

THE ECONOMICAL FIRE INSUR- ANCE COMPANY ( <i>Defendant</i> ) . . . .	}	APPELLANT;
AND		
JAMES D. CHERRY & SONS LIM- ITED ( <i>Plaintiff</i> ) . . . . .	}	RESPONDENT.

1962  
 \*Nov. 7  
 Nov. 28

ON APPEAL FROM THE COURT OF QUEEN'S BENCH, APPEAL SIDE,  
 PROVINCE OF QUEBEC

*Contracts—Insurance—Agency—“Expirations” to remain property of general agent on termination of contract—Company soliciting sub-agents for direct agency agreements—Whether breach of contract.*

By clause 9 of a contract under which the defendant insurance company appointed the plaintiff as its general agent in the fire insurance business in the Province of Quebec, it was provided that in the event of its termination without the agent being in default, his records, use and control of “expirations” would be deemed his property and left in his undisputed possession. During the lifetime of the agreement the plaintiff had accumulated a considerable number of sub-agents who were in possession of “expirations” relative to the fire insurance written by them. After the termination of the contract the defendant insurance company invited a number of the plaintiff's sub-agents to place their renewal fire insurance business with it on a direct basis, thus obtaining the advantage of the “expirations” in respect of the renewal of any fire insurance policy placed by these sub-agents for the plaintiff. The trial judge awarded damages for breach of contract. This judgment was affirmed by the Court of Queen's Bench. The defendant insurance company appealed to this Court.

*Held:* The appeal should be dismissed.

On the facts of this case the defendant insurance company had violated the terms of clause 9 of the agreement. In dealing, as it did, with the plaintiff's sub-agents the defendant obtained for its own use in effecting renewals of fire insurance the benefit of “expirations”, the “use and control” of which it had agreed should be “deemed to be the property” of the plaintiff and “left in his undisputed possession”. There were no reasons to disturb the amount of the award.

APPEAL from a judgment of the Court of Queen's Bench, Appeal Side, Province of Quebec<sup>1</sup>, affirming a judgment of Smith J. Appeal dismissed.

*Antoine Geoffrion, Q.C.*, for the defendant, appellant.

*Charles Holdstock*, for the plaintiff, respondent.

The judgment of the Court was delivered by

RITCHIE J.:—This is an appeal from a judgment of the Court of Queen's Bench of the Province of Quebec<sup>1</sup> dismissing an appeal from the judgment of Smith J. of the

\*PRESENT: Taschereau, Fauteux, Abbott, Judson and Ritchie JJ.

<sup>1</sup> [1961] Que. Q.B. 476.

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Superior Court of the City of Montreal which awarded to the respondent damages in the sum of \$8,000 as compensation for loss caused by the appellant's violation of para. 9 of a certain agency agreement dated November 19, 1937, whereunder the respondent and its predecessor had operated as a "general agent" for the appellant in the fire insurance business in the Province of Quebec for seven years prior to the termination of the agreement by the appellant in July 1944. The sole issue in this appeal is whether, after termination, the appellant violated the provisions of the said para. 9 by entering into "direct agency" agreements with certain of the respondent's former sub-agents and thereby turning to its own account some of the "good will" accumulated by the respondent in its capacity as the appellant's general agent.

Paragraph 9 of the agency agreement reads as follows:

9. In the event of termination of this Agreement, the Agent not being in default and thereafter promptly accounting for and paying over balances not in default for which he is liable, the Agent's records, use and control of expirations shall be deemed the property of the Agent and left in his undisputed possession; otherwise the records, use and control of expirations shall be vested in the Company.

The word "expirations" as used in this context has a meaning peculiar to the insurance business which is well defined in the decision of the United States Federal Court of Appeals in *V. L. Phillips & Company v. Pennsylvania Threshermen & Farmers' Mutual Casualty Insurance Company*<sup>1</sup>:

(1) "Expirations" in the insurance field has a definite and well recognized meaning; it embodies the records of an insurance agency by which the agent has available a copy of the policy issued to the insured or records containing the date of the insurance policy, the name of the insured, the date of its expiration, the amount of insurance, premiums, property covered and terms of insurance. This information enables the agent to contact the insured before the existing contract expires and arms him with the information essential to secure another policy and to present to the insured a solution for his insurance requirements. It has been determined that this information is of vital assistance to the agency in carrying on the insurance business and it has become, in the insurance field, recognized as a valuable asset in the nature of good will.

During the lifetime of the agreement the respondent had accumulated a very considerable number of sub-agents who were in possession of "expirations" relative to the fire insurance written by them. During the same period the appellant had been operating a branch office in the Province of Quebec

<sup>1</sup>(1952), 199 F. (2d) 244 at 246.

for the writing of casualty insurance business, and for this purpose it had acquired a number of agents, some of whom were also sub-agents for the respondent in the fire insurance business.

On December 4, 1944, the appellant circularized such of its casualty insurance agents as had not been sub-agents of the respondent before entering the casualty field, inviting them to enter into "direct agency" agreements for the sale of fire insurance, and in so doing it was, in effect, inviting a number of the respondent's sub-agents to place their renewal fire insurance business with it on a "direct" basis. It is not difficult to see that by making the respondent's sub-agents its own direct agents it would obtain the advantage of the expirations in respect of the renewal of any fire insurance policy placed by such sub-agent for the respondent.

The essential facts are really not in dispute and the elaborate arguments made on behalf of the appellant to justify the course followed by it in this case have been reviewed by the Court of Queen's Bench and were, in my view, very fully and properly dealt with in the exhaustive decision of the learned trial judge who concluded that:

While it may be true that the records of the sub-agents relating to insurance written by them, were their own property as between themselves and the plaintiff; the defendant's contract with the plaintiff made such records the exclusive property of the plaintiff and subject to its absolute control, and the defendant had no right to make use of said expirations by the simple expedient of constituting the former sub-agents its own agents and then accepting through them renewals of insurance formerly written by the said sub-agents for the account of the plaintiff.

I do not think that the reasons for judgment of the Courts below are to be construed as deciding that the good will of a general agent becomes his absolute property free from all future competition from the insurance company on the termination of an agreement such as the present one nor do I think, as was suggested by counsel for the appellant, that these judgments have the effect of transforming para. 9 into a covenant in restraint of trade. This case should not, in my view, be construed as going further than deciding that the action here taken by the insurance company constituted a breach of the paragraph in question.

It is neither necessary nor desirable to lay down any rules of general application regulating the conduct of insurance companies in competing for business originally written by

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a general agent whose contract has been terminated. Each case must, of course, depend on the terms of the agency agreement in question and the acts of the parties in relation thereto. It is sufficient for the purposes of this case to say that in dealing, as it did, with the respondent's sub-agents the appellant obtained for its own use in effecting renewals of fire insurance the benefit of "expirations", the "use and control" of which it had agreed should be "deemed to be the property" of the respondent and "left in his undisputed possession". In so doing, the appellant violated the terms of its agreement.

The learned trial judge fixed the damages at \$8,000 and, like the judges of the Court of Queen's Bench, I can see no reason for disturbing this award.

For these reasons, as well as those stated by the learned trial judge, I would dismiss this appeal with costs.

*Appeal dismissed with costs.*

*Attorneys for the defendant, appellant: Geoffrion & Prud'homme, Montreal.*

*Attorney for the plaintiff, respondent: C. Holdstock, Montreal.*

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