N2LR

IN THE SUPREME COURT OF NEW ZEALAND
NORTHERN DISTRICT
AUCKLAND REGISTRY

No. A.136/70

No Special Consideration

(17) 1X

BETWEEN EDWARD LEONARD HAYDON of Papakura, Farmer

Plaintiff

A N D PACIFIC BLOODSTOCK (N.Z.) LIMITED a duly incorporated company having its registered office at Auckland, Insurance Agents

First Defendant

A N D INTERNATIONAL SHIPPERS LIMITED a duly incorporated company having its registered office at Auckland, Shippers

Second Defendant

Hearing: 5th February, 1971.

Counsel: Grove for Plaintiff.
Brown, Q.C. and Carter for First Defendant.

Judgment: 9th February, 1971.

JUDGMENT OF HENRY, J.

Plaintiff, who is a farmer, kept a number of brood mares. It is customary to insure these animals and their progeny against loss. Plaintiff insured with "Lloyds". Such insurances were arranged through First Defendant, which, prior to September 1968, dealt with a firm of insurance brokers called Hogg Robinson & Gardner Mountain (N.Z.) Ltd., but at about that time First Defendant took up an agency with a firm called Edward Lumley & Sons (N.Z.) Ltd. As a result of that change First Defendant wrote to all those with whom it had done insurance business. Plaintiff received one such letter dated September 1st, 1968, in which the last paragraph read as follows:-

> "In the meantime we would confirm that Edward Lumley & Sons will through this office, be arranging renewal of all existing policies as they expire."

For the purposes of this case only two policies of insurance are of moment. Plaintiff had insured his brood mare

"Catamaran" and her foal in policies which were due to expire on September 18th, 1968. These insurances had been effected through the agency of Hogg Robinson & Gardner Mountain Ltd. and would, if renewed through First Defendant, be dealt with by Edward Lumley & Sons Ltd. under the new arrangement set out in the said letter of September 1st, 1968. A notice was sent to Plaintiff by the insurers some time in August, advising him of the expiry date of the policies. Plaintiff did nothing. On December 30th, 1968, in the early hours of the morning, "Catamaran" got into difficulties whilst foaling and had to be destroyed. This was on the advice of a veterinary surgeon, Mr. C. J. Roberts, who was in attendance. On the same morning Plaintiff asked Mr. Roberts "to sign a certificate as to the fitness of the mare for insurance". He refused. At 10.30 a.m. Plaintiff attended at the offices of First Defendant. He there saw a clerk. To this clerk Plaintiff produced the document sent to him in the previous August. The bottom portion was detachable. This was detached by the clerk who made certain entries on it. The document was signed by Plaintiff. It reads:-

" Pacific Bloodstock (N.Z. Ltd.,
P.O. Box 23-182,
Papatoetoe.

Dear Sir,

1. Please renew the Insurance Policy/ Policies detailed in your notice dated .....

OR 2. Please amend the amount insured in the Policy/Policies detailed in your notice dated ..... in the following manner:-

Catamaran $280 received 30.12.68

3. My cheque for the premium due is enclosed.

Yours faithfully,

EDWARD L. HAYDON
Insurer. "

A cheque was paid for the premium on both policies. No indication was given by Plaintiff that "Catamaran" was then dead.

I turn now to the evidence of Mr. Harris who was (and still is) the Manager of First Defendant. He arrived about half an hour after Plaintiff left First Defendant's premises, but the effect of Plaintiff's visit was then related to him. "Catamaran" was an "over-age mare" which meant that, before she could be further insured a certificate from a veterinary surgeon as to her condition was required. Also she could not be insured for the same sum. There is a recognised scale whereby values are written down each year so that after twenty years of age no insurance will be given. Premiums increase each year. Either the insured or First Defendant takes the steps necessary for the obtaining of a certificate from a veterinary surgeon. There is no set practice. Since Plaintiff had not left a certificate Mr. Harris immediately rang Mr. Roberts who stated that "Catamaran" had died that morning. It was a coincidence that Mr. Roberts happened to be the veterinary surgeon 'phoned by Mr. Harris for the obtaining of such a certificate.

