15.11.85

IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN
IN CHAMBERS, BEFORE THE HON. MR. JUSTICE HULL

CAUSE NO: 401/85

BETWEEN:	FRANK P. LANZA	–	PLAINTIFF
AND:	THE ROYAL INSURANCE COMPANY	–	DEFENDANT

Mr. Lanza in person.
Mr. Jenkins for the defendant.

REASONS FOR DECISION

On 13th November 1985, I granted leave to the defendant to defend this action on the condition that within 14 days it should file and serve on the plaintiff further and better particulars of its Defence in two respects, ie.

(a) stating specifically whether or not it denies that there has ever been a contract of insurance No. C.I. 7103106 between the parties; and

(b) to the extent that as an alternative defence, it denies that it is liable to the plaintiff under the policy, summarising comprehensively the facts by reason of which it denies liability.

I said that if the need arose I would state my reasons. I had in mind the possibility of an appeal. The plaintiff, who appears in person, has now written to the court requesting written reasons. I propose to give them even though no notice of appeal has been lodged.

This was in essence a summons for judgment under rule 23 of the Grand Court (Civil Procedure) Rules. By his supporting affidavit, the plaintiff stated that his claim, as set out in the indorsement on the writ of summons, is good and that he believes the defendant has no defence.

The plaintiff's claim, as set out in the indorsement, is clear. He is saying that he holds an insurance policy with the defendant, that on or about 10th April, he made a claim under it for damage suffered during a break-in, that the amount of the damage was $16,453.85, that despite repeated demands, the defendant has refused to pay out, and that the only correspondence

he has had from the defendant was, six months after the event, a rejection slip. He has not pleaded in the indorsement the actual terms of the rejection slip but he has attached what he pleads as being a copy of it to the writ. He also seeks to recover $2,000 compensation for hardship and strain suffered as a result of what he alleges as being unreasonable delay by the defendant, and costs and interest.

At first, the defendant did not file a Defence. That was because it chose instead to apply to have the matter referred to arbitration. When that application was refused, it did file a Defence and also an affidavit in answer to the plaintiff's summons for summary judgment.

That summons fell to be decided on the affidavits and on the submissions made for each party.

I came to the view that the defendant ought to be granted leave to defend. It is evident that there are disputes as to facts, for example, when and what the plaintiff reported to the Police and whether he made a report to the defendant company, and also as to whether the head of $2,000 damage can in any event be sustained.

I nevertheless had reservations about the Defence. Paragraph 4 of the indorsement on the writ is admitted but everything else is in effect denied. It is also evident from paragraphs 3 and 4 and from paragraphs 7- 11 of the affidavi/that the defendant is pleading that the plaintiff was in breach of his obligations under a contract of insurance.

The defendant may be able to maintain as alternative defences -

(a) that no contract of insurance ever existed; and

(b) that if it did, the plaintiff is in breach of the agreed terms so as to release the defendant from its obligations -

but I think it is clear from the evidence and submissions for the defendant at the hearing of the present summons that it must now be in a position to set out the substance of its defence in clear and comprehensive summary, even though there may be alternative defences. I did not think the Defence as it stood at the time of my decision did this. It was not clear whether the defendant was denying that there ever was a contract. Paragraph 4 of the Defence seems to me at least by implication to admit at least that it had a policy of the kind referred to, and that this fact has some relevance to the claim. Paragraphs 3 and 4 of the Defence appeared to me only to state the defendant's position on the matters pleaded in them incompletely. Paragraphs 7 to 10 of the supporting affidavit point to this.

The Defence also fails to make clear the extent to which alternative defences are being pleaded.

At trial, the burden will lie on the plaintiff to prove his case, but on the present application, having verified his cause of action by affidavit, it was for the defendant to show cause why it should have leave to defend. Paragraph 11 of its affidavit is not in these circumstances in my view sufficient for that purpose (see for example Wallingford v. Mutual Society (1880), 5 App. Cos. 685, where Lord Blackburn of page 704 made the point that it is not enough merely to deny on oath the plaintiff's allegation - the court must be satisfied that there is reasonable ground for the denial.)

My reservation about the Defence was that the true position of the defendant might really be no more than as set out in paragraph 11 of the affidavit. Having regard to the other parts of the affidavit and of the Defence, I did as I say finally come to the view that leave should be granted, but also that the defendant ought to make its Defence quite clear. For these reasons, I granted leave on terms.

D. Hull.

GRAND COURT - CAYMAN ISLANDS

David Hull
Puisne Judge

15th November, 1985.