

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Fleet v. Federated Life Insurance Company of Canada, 2008 NSSC 231

Date: 20080725

Docket: SH 247663

Registry: Halifax

Between:

David Richard K. Fleet

Plaintiff

v.

Federated Life Insurance Company of Canada
and Paul Bellefontaine

Defendant

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Judge: The Honourable Justice Gerald R P Moir

Heard: 21, 22, 23 January 2008 at Halifax

**Final Written
Submissions:** 25 February 2008

Subjects: Civil Procedure Rule 18.14; use of discovery transcript
Life insurance; material misrepresentation or non-disclosure

Issues:

1. Whether plaintiff makes a defendant plaintiff's witness by introducing entire discovery transcript?
2. Whether insurer able to avoid life policy for material misrepresentation or non-disclosure?
3. Whether agent liable to plaintiff or insurer?

Summary: Coverage was denied because of false answers in application. Plaintiff also claimed against insurer's agent, and insurer cross-claimed against agent. At trial, plaintiff tendered agent's discovery transcript. Agent then chose not to testify. Both defendants argued uncontradicted evidence of agent was binding on the court.

Result:

1. Case law and Rule 18.14(5) make it clear that, in Nova Scotia, tendering an adverse party's discovery transcript does not make the adverse party a witness for the tendering party.
2. Agent was found to have signed insured's name to application without her authorization. There was no credible evidence about disclosures she made to agent. Insured found liable.
3. Claim by plaintiff against agent dismissed. Agent breached contract with, and fiduciary obligations owed to, insurer. Liable for amounts to be paid by insurer.

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