

CITATION: Jordan v. Commonwell Mutual Insurance Group, 2025 ONSC 1086

COURT FILE NO.: CV-19-00000096-0000

DATE: 2025Feb19

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

JOHN JORDAN and WILLIAM NIELSON

Plaintiffs/Responding Parties

– and –

COMMONWELL MUTUAL INSURANCE
GROUP and FINNEGAN INSURANCE
BROKERS LTD.

Defendants/Moving Parties

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)
) Michael Raymond Switzer, for the
) Plaintiffs/Responding Parties
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) Kadey B. J. Schultz, for the Defendant, The
) Commonwell Mutual Insurance Group
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) Pasquale Santini, for the Defendant,
) Finnegan Insurance Brokers Ltd.
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) **HEARD:** November 16, 2023 with written
) submissions filed November 27, 2023,
) January 29, 2024 and February 12, 2024

CAREY J.

DECISION ON MOTIONS FOR NON SUIT

Overview and Issues

[1] The plaintiffs seek damages from both defendants arising from a policy of insurance on a hunting camp and outbuildings destroyed by fire in 2018. They say the replacement value was in excess of \$140,000. Both defendants have moved for non suit dismissing the claims.

[2] The plaintiffs say that the defendant Finnegan failed in its duty to the plaintiffs to ensure that the insurance policy adequately protected their property and acted in bad faith.

[3] Specifically, they say that the defendant Finnegan failed to advise the unsophisticated defendants that the policy did not provide replacement cost coverage in the event of a destruction of the buildings situated on the property.

[4] The plaintiffs further say that the defendant Commonwell failed in its duty not to close the file while the issues with the policy were live.

[5] The defendants Finnegan and Commonwell say that replacement insurance was not available for this type of property and that had been explained to the plaintiffs. They argue that the plaintiff Jordan lacks credibility and that, in any event, the plaintiffs have been referred by this court to arbitration and the plaintiff Neilson has presented no evidence by affidavit or otherwise on the issues. It is not disputed that a cheque in the amount of \$54,000 was sent out to the plaintiffs.

[6] For the reasons set out below, I am granting the summary judgment motions and dismissing the claims of both plaintiffs as against all defendants.

Analysis

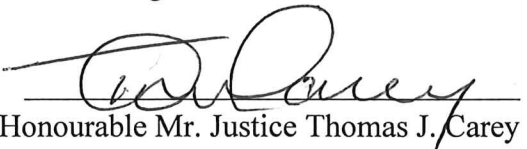
[7] The order of Fraser J. dated October 6, 2022 sending this matter to arbitration was clear and bound all parties. This case's course, following a disagreement, is governed by the insurance policy that was issued. Even if I were wrong on that issue, I accept that there is no credible evidence that supports the plaintiffs' position that the policy limits were not explained by Finnegan or that Commonwell acted in bad faith.

[8] The plaintiff Jordan argues that he presumed his policy was for replacement value insurance but agreed that he did not discuss that belief with the defendants. His position in proceeding in this case seemed to be motivated by the belief that the defendants and the police thought that he was responsible for the apparent arson at the property. There was no evidence at all that this was the case and that would have been inconsistent with the issuance of the \$54,000 cheque to the plaintiffs. At trial, he admitted that before the claim was issued, he knew he had a cash value only policy.

[9] Even if I accepted that negligence was proven here, which I do not, there is no evidence to support the claim for damages as the only evidence of the hunt camp value was that established by the Appraisal Award, \$32,918.26.

[10] Finally, I conclude that the revised claim for \$10 million dollars should not have been accepted for filing and was totally lacking any basis on the facts here for its issuance. If it was done for a tactical reason, it clearly was both improper and counterproductive. The settlement cheque sent to the plaintiff in the circumstances was more than appropriate and should have resolved this relatively simple claim.

[11] Accordingly, all claims in this matter are dismissed against both the defendants with costs. If the parties are unable to agree on costs, they can provide written submissions to me no more than two pages double-spaced on a timetable agreed to by them within 30 days of the release of this decision. I would ask that the court be advised if an agreement has been reached.


Honourable Mr. Justice Thomas J. Carey

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Released: February 19, 2025