

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: *Caldwell Roach Insurance Agencies v. Fiddes*, 2021 NSSM 37

Date: 20211026

Claim: No. SCT 505554

Registry: Truro

Between:

Caldwell Roach Insurance Agencies

CLAIMANTS

and

David Fiddes

DEFENDANT

Adjudicator: Julien S. Matte, Adjudicator

Heard: October 25, 2021 (via teleconference)

Counsel: Vince Neary representing the Claimant
David Fiddes, self represented, for the Defendant

Matte, Adjudicator,

[1] A longtime business relationship between an insurance broker and a small business owner sours after the business owner refuses to pay for a policy he claims was never requested and points to a missing signature to show he's right.

[2] The uncontested background to the dispute was provided by the Claimant's principal, a general insurance broker ("Claimant"). The Claimant met the Defendant six or seven years prior when the Defendant became a client. The Defendant obtained insurance for his commercial vehicles including snowplow, insurance for his equipment and tools as well as General Liability insurance. A couple years later, the Claimant also became a customer of the Defendant with respect to snow removal. The mutually beneficial arrangement continued for a few years.

[3] The parties' disagreement stems from the renewal for January 2020-January 2021 insurance policy. According to the Claimant and unchallenged by the Defendant, the Defendant had made several claims under the previous commercial vehicle policy. As a result the then insurer refused to provide any further coverage to the Defendant. The Claimant researched other options and found another insurer that would meet the Defendant's insurance needs.

[4] The Claimant first sent the Defendant a reminder of the upcoming insurance renewal early December 2019 and drafts of the new policies followed later that month. The Claimant testified that he met with the Defendant on January 13, 2020 to discuss the situation with respect to the previous insurer as well as the new policy he had sourced. In addition to his recollection of the meeting, the Claimant provided a calendar entry as well as an email thread indicating in part that the

Defendant was running late but would arrive at the meeting soon.

[5] According to the Claimant, during the January 13, 2020, the parties discussed the new policy and the Defendant agreed to its terms. The Claimant points to the Defendant signature on the policy application as proof of the meeting but acknowledged that he failed to obtain a second signature on another page. At the time, the Claimant asked the Defendant to review the list of equipment to be insured to make sure it was still accurate. Despite some initial back and forth, the equipment list was not finalized at that time.

[6] In early June 2020, and on discovery of the missing list, the Claimant sent the Defendant a reminder to finalize the equipment list to which the Defendant replied and provided the list. The Claimant followed with an invoice for the entire policy.

[7] The invoice of \$5,365.00 has not been paid and is claimed as damages.

[8] The Defendant indicates that he never met with the Claimant on January 13, 2020. The defendant relies on his plowing schedule for that day which he testified indicated that he plowed the Claimant's parking lot at 5:50 a.m. and that he had been too busy to have returned that day. The Defendant points to the unsigned page in the insurance application as proof he never applied and questions how the insurance policy could be in place if he wasn't paying it and was never asked to pay first and last month's premiums.

[9] When asked about having alternate insurance in place, the Defendant was reluctant to provide details but did eventually indicate there was insurance with another broker. No other details were given. The Defendant also testified that he

stopped plowing for the Claimant at some point during the winter of 2020 although not on the January 13, 2020 date.

[10] On cross examination from the Defendant, the Claimant indicated that the insurer did not require the missing signature to put the policy in effect but could not issue the policy documents until the equipment list was finalized. Given the longstanding relationship with the Defendant and to ensure insurance continuity, the Claimant paid the insurer directly and planned to collect from the Defendant. The Claimant confirmed that the policy was in place for the stated term of January 13 2020 to January 13 2021.

[11] After being prompted in early June 2020, the Defendant emailed the Claimant the requested equipment list. In response the Claimant sent an invoice dated June 17, 2020 for the policy showing the policy term as January 13 2020 to January 13, 2021 with an amount due of \$5365.00. When asked why the Defendant provided the equipment list, the Defendant testified he thought he was providing an updated equipment list to obtain a new insurance quote rather than perfecting the January policy.

[12] The Court finds that, upon receipt of the June 17, 2020 invoice, a prudent business person would have made a quick call to his longtime broker to clear things up and arrange to cancel one of the policies whether from the Claimant or the other broker mentioned. It is not credible that the Defendant would have operated without any insurance or with two policies in place at the same time.

[13] The Defendant's claim that no meeting took place is difficult to reconcile in the face of the Defendant's signature on the application. If a meeting took place but no agreement had been reached, then the June invoice should have brought things

to a head. The fact that there is no evidence to support that the policy was canceled makes the claim that it was never agreed to difficult to reconcile with the evidence.

[14] Further, to accept the Defendant's version would require the Court to find that the Claimant was fraudulent in putting in place an unrequested policy at a meeting that never took place. There is no evidence to support such a finding. If, on the other hand, there had simply been a miscommunication in January 2020, the invoice from June 2017 made the Claimant's view about the ongoing coverage, crystal clear and could only be ignored at the Defendant's peril.

[15] The Court finds that the parties met in January 2020 to discuss ongoing coverage for the Defendant's business. The Defendant agreed to the policy subject to adjustment arising out of the equipment list. The court further finds that the policy was put in place by the Claimant for the policy period of January 13, 2020 to January 13, 2021. As a result the Defendant had insurance coverage for the policy period as invoiced on June 17, 2020.

[16] The Claim for \$5,365.00 plus costs is allowed.

Julien S. Matte, Adjudicator