

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:)
)
 CHRIS LEE and JUDITH LEE) Barry J. Sullivan, for the Plaintiffs
)
)
)
 Plaintiffs)
)
- and -)
)
)
 BRENDAN BOTT) Daniel J. Fife, for the Defendant
)
)
)
 Defendant)
)
- and -)
)
)
 THE GUARANTEE COMPANY OF) T.R. Shillington, for the Third Party
 NORTH AMERICA)
)
 Third Party)
) **HEARD:** March 10, 2008

2008 CanLII 17128 (ON S.C.)

McGARRY J.

[1] This action arises from a fire which occurred on August 20, 2000 and resulted in the destruction of a barn and its contents. The parties have agreed upon the damages in the sum of

\$58,706.08. The sole issue is whether the actions which give rise to the fire were intentional rather than accidental thereby bringing into question the coverage by the third party.

[2] Filed as Exhibit 1 is a excerpt from the insurance policy which states:

You are not insured for claims arising from:

(5) bodily injury or property damage caused by any intentional or criminal act or failure to act by:

- (i) any person insured by this policy; or
- (ii) any other person at the direction of any person insured by this policy.

[3] The defendant, Brendan Bott, (“Bott”) testified that he was pursuing a divinity degree; however, at age 18 when the fire occurred he was a binge drinker, pot smoker and partygoer. On the night in question he and his friends visited the plaintiffs’ farm in order to party and observe a motocross event.

[4] He arrived at the farm at approximately 6:00 p.m. and continued drinking and partying until he was asked by the security to return to his tent due to his behaviour. Instead he managed to squeeze into the barn with another friend. He had earlier taken a barbeque lighter from a picnic table in a nearby town, he lit the barbeque lighter, waved it around and applied it to a wall of hay. The hay caught on fire and literally blew up in front of him. He and his friend ran from the barn and ended up the nearby town, stole two bicycles and rode to a barn to sleep for the night. He acknowledged that his recollection of the events in the barn was hazy due to his consumption of alcohol, felt that he was impaired at the time and believed that he could not have had any intention of lighting the hay. When asked why he would apply the flame to the hay was unable to provide any explanation.

[5] The following day he became aware that the police were looking for both he and his friend and when confronted by the police denied any involvement. In due course when he heard that his friend was going to be charged with setting the fire he went to the police and acknowledged that he was the person who had destroyed the barn.

[6] Under cross-examination he agreed that he could not provide any explanation other than that he had no intention of starting the fire however he also acknowledged that he had told his friend that the owners of the barn deserved to have it burned down. His explanation for these comments was that they were simply the result of him being 18 and in a drunken state.

[7] The defendant takes the position that this issue must be resolved from a subjective perspective and that his explanation that he had no intention to light the fire should be accepted as there is no other evidence to contradict it. He attributes his actions to a person who was drunk and unable to form an intent.

[8] As explained by Professor Philip H. Osborne: in his text *The Law of Torts*, end ed. (Irwin Law Inc.: Quicklaw, 2003):

B. The Meaning of Intention

In tort law the culpability of the defendant's conduct is defined with reference to the consequences of that conduct. Negligence is conduct that gives rise to a foreseeable and substantial risk of its consequences. As the likelihood of the consequences increases, the conduct of the defendant may be described first as grossly negligent and then as reckless. Conduct is not, however, intentional unless the defendant either desires the consequences of his conduct or the consequences are substantially certain to result from the conduct.

[9] The defendant acknowledges that he applied the flame to the hay. He states that he smoked but that the barbeque lighter was not lit for that purpose. It was clear that he entered the barn rather than returning to his tent as instructed and later stated that the owners deserved to have the barn burned. He also fled the scene, stole bicycles and was able to make it to another barn to sleep overnight. It would seem that the only vague recollection that he has is in connection with the reason for him setting fire to the hay and in all circumstances I am satisfied that the only reasonable conclusion that I could come to is that he intended to light the hay and the inevitable result occurred.

[10] This is not a situation in which an isolated act such as throwing away a match resulted in extensive fire damage. In this case, as I have said, it was inevitable that unless the fire could be

put out the building would be destroyed. The defendant acknowledged that he took no steps to extinguish the fire.

[11] In light of my findings, I am satisfied that the defendant committed an intentional act by lighting a fire and consequently the defendant is not entitled to any indemnity from the third party and will be required to pay the damages as claimed.

[12] If necessary, the parties may make written submissions concerning costs within 14 days of the date of this order.

“Mr. Justice J. F. McGarry”
Mr. Justice J.F. McGarry

Released: April 18, 2008