

14 Jan 2010
(HJ)

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 HOLDEN AT GEORGE TOWN, GRAND CAYMAN

3 CAUSE NO: 78 OF 2006

4 BETWEEN:

- 5 (1) SAGICOR GENERAL INSURANCE (CAYMAN) LIMITED
- 6 (2) THE PROPRIETORS OF STRATA PLAN NO. 151
- 7 (KNOWN AS WINDSOR VILLAGE)

8 Plaintiffs



9 -AND-

- 10 (1) CRAWFORD ADJUSTERS (CAYMAN) LIMITED
- 11 (2) BOULD PATERSON LIMITED
- 12 (3) ALASTAIR PATERSON
- 13 (4) HURLSTONE LIMITED
- 14 (5) HURLSTONE GENERAL CONTRACTORS LIMITED
- 15 (6) JOHN HURLSTONE
- 16 (7) ROBERT HURLSTONE

17 Defendants

18 -AND-

19 IN THE GRAND COURT OF THE CAYMAN ISLANDS

20 CAUSE NO. 573 of 2008

21 BETWEEN:

- 22 (1) HURLSTONE LIMITED
- 23 (2) HURLSTONE GENERAL CONTRACTORS LIMITED
- 24 (3) JOHN HURLSTONE
- 25 (4) ROBERT HURLSTONE

26 Plaintiffs

27 -AND-

- 28 (1) SAGICOR GENERAL INSURANCE (CAYMAN) LIMITED
- 29 (2) THE PROPRIETORS OF STRATA PLAN NO. 151
- 30 (KNOWN AS WINDSOR VILLAGE)

31 Defendants

32 Coram: The Hon. Mr. Justice Henderson

33 Appearances:

34 Mr. Michael Roberts Q.C. instructed by Mr. Nick Dunne of
35 Walkers for the 1st and 2nd Plaintiffs
36 Mr. Thomas Lowe, Q.C. instructed by Mr. Christopher J. McDuff
37 of Thorp Alberga for the 4th to 7th Defendants
38 Mr. Anthony Bueno Q.C. instructed by Mr. Graham Hampson for
39 the 1st and 3rd Defendants

40 Heard on 18th December 2009

RULING

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4 1. At the conclusion of final argument in this lengthy trial, the defendants have
5 applied to re-amend their pleadings. The first, second and third defendants wish
6 to re-amend their counterclaim by the addition of:

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8 (1) an allegation of damage to the reputations of these defendants flowing
9 from an article in the Cayman Compass describing the original allegations
10 (by Sagicor and Windsor Village) of fraud and conspiracy;

11
12 (2) an allegation that the article mentioned above was “planted” by Frank
13 Delessio, an executive of Sagicor, with the object of destroying the
14 reputations and businesses of the defendants;

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16 (3) references to the “frequent expression” by Mr. Delessio of his dislike of
17 and hostility towards Alastair Patterson;

18
19 (4) the attribution of a statement to Sagicor’s chief executive officer that it
20 had the means to take its fraud and conspiracy case “the full distance... to
21 put your boys [i.e. the Hurlstones] out of business”;

22
23 (5) a reference to the obtaining of a mareva injunction against the Hurlstone
24 parties and the attempt to obtain one against defendants 1 to 3;

25
26 (6) an allegation that the respective experts have agreed on the amount of
27 special damages (subject to a ruling on liability) in the amount of C\$1.3
28 million;

1 (7) an allegation that defendants 1, 2 and 3 suffered damage, including special
2 damage, resulting from loss of business arising from publicity given to the
3 original fraud and conspiracy action;

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5 (8) in the prayer for relief, a claim to the agreed special damages, to interest
6 and to costs.

7
8 2. Defendants 4 to 7, the Hurlstone parties, seek leave to re-amend their statement of
9 claim to include some, but not all, of the additional matters referred to above.


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11 3. As with any request for an amendment, the overriding concern is whether it will
12 cause prejudice. I am satisfied that no prejudice will arise from any of these
13 requested changes. In every case, the “new” allegations have been the subject of
14 extensive evidence and argument. There is no reason to think that any of these
15 amendments come as a surprise to Sagicor or Windsor Village; the newly pleaded
16 allegations serve only to bring within the pleading matters of fact which have
17 already been examined extensively and without objection from the plaintiffs.

18
19 4. Sagicor and Windsor Village argue that leave to amend should not be granted as
20 the claim, in its amended form, would have no reasonable prospect of success. I
21 do not think it would be fruitful or even proper to undertake that analysis at this
22 time. The trial is at an end, or virtually so, and assessing the requested
23 amendments as if the trial had not yet started would be a wholly artificial and
24 pointless exercise. For these brief reasons, the two applications to amend are
25 allowed.

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2 5. The plaintiffs have requested a right to make further submissions on some of the
3 matters referred to in the amendments. Although I am unconvinced of the need
4 for it, I will grant leave to the plaintiffs to file a further written argument within
5 14 days. This argument must be confined to matters referred to in the most recent
6 amendments and may not exceed 15 pages in length. The defendants have had a
7 more than ample opportunity to argue their case and are not permitted to make
8 any further argument. The plaintiffs' request for a direction that submissions
9 made by the defendants on the merits of the case which were interspersed with
10 their written submissions seeking leave to amend should be ignored is refused;
11 those submissions will be taken into account.

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13 6. The amendments have not imposed any additional costs upon these plaintiffs and
14 are unlikely to do so; I make no order as to the costs of the application for leave to
15 amend.

21 Dated: 14th January 2010


The Hon. Mr. Justice Alexander Henderson
Judge of the Grand Court

