Long Island Boating World

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SEA TRIALS

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Honesty Is The Best Policy

Is it true that honesty is the best policy? As one boat owner recently learned, this maxim applies not only in life, but also in marine insurance. So held a federal judge in a reported marine decision entitled *AGF Marine Aviation & Transport vs. Richard Cassin*.

Richard Cassin purchased an 85-foot pilothouse Formosa Ketch, named *Falcon*, from Magnus Falk. The purchase price was $400,000 and Cassin obtained financing from Citi Group/Sales Financing, Inc. for that amount.

The Insurance Application

Naturally, the vessel needed marine insurance. Cassin turned to a reputable London-based marine insurer, AGF Marine Aviation & Transport (AGF). Cassin filled out an insurance application, as is standard practice when applying for a policy of marine insurance. The application was submitted via the insurer's well-known English agent, TL Dallas (Special Risks) Ltd. The application requested disclosure of vessel details and facts about the owner, such as his experience, licenses, prior claims, etc. Under the section of the application calling for the "purchase price" of the *Falcon*, Cassin entered "$600,000." Based on this information, AGF issued a marine insurance contract to Cassin in the amount of $600,000 for a period of one year.

The Sinking

In the first year of the insurance contract, the *Falcon* sunk off the coast of Grenada after colliding with a submerged shipping container. As a result of this total loss, Cassin filed a claim with AGF seeking $600,000 from his insurer. However, during the insurance company's investigation of the claim, it learned that the purchase price of the *Falcon* was actually $400,000, not $600,000, and that it appeared the insured misrepresented the purchase price on his application. Misrepresentations are serious in admiralty law, as the insured was about to find out.

AGF's admiralty lawyers filed what is known as a "declaratory judgment" action in a federal jurisdiction near the loss, the District Court of the Virgin Island, Division of St. Thomas & St. John. AGF sought a 'declaration' from the court that the insurance contract should be void from its inception based on the misrepresentation of the purchase price in the application. Cancelling an insurance contract from its inception based on material omissions or misrepresentations in the application is known as being void *ab initio*. Since the facts did not appear in dispute, AGF moved for summary judgment to have the issue decided by the federal judge as a matter of law, without a jury.

Uberrimae Fidei

Remember, an insurance policy is a contract just like any other, but a marine
insurance policy has some unique admiralty laws that apply to it. One of these unique concepts is the doctrine of *"uberrimae fidei,"* otherwise known as the duty of "utmost good faith." This doctrine requires that an insured *fully* and *voluntarily* disclose to the insurer *all* facts material to the insurance risk. If there is a material misstatement or omission in the application, that is a ground for voiding the policy. To be material, the fact must be something which would have affected the insurer's decision to accept the risk or the premium charged. A party's *intent* to conceal, or lack thereof, is not relevant to the *uberrimae fidei* analysis. In this case, the court first had to determine whether the insured made any
misstatement.

Despite some contrary evidence that was given little weight, the judge found that the purchase price of the *Falcon* was indeed $400,000, not $600,000. The credible evidence showed that (i) Cassin financed $400,000; (ii) the closing statement reflected a selling price of $400,000; and (iii) the buyer accepted $400,000 from Cassin in exchange for the vessel. As a result, the Court concluded that Cassin misstated the purchase price on the application when he stated that the purchase price was $600,000.

Next, looking to the law, the Court determined that when an application specifically asks for the purchase

continued on page 63

continued from page 54

price of a boat, the purchase price is "unquestionably a fact material to the risk." In other words, a marine insurer's specific inquiry about a fact is usually sufficient to establish that such fact is "material" as a matter of law. Here, the application did ask specifically about the purchase price of the *Falcon*. The underwriters explained in affidavits submitted as evidence that the purchase price is a critical factor in determining the insured value of a vessel. The affidavits also showed that if Cassin's application had listed the purchase price as $400,000, but he sought $600,000 in insurance coverage, the underwriters would not have considered writing the risk unless they first received significant evidence that at least $200,000 in improvements had been made after the purchase, or that Cassin had received an extraordinary bargain when he purchased the vessel. Thus, the undisputed facts showed that AGF's underwriters actually relied on the disclosure of the purchase price in determining whether or not to issue the Policy. In light of the undisputed facts and the law, the Court determined that the misrepresentation of the purchase price on the application was a breach of the duty of *uberrimae fidei*. As a result, the insurance contract was voided and the insured was unable to recover anything for the loss of his vessel. Finding that the facts were not in dispute and that AGF was entitled to judgment as a matter of law, the Court granted the insurer's motion for summary judgment declaring that there never was a valid Policy.

Conclusion

This case is a stark reminder that honesty is truly the best policy. And in marine insurance, the lack of it may result in no Policy!

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