It appears that earlier, on October 18th, 1968, when another veterinary surgeon, Mr. J. R. Johnston, was attending to Plaintiff's horses, he was asked to give a certificate of fitness of "Catamaran" for insurance. A certificate of that date was provided and I am satisfied it was then given. Plaintiff said his instructions were that this should be sent to First Defendant direct by Mr. Johnston. Mr. Johnston was not called and I am not prepared to accept that this was so. However, Plaintiff was out of New Zealand about this period and he stated that the certificate was in his mail when he returned to New Zealand about December 14th. He did nothing about this certificate and it remained in his possession until after the events of December 30th which I have narrated. On March 20th, 1969, the following letter was sent by First Defendant to Plaintiff:-

" We enclose our cheque for $278.00 being a refund of the premium on the "Catamaran" mare.

Insurance on an over age mare is only renewed on the production of a Vets certificate, and a rate established accordingly. But as no such certificate was produced, our underwriters were not prepared to renew the policy. "

Plaintiff denies receiving this letter. Discovery by both sides omits any reference to this cheque and other records covering it, as well as the cheque paid by Plaintiff on December 30th. I need not pursue this further but it is obvious that the insurers would not then accept that any renewal had been effected. It is also obvious that the insurers were under no liability so Plaintiff now sues the First Defendant and I turn to analyse Plaintiff's claim.

The relevant parts of the Statement of Claim are paragraphs 1, 2 and 4. They read as follows:-

" 1. He was at all material times the owner of the horse "Catamaran".

2. On the 1st day of September 1968 the first defendant advised the plaintiff that the said horse which was insured in the sum of $4,000.00 would be insured on the plaintiff's behalf by it, the first defendant.

4. The first and/or the second defendant accepted payment for a premium in respect of the insurance on the said horse but failed to insure it. "

The allegation in paragraph 4 has not been proved. At the point of time when the cheque was handed over the horse was already dead, so Plaintiff had no insurable interest. I find also he failed to disclose this when he paid his cheque. If there be a cause of action it can arise only under paragraph 2 and from the undoubted fact that First Defendant did not insure the horse. Plaintiff relies upon the letter of September 1st, 1968, and, particularly the last paragraph which has been already cited. Just how this document supports a cause of action has not been made clear either by pleading or in argument. It is not expressly claimed that any contract existed between Plaintiff and Defendant. Any such claim must fail because no consideration has moved from Plaintiff to support it, or, at least, no consideration has been proved so to move. If the claim is not for a breach of an alleged contract then the Court is at a complete loss to find either in the

pleadings or evidence any other basis to support a claim for the alleged loss.

However, in my judgment, the position is clear. The said letter is no more than an offer to undertake the renewal of Plaintiff's existing policies as they expire. This meant, as Plaintiff well knew, that he would receive from the insurers the usual notices of expiry and that it was then for him to instruct First Defendant and to collaborate on the negotiating of a fresh policy for a lesser sum after a certificate of health had been obtained from a veterinary surgeon. It was not a simple renewal such as is well known on fire insurance. This mare was nearing the end of the recognised ~~xx~~ productive period and her insurable value was substantially diminishing each year. All Plaintiff's actions, including the getting of the certificate from Mr. Johnston, the attempt to get a further one from Mr. Roberts, and the visit to First Defendant's office and payment of the cheque, plainly show that Plaintiff knew that the letter of September 1st, 1968, was no more than an offer to arrange the renewal of existing policies and that it was for Plaintiff to give the necessary instructions, upon the receipt of the customary notice from the insurers, whether or not he desired further insurance. This would then require to be negotiated with the brokers. There is no occasion to decide what the obligations were inter se once instructions had been given, but it is clear that on this occasion Plaintiff accepted responsibility at least for the obtaining of the necessary certificate from a veterinary surgeon, but thereafter did nothing. I do not overlook the fact that, if Plaintiff had done no more than indicate an intention to renew the insurance, First Defendant might itself attend to all detail. The terms of such a relationship would depend upon the circumstances after instructions had been given.

There is no occasion to consider the technical requirements of obtaining a valid insurance cover. These are not

always insisted on. All this Court is called upon to determine is whether or not First Defendant was under a legal duty to take steps to insure the said brood mare, and, if so, did it fail to carry out that duty and so cause Plaintiff loss. I find that Plaintiff has failed to prove that any such duty lay upon First Defendant. The claim accordingly fails. There will be judgment for First Defendant, together with costs according to scale as on a claim for $4,000, and with Court disbursements and witnesses' expenses to be fixed by the Registrar. I certify for discovery and inspection, the costs of which may be fixed by the Registrar.

Solicitors:

Anthony Grove, Auckland, for Plaintiff.

McElroy, Duncan & Preddle, Auckland, for First Defendant.