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Docket: CI 01-01-23193
(Winnipeg Centre)
Indexed as: Pine Ridge Golf Club v. Lombard General Insurance Company of Canada et al.
Cited as: 2003 MBQB 168

COURT OF QUEEN'S BENCH OF MANITOBA

B E T W E E N:

PINE RIDGE GOLF CLUB,

plaintiff,

-- and --

LOMBARD GENERAL INSURANCE COMPANY OF CANADA, ROYAL & SUN ALLIANCE INSURANCE COMPANY OF CANADA, DONBAR AGENCY LIMITED trading as CROSSROADS INSURANCE AGENCY, and ANTHONY McREDMOND,

defendants.

Counsel were:

TED E. BOCK
for the plaintiff

MICHAEL G. FINLAYSON
for the defendants Lombard General Insurance Company of Canada & Royal & Sun Alliance Insurance Company of Canada

WILLIAM S. GANGE
for the defendants Donbar Agency Limited trading as Crossroads Insurance Agency & Anthony McRedmond

Judgment delivered:
July 8, 2003

HANSSEN J.

[1] This is an appeal from a decision of a Master. The Master granted Lombard General Insurance Company of Canada ("Lombard") and Royal & Sun Alliance Insurance Company of Canada ("Royal") summary judgment dismissing

Pine Ridge Golf Club's ("Pine Ridge") claim. At the same time, he dismissed Pine Ridge's motion for summary judgment against Lombard and Royal.

[2] The issue between the parties concerns the interpretation of an insurance policy. Pine Ridge claims that certain equipment which it lost in a fire was insured under Part I of the policy as "property of every description" whereas Lombard and Royal claim it was insured under Part III of the policy as "mobile equipment". They agree that if the court accepts the interpretation advanced by Pine Ridge, judgment should be awarded in its favour against Lombard and Royal in the principal sum of $240,458.23. They also agree that if the court accepts the interpretation advanced by Lombard and Royal, Pine Ridge's claim should be dismissed.

[3] I have concluded that Pine Ridge is entitled to summary judgment against Lombard and Royal.

FACTS

[4] Pine Ridge operates a golf course near Winnipeg. In May or June 1999, it received Lombard General Insurance Company of Canada Policy No. CBP 0821576 ("the policy"), which was subscribed in equal portions by three insurers – Sovereign General Insurance Co. ("Sovereign"), Royal, and Lombard ("the insurers").

[5] As the result of a fire on July 29, 1999 a large quantity of Pine Ridge's groundskeeping equipment was lost or damaged. The replacement cost of the equipment was $572,669.30.

[6] Sovereign settled Pine Ridge's claim for $190,870.69 being its proportionate share of the replacement cost of the equipment. In settling the claim, Sovereign treated the equipment as "property of every description" insured under Part I of the policy. The policy provided coverage for such property on the basis of its full replacement cost value to a limit of $2,215,000.

[7] Lombard and Royal also paid the claim but on a different basis. They concluded that the equipment was not insured under Part I of the policy by virtue of an exclusion in that part of the policy for property insured under "marine insurance". Instead, they treated the equipment as "mobile equipment", which was insured under Part III of the policy to a limit of $212,000. Accordingly, they paid Pine Ridge only their proportionate share of $212,000 that is, $141,340.40.

[8] As a result, Pine Ridge received $240,458.23 less than it would have if Lombard and Royal had paid their proportionate share of the replacement cost pursuant to Part I of the policy.

[9] Part I of the policy insures "property of every description at a location described in the Schedule of Part I and for which an amount of insurance is shown in respect of property of every description". The definition of "property of every description" contained in the policy includes equipment. The equipment was at Pine Ridge when it was lost due to the fire. Pine Ridge is one of the locations described in the schedule to Part I. An amount of coverage of $2,215,000 is shown for property of every description.

[10] Property insured under the terms of any marine insurance is excluded from coverage under Part I by virtue of Exclusion 7.a.12. This exclusion reads:

> **7.** ***Exclusions***
> **a. Property Excluded**
>
> This form does not insure loss or damage to...
>
> 12) property insured under the terms of any Marine Insurance and property while waterborne, except while on a regular ferry or railway car transfer in connection with land transportation.

[11] Part III of the policy which is titled "Inland Marine" states under the heading "Schedule of Coverages":

Coverages applicable to all locations:	
Accounts receivable $100,000	$1,000 deductible
Mobile equipment $212,000	$1,000 deductible

POSITIONS OF THE PARTIES

[12] Pine Ridge takes the position that the equipment was insured under Part I of the policy.

