

IN THE GRAND COURT OF THE CAYMAN ISLANDS
 HOLDEN AT GEORGE TOWN
 BEFORE THE HON. KIPLING DOUGLAS, ACTING PUISNE JUDGE
 CAUSE NO. 401 of 1985.



13th January 1986

BETWEEN FRANK LANZA PLAINTIFF
 AND THE ROYAL INSURANCE CO. Ltd. DEFENDANT

Plaintiff in person unrepresented.
 Mr. Jenkins for defendant.

AG	<i>[Signature]</i>
LD	<i>[Signature]</i>
SEC	<i>[Signature]</i>
CC1	
CC2	<i>[Signature]</i>
CC3	
CC4	<i>[Signature]</i>
IE	<i>[Signature]</i>
PS	<i>[Signature]</i>
For Action To	<i>[Signature]</i>
NFA Put Away	

RULING

This is an application by the plaintiff brought under rule 41 of the Grand Court (Civil Procedure) Rules that the defence filed by the defendant be struck out.

By Writ of Summons dated 26 September 1985 the plaintiff claimed against the defendant for monies due and payable under the terms of a written Insurance Policy. This writ was served on the office of Foster Brothers (Ins.) Ltd. agents for the defendant company on 27 September 1985 as supported by affidavit of service of the said date.

On the 4th October an appearance was entered by the defendant company through their attorneys.

On 8 October a summons was taken out by the defendant applying for a

hearing of an application by them brought under section 6 of the Arbitration Law 1974 that the matter be stayed pending the hearing of an arbitration. An affidavit in support of this application was attached and the date of the application set for 31 October 1985.

By summons dated 17 October 1985 the plaintiff applied to the Grand Court sitting in Chambers for:

"Leave to apply for Final Judgment in Default of Defence pursuant to s 23 and 42 (2) of the Grand Court (Civil Procedure) Rules."

The hearing of this application was also set for 31 October 1985.

On that date the decision of the Judge was reserved and the summons adjourned to 4 November 1985 so also was the summons for judgment.

On 4 November 1985 the application by the defendant for a stay was refused and the summons by the plaintiff adjourned to 12 November 1985 to allow the defendant to file affidavit in answer.

On the following day, 5 November 1985, a defence was served on the plaintiff.

On the 13 November 1985 leave was granted to the defendant to defend this action on condition that within 14 days it should file and serve on the plaintiff Further and Better Particulars of its defence;

- (a) Stating specifically whether or not it denies that there has ever been a contract of insurance No. C.I. 7103106 between the parties.
- (b) to the extent that as an alternative defence, it denies that it is liable to be plaintiff under the policy, summarising comprehensively the fact by reason of which it denies liability.

In his reasons for decision the learned Judge made it clear that he came to the view that the defendant ought to be granted leave to defend

as it is evident that there are disputes as to fact. He however went on to express his reservations about the defence.

On 21 November 1985 the defendant filed Further and Better Particulars in compliance with the order.

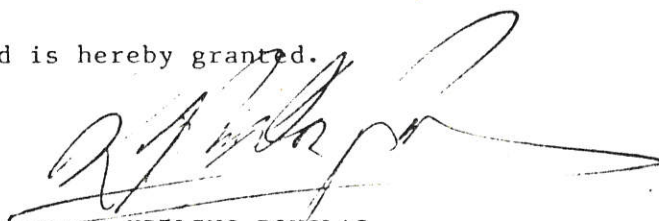
On November 28 the plaintiff took out another summons to have the matter struck out. The supporting affidavit alleges three grounds that the defence

- (a) discloses no course of action or defence and
- (b) is scandalous, vexatious and frivolous and
- (c) it is an abuse of the process of the Court.

The pleadings so far provide no support for (b) and (c). I therefore propose to deal with (a) only.

A perusal of the affidavit in reply dated 5 November 1985 discloses that there are a number of issues in dispute. Apart from the denials contained in paragraphs 2 - 7 and para 11, paragraphs 8 - 10 refer to the Contract of Insurance and clearly raise a number of issues which can only be determined at the trial. On the strength of these sections I would grant leave to defend. The Further and Better Particulars filed on 21 November 1985 take the issue even further. Paragraph 1 (a), (c), (f) and (g) all raise questions of fact. All these will have to be determined by the court at the trial. It is not for me to decide this issue on the strength or weaknesses of the defendant's case. The defendant has denied several aspects of the claim and I am satisfied that both the defence and the Further and Better Particulars disclose reasonable ground for these denials.

Leave to defend is hereby granted.



KIPLING DOUGLAS

17 January 1985.