

NO. C893198

VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

)
)
BETWEEN:)
)

WENDEB PROPERTIES INC.)
TIMBERLAKE HOLDINGS LTD.)
PLAINTIFFS)

AND:)
)

ELITE INSURANCE MANAGEMENT LTD.)
carrying on business as)
ELITE INSURANCE CO. and)
COASTAL INSURANCE SERVICES LTD.)
DEFENDANTS)

AND:)
)

COASTAL INSURANCE SERVICES LTD.)
THIRD PARTY)
)

AND:)
)

ELITE INSURANCE MANAGEMENT LTD.)
INSURANCE CO.)
THIRD PARTIES)
)
)
)

REASONS FOR JUDGMENT

OF THE HONOURABLE

MR. JUSTICE MACZKO

(IN CHAMBERS)

and ELITE

Counsel for the Plaintiff:

F. Potts, Esq.

Counsel for the Defendant:

S. Jackson, Esq.

Date and Place of Hearing:

December 12, 1989

Vancouver, British Columbia

This is an action for indemnity under a fire insurance policy. The plaintiff seeks judgment pursuant to an application under 18A of the Supreme Court Rules. The plaintiff owned a building at 1206

Hamilton Street, Vancouver, which was insured partially by Allstate Insurance Company and partially by Elite, the defendant. The plaintiff's action is against Elite, the insurer, and Coastal, the agent for the insurer.

Elite denies coverage alleging that no coverage was extended before the loss, that Coastal acted beyond its authority in providing coverage to the plaintiff and on the ground that there was a material change in risk of which Elite received no notice.

Elite insured the plaintiff's property for the year June 1st, 1988 to May 31, 1989. When that insurance was placed, Coastal acted as agent and the plaintiff dealt only with Coastal in the placement of that coverage. In 1989 Coastal again acted as agent and provided coverage from June 1, 1989 to May 31, 1990.

On May 3, 1989 Elite wrote to Coastal stating that it would provide coverage to the plaintiff on an as is basis. On May 30th Coastal informed the plaintiff that coverage would be renewed. On May 31st Coastal advised the plaintiff that the policy was renewed and was in place as of June 1st, 1989. On June 7th internal instructions were given at Coastal to prepare a cover note for the plaintiff. Late in the evening on June 7th or early morning June 8th a fire broke out on the plaintiff's premises completely destroying the insured building. Elite was notified about the fire

on June 8th. An invoice for premiums was sent to the plaintiff on July 10th and the plaintiff paid the premium on July 12th. This premium was never returned.

Allstate paid its share of the loss shortly after the fire but Elite continues to deny coverage. Coastal admits that it provided coverage to the plaintiff and says it had authority to do so. Coastal took the position that the plaintiff is entitled to coverage and Elite is obligated to pay.

The defendant denies coverage on the ground that Coastal had no authority to cover the plaintiff and that there was a substantial change in risk. I find that Elite did extend coverage through its agent Coastal and is bound by the policy of insurance on the plaintiff's properties at 1206 Hamilton Street, Vancouver, British Columbia.

The defence regarding Coastal's authority to extend coverage is a dispute between Coastal and Elite which cannot affect the plaintiff's rights. It was admitted that there was an agency agreement between Coastal and Elite. Coastal was the agent that arranged insurance with Elite for the preceding year. Coastal is the only agent that dealt with the plaintiff. Elite wrote to Coastal stating it would renew coverage on existing terms. If Coastal exceeded its authority in extending coverage there is no evidence that the plaintiff knew or could have known about it. The plaintiff believed Coastal had authority to extend coverage, and acted on it. The plaintiff could not have even suspected that Coastal was exceeding its authority, if indeed it was. There was clearly ostensible authority on which the plaintiff acted and the defendant Elite cannot deny coverage.

MATERIAL CHANGE IN RISK

The only evidence that there was a material change in risk is that the plaintiff was contemplating renovating its building. Some of the tenants had left and some doors had been delivered to the premises. There was no evidence that any renovations had begun. It is clear that Coastal was preparing to issue a new policy if and when renovations commenced. However, that point had not yet been reached when the old policy was renewed.

The essence of the plaintiff's position is that it should have an opportunity to do discoveries and go to trial in case a defence may present itself. It has no evidence at the present time which would provide a defence. I find that the evidence in favour of the plaintiff is overwhelming. To send this part of the case to trial would only delay matters and would deny the plaintiff access to its insurance monies and could work a great hardship in its plans to rebuild. In my view the defendant must present a credible defence on an 18A application. The fact that Elite might have a claim against Coastal should not prejudice the plaintiff.

ELITE v. COASTAL

Coastal also made an application for the court to make a finding that it had actual authority to issue the policy. I dismiss that part of the application because the defendant Elite presented enough evidence that it might have a cause of action against Coastal for exceeding its authority. I think the defendant should at least have an opportunity to have a discovery and it might be open to Coastal to renew its application once discoveries have been completed. Elite takes the position that Coastal did not have actual authority to bind Elite because the agency agreement was on an "offer and acceptance basis" and that Coastal issued a cover note without obtaining Elite's agreement to cover. Elite alleges that a renewal notice was sent by Elite to Coastal on May 3rd, 1989 which constitutes an offer to "renew as is" and that the offer expired on June 1st, 1989 without Elite having received instructions. If these facts are proven Elite might have a good cause of action against Coastal, and Coastal might have a defence. Sufficient issues have been raised and I believe it would not be appropriate to give judgment at this time.

The plaintiff Wendeb will have its costs against Elite and those costs will become costs in the cause between Elite and Coastal. The costs to date as between Coastal and Elite will be costs in the cause.

F. Maczko, J.

Vancouver, British Columbia

January 16, 1990