
June 15.

JUDGMENT

[1] GORDON, J.A. [AG.]: This appeal arises from a decision of the High Court awarding the respondent in effect the sum of \$185,000.00 being the sum for which a dwelling house had been insured by the respondent with the appellant company together with interest and costs. The interest as at the date of judgment was agreed to be \$77,700.00 and prescribed costs to be \$47,700.00¹.

[2] On 11th December 1997, a dwelling house situate on Plot No 25 Beanefield Estate in the Quarter of Vieux Fort was completely destroyed by fire. It was common

¹ Page 87 of the Record

ground between the parties that the destruction was total. The particular house, being one of three, was insured for the sum of \$185,000.00. The other two houses were insured for different sums respectively.

[3] The defence run at the trial comprised two components. Firstly, the Appellant, who was the defendant in the court below, pleaded that the building which was destroyed did not belong to the respondent who was the plaintiff in the court below. Secondly, the appellant pleaded that the value stated on the proposal form, which formed the basis of the contract (policy) of insurance was grossly overstated. No evidence was led to support that assertion.

[4] On appeal, learned counsel for the appellant sought to urge three grounds of appeal before the court. The first ground was that the learned trial judge wrongly determined that the policy of insurance was a 'valued policy' of insurance. The second ground urged by the appellant was that the burden of proving quantum of loss lay on the respondent and that such burden had not been discharged. The third ground of appeal argued by the appellant was that the appellant was entitled to repudiate liability for non-disclosures contained in the proposal form signed by the respondent. The appellant conceded that there were no misrepresentations, only non-disclosures.

[5] It is convenient in this case to take the first and second grounds together. With great respect to learned counsel for the appellant, if the value of the loss was proved by the respondent to be equivalent to or less than the sum insured, then in a total loss situation, whether the policy was a valued policy or a policy of indemnity is a distinction without a difference, in that the end result would be the same.

[6] In his witness statement the respondent stated² "I completely renovated one of the houses which is the house that got burnt; I spent large sums of money to do so

² At paragraph 23

and brought the value of the house from an initial value of \$4,500 to \$185,000.00 which is the sum for which it was insured at the time it got burnt.” At no point during the trial was the respondent challenged in respect of the value of the house. Indeed, at the trial, Mr. Bhaiya Sondwale, witness for the appellant seems to accept that this was the value of the house³. In any event, not only was the value placed upon the house by the respondent not challenged in cross examination, no alternative value was put forward by the appellant. In the circumstances, I find that the trial judge did not, as urged by learned counsel for the appellant, award \$185,000.00 “simply because it was the sum insured”. Grounds one and two of the appellant’s argument therefore fail.

[7] The third ground of appeal argued by learned counsel for the appellant was that the respondent had failed to disclose in his proposal to the appellant company a number of material facts. The first such non-disclosure was that the house which was the subject of the insurance policy in question was not habitable and termite ridden. The basis of this argument lay in a letter dated 16th October 1996 written by the respondent to a Mr. Jn. Marie of the National Development Corporation with whom the respondent was in negotiation for the determination of the price of the three houses. In that letter the respondent did say “the roof of the house is falling apart, the ceiling is on the floor and the whole house is termite ridden.” Unfortunately, as pointed out by learned counsel for the respondent the house therein referred to was not the house, the subject of this litigation.

[8] The second non-disclosure of which the appellant complains is that the house did not belong to the respondent. It was conceded that the land on which the house stood was in the ownership of the respondent. It is further conceded that the house was made of concrete and wood⁴. One is reminded of Article 369 of the Civil Code of Saint Lucia Cap 4.01 of the Laws of Saint Lucia which reads as follows:

³ See Record 2 at page12 line20

⁴ See Proposal for insurance and witness statement of respondent at page 25 of record

“369. Ownership of the soil carries with it ownership of what is above and what is below it; except that a mine may be alienated and owned apart from the land above it.

The owner may make upon the soil any plantations or buildings he thinks proper, saving the exceptions established in the book respecting servitudes.”

Although it might seem that the learned trial judge might have come to the conclusion that the respondent did not own the building⁵, this was not necessary to her determination.

[9] Halsbury’s Laws of England, 4th Edition, Vol 25, paragraph 633 states the following:

“The precise nature, extent or value of the insurable interest in a contract of insurance is irrelevant. An equitable or beneficial interest of any kind is as effective for this purpose as a legal interest”.

There is unchallenged evidence that the respondent, with the permission of the National Development Corporation, substantially improved the house in question. He therefore had, at the very least an equitable interest in the value of, and indeed the house itself. I therefore find that there was neither a non disclosure not a misrepresentation as to interest by the respondent in the insured property.

[10] The other misrepresentations and non disclosures of which the appellant complains, namely the misdescription of the house and the gross overvaluation of the house have been dealt with above.

⁵ If such a conclusion was reached by the Learned trial judge it would have been a wrong conclusion, though such a conclusion was not necessary to her determination

[11] For the reasons stated above I would dismiss this appeal and confirm the order of the learned trial Judge. I would further award the respondent the costs of this appeal at 2/3 of the costs awarded below.

Michael Gordon, QC
Justice of Appeal [Ag.]

I concur.

Janice George-Creque
Justice of Appeal

I concur.

Frederick Bruce-Lyle
Justice of Appeal [Ag.]