

SUPREME COURT OF NOVA SCOTIA

Citation: *Grafton Connor Property Inc. v. Murphy*, 2015 NSSC 195

Date: 2015-06-30

Docket: Hfx No. 293148

Registry: Halifax

Between:

GRAFTON CONNOR PROPERTY INCORPORATED, a body corporate, c.o.b.
GRAFTON-CONNOR GROUP, and BEAUFORTH INVESTMENTS
INCORPORATED, a body corporate, c.o.b. NORTH END BEVERAGE ROOM

Plaintiffs

v.

SEAN MURPHY, in his quality as Attorney in Fact in Canada for Lloyd's of
London Underwriters and MARSH CANADA LIMITED, a body corporate

Respondent

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Judge: The Honourable Justice Arthur J. Leblanc

Heard: June 9-13, 16-20, 23-27 and 30, July 2-4, and October 30,
2014 in Halifax, Nova Scotia

Final Written Submissions: October 30, 2014

Written Decision: June 30, 2015

Subject: Insurance Law, Negligence

Summary: The North End Pub, owned by the Grafton Connor Group of Companies ("Grafton Connor") was destroyed by fire. The Pub was insured by Lloyd's of London Underwriters ("Underwriters") under an insurance policy that had been placed through Marsh Canada Limited ("Marsh"), an insurance broker.

Underwriters subsequently discovered that, contrary to the information it received at the time it bound coverage, the Pub was neither sprinklered, nor entirely of masonry construction. Underwriters denied the claim on the basis of material misrepresentation. Grafton Connor brought an action against Underwriters and Marsh for indemnity under the policy, consequential damages as a result of the delay in rebuilding, and aggravated and punitive damages.

Grafton Connor argued that Endorsement 10 to the policy precluded Underwriters from voiding coverage on the basis of unintentional misrepresentations. In the alternative, it said Underwriters negligently assessed the risk of the North End Pub and was liable to indemnify Grafton Connor for the value of the claim under the policy.

In the further alternative, if Underwriters was entitled to void the policy and was not liable in negligence, Grafton Connor claimed against Marsh in contract and tort. Grafton Connor alleged that the misrepresentations originated with Marsh, that Marsh was negligent in handling its account, and that Marsh had knowledge, and later possession, of an inspection report indicating that the Pub was not sprinklered.

Grafton Connor also claimed three categories of consequential loss against both defendants: (1) increased costs of construction; (2) lost profits from the redevelopment over the period of delay, and (3) loss of entitlement to VLTs which resulted in loss of the business.

Issues:

- (1) Did Endorsement 10 preclude Underwriters from voiding coverage?
- (2) If not, was Underwriters entitled to void the policy on the basis of material misrepresentation?
- (3) If the Policy was properly voided, was Underwriters liable in negligence?
- (4) If Underwriters was not liable under the policy or

otherwise, was Marsh liable to indemnify Grafton Connor for the value of the claim?

- (5) Was Grafton Connor contributorily negligent?
- (6) Did co-insurance apply?
- (7) Was the policy a blanket or a scheduled policy?
- (8) Was Grafton Connor entitled to consequential damages?
- (9) Was Grafton Connor entitled to aggravated and/or punitive damages?

Key words:

Misrepresentation, insurance, underwriting, insurance brokers, duty of care, duty of good faith, blanket coverage, scheduled coverage, co-insurance, consequential damages, aggravated damages, punitive damages

Result:

(1) Endorsement 10 was not intended to excuse unintentional material misrepresentations by the insured. (2) Underwriters was entitled to void the policy. (3) Underwriters was not liable in negligence. It had no duty to investigate the accuracy of the information provided in order to unearth misrepresentations by the insured.

(4) Marsh breached the standard of care of a reasonable broker by failing to make inquiries to ascertain whether the insured's representative had the necessary training or experience to accurately complete the insurance applications, and, if not, to discuss the benefits of property inspections with him.

(5) Grafton Connor was also negligent. Among other things, it failed to ensure that its representatives handling the placement of insurance had sufficient knowledge of the properties to place coverage. Liability for the claim under the policy was apportioned equally between Marsh and Grafton Connor.

(6) The co-insurance provision did not apply. (7) The policy

was a blanket policy.

(8) Grafton Connor failed to establish a breach of the duty of good faith by Underwriters. As a result, consequential damages were not available against it.

As against Marsh, Grafton Connor's decision to use the insurance proceeds to build a multi-storey mixed-use development was not foreseeable. Nor was the loss of the VLTs and resulting loss of the business. Grafton Connor was entitled to the increased cost to construct a replacement standalone Pub and the loss of profits it could have generated from the replacement Pub from December 2008 to the date of trial. Liability for consequential damages was apportioned equally between Grafton Connor and Marsh.

(9) Aggravated and punitive damages were not warranted.

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