[13] Lombard and Royal take the position it was insured under Part III of the policy and not Part I. They argue that the schedule entitled "Inland Marine *Schedule of Coverages*" constitutes marine insurance. They say that because the equipment was insured under this schedule, it was excluded from coverage under Part I of the policy by virtue of Exclusion 7.a.12. They claim this was the intention of the parties and that this is evident from the course of dealings between them prior to the date of loss.

[14] Pine Ridge argues that the coverage provided for mobile equipment under Part III was not marine insurance and therefore Exclusion 7.a.12 was not engaged. It also argues that evidence regarding the past course of dealings between the parties would violate the parol evidence rule and is therefore inadmissible.

DOES THE EXCLUSION APPLY?

[15] I am satisfied the coverage under Part III of the policy was not marine insurance.

[16] "Marine insurance" is defined in both ***The Insurance Act***, R.S.M. 1987 c. I40, and ***The Marine Insurance Act***, R.S.M. 1987, c. M40.

[17] The definition in s. 1 of ***The Insurance Act*** reads:

> **"marine insurance"** means insurance against marine losses; that is to say, the losses incident to marine adventure, and may by the express terms of a contract or by usage of trade extend so as to protect the insured against losses on inland waters or by land or air, which are incidental to any sea voyage;

[18] Section 2 of ***The Marine Insurance Act*** defines "marine insurance" as follows:

> A contract of marine insurance is a contract whereby the insurer undertakes to indemnify the assured, in manner and to the extent thereby agreed, against marine losses, that is to say, the losses incident to marine adventure.

[19] Sections 3 to 5 of ***The Marine Insurance Act*** go on to provide:

> **Mixed sea and land risks.**
> 3 A contract of marine insurance may, by its express terms or by usage of trade, be extended so as to protect the assured against losses on inland waters or on any land risk which may be incidental to any sea voyage.

Marine insurance coverage.
4 Where a ship in course of building, or the launch of a ship, or any adventure analogous to a marine adventure, is covered by a policy in the form of a marine policy, the provisions of this Act, in so far as applicable, shall apply thereto; but, except as by this section provided, nothing in this Act shall alter or affect any rule of law applicable to any contract of insurance other than a contract of marine insurance as by this Act defined.

Marine adventure and maritime perils defined.
5(1) Subject to the provisions of this Act, every lawful marine adventure may be the subject of a contract of marine insurance.

Insurable property.
5(2) In particular there is a marine adventure where,
(a) any ship, goods, or other movables are exposed to maritime perils. Such property is in this Act referred to as "insurable property";
(b) the earning or acquisition of any freight, passage-money, commission, profit, or other pecuniary benefit, or the security for any advances, loan, or disbursements, is endangered by the exposure of insurable property to maritime perils;
(c) any liability to a third party may be incurred by the owner of, or other person interested in or responsible for, insurable property by reason of maritime perils.

Maritime perils.
5(3) "Maritime perils" means the perils consequent on or incidental to the navigation of the sea, that is to say, perils of the seas, fire, war perils, pirates, rovers, thieves, captures, seizures, restraints, and detainments of princes and peoples, jettisons, barratry, and any other perils, either of the like kind or which may be designated by the policy.

(Underlining is mine)

[20] While a literal reading of the concluding words of ss. 5(3) of ***The Marine Insurance Act*** appears to permit any peril to be designated by the policy as a marine peril, this would be an absurd interpretation.

[21] In his text **The Law of Marine Insurance**, (Clarendon Press, 1996), Howard N. Bennett discusses the interpretation given in England to an identical definition in ***The Marine Act***, 1906. At p. 12 he states:

