

JERSEY / JUDGMENT

Cafe de Lecq -v- Rossborough

[2012] JRC 067 (26 March 2012)

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judgment

the commissioner: 1. Rossborough contends that the plaintiff has failed to prove on a balance of probabilities, as it must, that if Rossborough had done what it should have done Mr Ruellan would have acted to ensure that there was compliance with the deep fat fryer warranty: in reality, they say, Mr Ruellan would not have acted any differently than he did. Accordingly, there is no causal connection between any breach of duty on the part of Rossborough and the plaintiff's inability to recover on the AXA policy. 2. Rossborough's case is based on a number of points although emphasis shifted somewhat between them as the case progressed. Originally the main contention was that Mr Ruellan had not, by his own admission, done anything to ensure that the deep fat fryer at the Breakwater Café complied with the relevant warranty following receipt of Rossborough's letter of 16 February, 2006, (Amended Answer, paragraph 30.3, and Rossborough's opening skeleton argument, paragraph 57) and that there was no reason to suppose that he would have been any more diligent in the case of Café de Lecq. Mr Ruellan's answer to this was that he did not need to carry out any check at the Breakwater Café because "everything was new" and

- as he colourfully put it - "I would have expected that those things were on the equipment and assumed that no-one would have supplied me with a fryer that did not have all the relevant buttons and switches." Such a stance may have entailed an element of risk but is understandable and cannot, we think, be regarded as wholly irresponsible. In any event
- (i) it tells one nothing about how Mr Ruellan would have behaved in the case of Café de Lecq where he knew that the deep fat fryer was not new, and (ii) although the 16 February, 2006, letter went further than Rossborough's letters of 2 nd and 15 th March, 2007, in making (unspecific) reference to "the warranties", it still failed to draw attention to the restrictive nature of the cover offered and the consequences of non-compliance in a way that would have alerted Mr Ruellan to the importance of checking that his expectations of the new fryer were in fact correct. 3. By the end of the case the main theme of Rossborough's case had become one of general carelessness and indifference on the part of Mr Ruellan where risk and insurance were concerned. The result in the case of Café de Lecq was, it was argued, that no matter what Rossborough had said in their letters:- "Mr Ruellan simply did not read letters from Rossborough to him..... It is more likely than not that even if the DFF

warranty had been more explicitly referred to, or spelt out, in the covering letters of 2 March, 2007, and 15 March 2007. Mr Ruellan would still not have "got the message". He would simply not have read what was sent to him. This is because Mr Ruellan simply does not treat communications from his brokers and/or insurers as important even though he knows that they are important." And, it is said, even if he had read them he would not have taken heed of them. 4. It is true that a number of answers given by Mr Ruellan under cross-examination by Advocate Journeaux gave the impression of someone accustomed to giving communications from brokers and insurers no more than cursory attention. But he was often less sophisticated than some in the way he answered questions; and, on a fair assessment of his evidence as a whole, it is clear that his more "throwaway", gruff responses on the subject of insurance were directed more to the detailed material accompanying Rossborough's letters than the letters themselves, as for example, in "Because half the things you get from insurance companies are just insurance speak. You don't know what they mean half the time". 5. On any view the defendant's contention that "he simply did not read letters from Rossborough" does not stand up. The written record makes it plain that, if nothing else, Mr Ruellan must have read Rossborough's letters and taken note of requests that required information from him: otherwise he would not have duly completed and returned, as requested, the (partially completed) proposal form sent to him by Rossborough with its letter of 16 th February, 2006, and would not, following receipt of Rossborough's letter of 2 nd March, 2007, have telephoned Mr English to point out that the Statement of Fact needed correction in one respect (that the premises were protected by a Securicor intruder alarm system). What he did not do, for perfectly understandable reasons, was to trawl through the detail in page after page of accompanying documentation. 6. There is, accordingly, no reason to think that, if Rossborough's covering letters of 2 nd and 15 th March, 2007, had contained a clear message of the kind that we have found that they should have done Mr Ruellan would not have read and understood it:- "52. It is not for this Court to be prescriptive as to how exactly a broker should word his correspondence with clients in order to draw attention to the existence of significant warranties or endorsements and to emphasise the implications of non-compliance. But the substance of the message that needed one way or another to be got across in the present case was simple: that AXA were only prepared to offer cover on terms that the deep-fat fryer complied (and would continue to comply throughout the term of the insurance) with the specification set out in the Appendix to the accompanying Schedule and that any failure to comply with that specification would be likely to render the whole policy ineffective. It was a message that needed to be prominently stated in Rossborough's covering letter, which in the ordinary way would be the very first document that the client would see on opening the envelope. For present purposes what matters is that Rossborough came nowhere near doing this." The key question is whether there is any reason to suppose that, having done so, he would have ignored it. The question, be it noted, is not whether Mr Ruellan would or would not have acted on a letter expressed in the same terms as the one written by Mr English twelve months previously in relation to the Breakwater Café (which was the way in which the matter was put to Mr Ruellan by Mr Journeaux in cross-examination) but whether he would have failed to take action on a letter

expressed in the more explicit, informative and admonitory terms that we have found appropriate - a letter which, in the event, was never written. The answer, as we see it, must be that it is wholly unlikely that he would have ignored such a letter, given that he knew the deep fat fryer in the Café de Lecq was not a new one. 7. Rossborough points to passages in Mr Ruellan's evidence in which he explained why, in the event, he had not had the deep fat fryer checked for safety before allowing staff to use the equipment: that there had not been time before the planned start of trading and that he himself had been busy "constantly running backwards and forwards between the two cafés". But the premise of those answers was that, on the basis of the letters actually received by him from Rossborough, there was no reason for him to have been concerned with whether the fryer complied with a warranty of which he was (understandably) unaware and, accordingly, whether the café was or was not insured. 8. Had Mr Ruellan's attention been drawn to the terms of the warranty in the way that it should have been, to conclude that he would still have failed to check whether the newly-acquired fryer complied with the terms on which AXA was prepared to offer cover would require one to impute to him a degree of reckless disregard for his own interests, as well as those of his wife, Mr Reynolds and the Roperts, wholly at odds with what one would expect from any reasonably responsible person. As Mr Ruellan said in cross-examination, acknowledging that insurance is important, "Got to be done. You can't operate without insurance". 9. Nor can it reasonably be supposed that, having found that the fryer lacked the necessary safety features - or, perhaps, having assumed that because of its age it might lack them - Mr Ruellan would not have taken prompt steps to remedy the situation, probably by buying a new fryer, the cost of which we were informed would have been of the order of £1,000. As Mr Ruellan put it, "If I'd have had any sort of notification or hint of anything being wrong with the fryer, I would have done something about it. If it had been explained to me, I would have had something done. It's minimal." And again, at a later point in his evidence "If I had had any hint of something being wrong I would have done something about it." We have no reason to doubt that this was anything other than the truthful evidence of someone who, in our estimation, was as sensible as the next man and was certainly not going to ignore completely a situation that would have left the café uninsured especially when it could have been remedied simply and at no great cost. 10. It is for these reasons that we find as we have done in the second sentence of paragraph 53 of the Judgment. Authorities Café de Lecq-v-Rossborough

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