Supreme Court of Canada
Great Northern Insurance Co. v. Whitney, (1918) 57 S.C.R. 543
Date: 1918-03-11

Great Northern Insurance Company (Defendant). Appellant;

and

William D. Whitney (Plaintiff) Respondent

1918: March 4, 11.

Present:—Sir Charles Fitzpatrick C.J. and Idington, Anglin and Brodeur JJ.

ON APPEAL FROM THE APPELLATE DIVISION OF THE SUPREME COURT OF ALBERTA.

Insurance—Horse—Materiality—Alteration—Inquiry by Company.

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An insurance company cannot invoke as material a representation, in an application for insurance, as to the cost price of the thing insured, when a palpable alteration of the figures appears on the face of the application and no inquiry is made by the company as to the reason for such alteration.

Judgment of the Appellate Division (10 Alta. L.R. 292; 32 D.L.R. 756, affirmed).

APPEAL from a decision of the Appellate Division of the Supreme Court of Alberta[1], affirming the judgment of Walsh J. at the trial and maintaining the plaintiff's action with costs.

The material facts of the case are fully stated in the judgments now reported.

G. H. Ross K.C. and Barron for the appellant.
Auguste Lemieux K.C. for the respondent.

THE CHIEF JUSTICE.—The respondent sued for $800, the amount of an insurance on the life of a stallion. The only defence raised is that in the application for the insurance it was stated that the price paid for the horse was $1,500, whereas in reality it was only $800.

There is no suggestion that there was any bad

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faith on the part of the respondent. The facts are that the company's agent who procured the insurance took the documents home and filled them out and sent them back to the respondent to sign. The respondent's sight is not very good and he did not check the statement over; the agent told him to sign it, that it was all right. The respondent, however,

[1] 10 Alta. L'R. 292; 32 D.L.R. 756; [1917] 1 W.W.R. 1159.

swears, and there is no contradiction, that the question of price as to what he paid was never mentioned, that the agent merely asked what the value of the horse was. The trial judge has found that

> it is quite clear from the evidence that this stallion at the time this application was made was really worth $1,500.

Mr. Justice Walsh gave judgment for the plaintiff for $800, which he reduced to two-thirds thereof, *i.e.,* $533.33, on his attention being called to clause 11 of the policy regarding the payment of not more than two-thirds of the amount

> and in view of the defendant counsel's consent.

The judgment proceeds on the ground that it was the agent's and not the plaintiff's fault that the payment made for the horse was given as $1,500, and that notwithstanding the clause in the application which provides that if another person other than the applicant fills out this form or any part of it he shall be deemed the agent of the applicant and that Luckwell was the agent of the defendant and not the agent of the plaintiff.

The defendant's appeal was unanimously dismissed by the four judges composing the court.

The judgment may be upheld for the reasons given in the courts below and further because it is submitted the cost and the value are not sufficiently distinguished. The cost or price paid for the animal, though important for the purpose of checking the value at the time of the

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application for insurance and preventing over-insurance, can be no absolute criterion of the value, for, first, it must depend on how long before the insurance the purchase was made; and in this case, it was two years before; and, secondly, a horse may be bought cheap like anything else, or indeed more so than most things. Curiously enough, it is the company's counsel who in his cross-examination of the respondent suggests that this was so in the present case and that the real price of the horse was then $1,500.

The contract contains a mass of complicated conditions under some or one of which the company could probably wriggle out of most insurance they might write. The officials of the company suggested a settlement. But the company, apparently seeing a loophole to avoid making any payment, repudiated its liability *in toto.*

If the appellant company gave to the statement made with respect to the price paid for the horse the importance it now seeks to attribute to it, I cannot understand why, when the application for insurance was received, the attention of its officers was not drawn to the palpable alteration of the figures which appear on the face of the document. The original price of the horse was, in the first instance, given at $800 and this was changed to $1,500; and apparently no inquiry was made about the reason for this alteration.

It is, in my opinion, clear that the respondent throughout acted in good faith; when he filed his proof of loss he stated the price of the horse at $800.

Appeal dismissed with costs.

IDINGTON J. — I think, in the peculiar circumstances presented in this case that the knowledge of Luckwell, the agent, was that of the appellant.

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Indeed I am disposed to infer from an inspection of the alterations in the figures in the parts of the application of which so much has been made, that no one else than Luckwell, on behalf of the appellant, ever read and passed upon them or there would have been an inquiry started as to why the obviously altered figures were in the condition they were.

In such an event no doubt the result would have been due rectification and a very ready acceptance of the risk which never involved more than the judgment recovered.

Treating Luckwell as the agent of the company and it responsible for the condition of the application, I see no escape from the conclusions unanimously reached by the learned judges who have had occasion to pass upon the defence set up, and hence agree that the appeal should be dismissed with costs.

ANGLIN J.—This appeal, in my opinion, lacks merit.

I am not satisfied, if the answer in the application as to the "price paid" for the horse should be taken, as against the insured, to have been $1,500, that it was absolutely untrue. There is more than a suggestion in the record that the horse had been sold by one Hodges for $1,500 to Harker, that Harker had re-sold him for the same price to a purchaser, who paid only $700 and made default for the balance of $800, and that in consideration of the plaintiff, paying this balance, he then obtained the animal from Harker, to whom the price paid was thus actually $1,500. But on both the "application" and the "description" furnished with it the figures "$1,500" have manifestly been written over other

figures, which may well have been $800. If the representation as to the cost price was regarded as material, it is scarcely conceivable that an application

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and description with such obvious alterations in these figures should have been acted upon without verification or inquiry. The almost irresistible inference is that as only $800 of insurance was sought upon a horse valued at $1,500 the price paid by the assured was deemed negligible.

The fact that the policy limits the risk of the insurer to "two-thirds of the actual cost" of the animal insured confirms this view.

Clause 22 of the policy provides for immunity of the insurance company

> where it shall be found that the material statements set forth in the application upon which the acceptance of the risk was based were untrue.

If the statement as to cost was untrue and was binding on the assured, it has not been established that it was in fact, or was deemed, material, or that the acceptance of the risk was induced by, or based upon, it.

BRODEUR J.—This is an action on a contract of insurance of a horse. The insurance company contends that the application contains a false statement which was material to the risk, namely, that the plaintiff paid $1,500 for the horse, whereas, in fact, he paid only $800.

The application, which was declared by the contract to form part of the policy, was prepared by the agent of the company and was signed by the applicant. It was a condition of the policy that if the application is prepared by a person other than the applicant that person should be deemed the agent of the applicant and not the agent of the company.

The applicant was never asked by the agent how much he had paid for his horse. There is a question,

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however, in the application by the answer to which he would have been supposed to declare that the horse had cost him $1,500.

All the parties seem to be in good faith in the matter, and the mistake which has occurred was likely due to the fact that the applicant declared to the agent that the horse was worth $1,500. The evidence shews that the horse was worth that price.

It is in the circumstances of the case somewhat of a technical defence that is raised by the insurance company. Luckwell, the agent who filled up the application, was acting as agent of the company; and if he has not thought fit to inquire as to the price paid for the horse, his negligence would be the negligence of the company. Besides, the statement which was made would not be considered as being a material statement in the circumstances of the case because it is pretty clear by the application that the figures $1,500 or $800 seem to have been changed and altered. That fact should have been sufficient for the company to inquire as to it. They have not done so however. I think that the company should be called upon to pay the insurance.

The judgment of the courts below which dismissed its plea should be maintained with costs.

Appeal dismissed with costs.