> The final phrase of this definition, ... has occasioned some difficulty since, read literally, it permits any peril to be designated as a maritime peril despite a complete absence of any maritime connection. However, although the concept of maritime perils serves to define a marine adventure, the courts restrict the definition of the former by reference to the latter. In *Re London County Commercial Reinsurance Office Ltd.* [[1922] 2 Ch. 67] reinsurance 'peace policies' drafted in marine insurance form provided for indemnification against total losses 'in the event of peace not being declared between Great Britain and Germany on or before 31 March, 1918.' Since the trigger to indemnification was obviously not a loss incident to a marine adventure the failure to declare peace could not be a maritime peril and the contract could not be one of marine insurance.
>
> Where a vessel is mortgaged, the mortgagee will normally take an assignment of the benefit of the mortgagor's hull insurance. However, as a safeguard against failure of the principal insurance, the mortgagee may also take out a separate mortgagee's interest policy. In *The Captain Panagos D.P.,* [[1985] 1 Lloyd's Rep. 625] in order to determine the measure of the insurer's liability on a bank's mortgagee's interest policy, Mustill J. had to decide whether the policy was one of marine insurance. Observing that a literal reading of the closing words of section 3(2) would be 'absurd', he held that only exposure of property to perils consequent on or incidental to the navigation of the sea could lend an adventure a marine character. The policy in question presented considerable difficulties of interpretation, but its 'general tenor and shape' were held to be more consistent with insurance against damage to the vessel rather than financial loss to the mortgagee through default of the insurer on the principal policy. Accordingly, the policy was held to be one of marine insurance.

[22] The coverage provided on the mobile equipment in Part III of the policy was not marine insurance because the losses insured against were not losses relative to any marine adventure. Accordingly, Exclusion 7.a.12 did not affect Pine Ridge's coverage under Part I of the policy.

IS EXTRINSIC EVIDENCE ADMISSIBLE TO AID IN INTERPRETING THE POLICY?

[23] In spite of the fact that Part I of the policy provided coverage for "property of every description", the Master concluded the parties didn't intend

the equipment to be covered under Part I of the policy. In coming to this conclusion he relied on extrinsic evidence regarding dealings between the parties prior to the date of the loss.

[24] Pine Ridge began purchasing insurance from the insurers in 1995. Part I of all of the policies issued for the years 1996 – 1998 provided insurance coverage to Pine Ridge on its buildings and contents. Among other things, Part I of each of the policies provided $1,760,400 of blanket coverage on the buildings and $350,000 on the contents. Part I of the policies did not provide any coverage on equipment. Pine Ridge's mobile equipment was separately insured under Part III of each of the policies for approximately $422,500.

[25] On November 12, 1998, at the request of Pine Ridge's insurance broker the insurers reduced the limit of coverage on the mobile equipment to $212,000 and refunded $496 of the premium which had been paid by Pine Ridge.

[26] In June 1999, Pine Ridge requested that Part I of the 1999 policy be issued with "property of every description" coverage rather than with separate coverage for the buildings and contents as had been the case in the past. However, the policy which was issued continued to provide coverage under Part III for mobile equipment in the amount of $212,000.

[27] Pine Ridge submitted a statement of values to the insurers dated June 7, 1999 which listed the property previously covered under Part I of the 1998 policy. It did not include any equipment. The total value listed in the statement

was $2,215,000 which was also the limit of the "property of every description" insurance coverage in the 1999 policy.

[28] Lombard and Royal contend that this history demonstrates that the parties did not intend the equipment to be insured under Part I.

[29] In this case, the parties' agreement – the policy – was reduced to writing and was intended to express the entire agreement between the parties. As a general rule, extrinsic evidence will not be admitted to vary, add to, subtract from or qualify the parties' written agreement if the language of the written contract is clear and unambiguous. See ***Bohna* v. *Toffoli*** (1981), 12 Man. R. (2d) 1 at para. 44.

[30] As there is no ambiguity on the face of the policy, I am satisfied the extrinsic evidence is not admissible to assist in the interpretation of it.

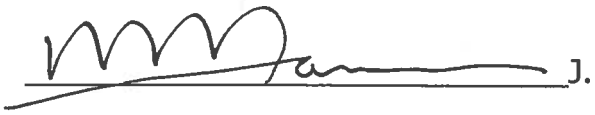
[31] While the insurers may have intended the equipment to be covered under Part III and not Part I, they failed to achieve this result with the policy they issued. On a plain reading of the 1999 policy, Pine Ridge's equipment was covered under Part I as long as it was located at Pine Ridge's premises at the time of the loss. Part III provided more limited coverage with respect to the equipment if it was away from its normal location.

CONCLUSION

[32] As the exclusion on which Lombard and Royal rely was not triggered and the extrinsic evidence is not admissible to interpret the policy, there is no triable issue with respect to Pine Ridge's claim against them. Accordingly, I am setting

aside the summary judgment granted to Lombard and Royal by the Master and I am granting Pine Ridge summary judgment in the amount it is claiming.

[33] Pre-judgment interest and costs may be spoken to if necessary.



J.