

Claim No: 314315

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Sampson v. AA Munro Insurance, 2009 NSSM 44

BETWEEN:

JOEY SAMPSON and ANITA SAMPSON

Claimants

- and -

AA MUNRO INSURANCE

Defendant

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on September 8, 2009

Decision rendered on September 14, 2009

APPEARANCES

For the Claimants self-represented

For the Defendant Mary MacDonald, broker

BY THE COURT:

- [1] This Claimants own a trailer which they use as a seasonal home and which is permanently parked at a campground on Nine Mile Lake.
- [2] In the spring of 2009 the river flooded its banks and destroyed the trailer. When the Claimants made a claim on their insurance, they were surprised to learn that they did not have the replacement value insurance that they believed they had obtained through their insurance broker, the Defendant AA Munro Insurance in New Glasgow. In fact, the policy that had been arranged for them entitled them only to the depreciated value of the trailer.
- [3] The Claimants, with the help of a lawyer, were able to negotiate a fairly liberal settlement from Portage Mutual Insurance, but seek a further amount from the Defendant on the basis of a claimed failure to provide the appropriate coverage.
- [4] The role of an insurance broker is most importantly to understand the needs of the clients and at least present them with options. In the case here, it appears that there was more than one way to insure a trailer. The more expensive option would have been through a so-called trailer policy, which would have provided for full replacement value. The less expensive option was to use a standard automobile policy which provides for a depreciated amount only, in the event of theft or damage.
- [5] The evidence of the Claimants is that they were clear in their desire for replacement value insurance, although they were obviously shopping around for the best deal possible. They were quite clear in their evidence

that the Defendant's representative, Ms. MacDonald, never explained that there were different types of policies, or that what they were getting provided depreciated value only.

- [6] It is important to note that all dealings were done by phone and fax; there were no face to face meetings. Before agreeing to the coverage, the Claimants received a fax from the Defendant quoting the premium on the policy. On the face of the fax it states:

2007 Prowler Classic Travel Trailer

\$30,000 value Replacement Cost (emphasis in original)

\$250 deductible All Perils Coverage

\$419.00 year

- [7] The Claimants concluded from this that they had replacement value insurance.
- [8] The evidence of Ms. MacDonald was that she needed to know the replacement value to know how much insurance to arrange, but that this did not mean that the coverage would be for replacement value.
- [9] I believe that most people receiving a fax such as was sent by the Defendant would conclude that they had replacement value, at least to the value stated. The finer points of replacement value vs. depreciated value (or actual cash value) would escape most people, unless it were carefully and competently explained. In my view, it is the duty of an insurance broker to explain the coverage being offered, and in particular to match it up with the customer's needs. If the broker fails to explain adequately

what is being obtained, and leaves a reasonable impression on the clients that they have the desired coverage, that amounts to actionable negligence.

The Law

[10] The duty of care owed a customer by an insurance agent was considered by the Ontario Court of Appeal in *Fine's Flowers Ltd. v. General Accident Assurance Co.* (1977), 17 O.R. (2d) 529, at 538, in a decision that has been expressly approved by the Supreme Court of Canada in *Fletcher v. Manitoba Public Insurance Co.*, [1990] 3 S.C.R. 191.

[11] In *Fines*, the court stated:

The main ground of appeal from the judgment of the learned trial Judge is that he put far too broad and sweeping a duty on insurance agents. They are not insurers. It is not part of their duty to know everything about their clients' businesses so as to be in a position to anticipate every conceivable form of loss to which they might be subject. The agent's duty, counsel submits, is 'to exercise a reasonable degree of skill and care to obtain policies in the terms bargained for and to service those policies as circumstances might require'.

I take no issue with counsel's statement of the scope of the insurance agent's duty except to add that the agent also has a duty to advise his principal if he is unable to obtain the policies bargained for so that his principal may take such further steps to protect himself as he deems desirable. The operative words, however, in counsel's definition of the scope of the agent's duty, are 'policies in the terms bargained for'.

In many instances, an insurance agent will be asked to obtain a specific type of coverage and his duty in those circumstances will be to use a reasonable degree of skill and care in doing so or, if he is unable to do so, 'to inform the principal promptly in order to

prevent him from suffering loss through relying upon the successful completion of the transaction by the agent'.

But there are other cases, and in my view this is one of them, in which the client gives no such specific instructions but rather relies upon his agent to see that he is protected and, if the agent agrees to do business with him on those terms, then he cannot afterwards, when an uninsured loss arises, shrug off the responsibility he has assumed.

- [12] Summarizing the results in *Fine's Flowers*, Wilson J. in *Fletcher* then observed (at pp. 215-16):

Thus, the agent would have discharged his duty in *Fine's Flowers* if he had informed the plaintiff that certain types of losses were not covered by the policy he had arranged and had advised the plaintiff to purchase additional coverage for the pumps if he really wanted "full coverage" ...

In my view, *Fine's Flowers* stands for the proposition that private insurance agents owe a duty to their customers to provide not only information about available coverage, but also advice about which forms of coverage they require in order to meet their needs.

Conclusions

- [13] I believe these authoritative statements apply to the case at hand. The Defendant did not supply what the Claimants needed by way of coverage, and failed to supply proper advice about what was available and what one could acquire at the different premium levels.
- [14] More specifically, Ms. MacDonald did not fully explain to the Claimants the limitations of the policy that they would actually be getting. I find that they relied upon her to obtain replacement value coverage, and that without their explicit instructions to do so, or appreciation of the subtleties involved,

she arranged a policy that provided the less desirable depreciated value coverage. In so doing, the Defendant agency was in breach of its duty of care and is liable in damages to the Claimants.

Damages

- [15] On the question of damages, the Claimants believed they had replacement value coverage for a second-hand trailer which they valued at \$30,000.00. It turns out that a new trailer of the same kind would cost \$47,000.00, plus HST. Because they could not afford a new trailer, or even a used one of precisely the same description, they purchased a used trailer of a different type for some \$26,000.00. I do not know if that included HST.
- [16] The negotiated amount that the Claimants received from Portage Mutual was \$28,465.00, which appears to have been more than the depreciated value that they were initially prepared to pay.
- [17] What the Claimants seek from the Defendant is the difference between \$30,000.00 plus HST (\$33,900.00) and \$28,465.00, which comes to \$5,435.00.
- [18] I will admit that there are some questions in my mind concerning how HST fits into the picture. If the Claimants indicate that they wished to have replacement value insurance in the amount of \$30,000.00, did that mean \$30,000.00 plus HST or just \$30,000.00? This is not entirely clear.
- [19] Another question which is not clear is whether in an actual policy, the term “replacement value” would necessarily be limited by the value that is

placed upon it. In other words, with a proper replacement value policy, might the Claimants have been able to claim the actual amount it would cost to replace it?

[20] I believe these are the types of questions that ought to have been addressed by the Defendant when arranging the insurance.

[21] In the situation here, the best measure of loss is the expectations that the Claimants had: namely that they were insured for up to \$30,000.00 plus HST which they believed was the value of their trailer. It turns out that they would have been under insured, but that would not have been the fault of the Defendant.

[22] I assess damages at \$5,435.00.00.

[23] On the question of costs, the Claimants paid \$179.35 to issue the claim. Ms. Sampson drove approximately 150 kilometres each way from Dartmouth to New Glasgow to serve the claim, for a total of 300 kilometres. I am prepared to allow the additional amount of \$60.00 as costs, which is less than it would have cost them to send the claim to a professional process server.

[24] In the result there will be damages of \$5,435.00 plus costs of \$239.35, for a total judgment of \$5,674.35.

Eric K. Slone, Adjudicator