



Copyright (C) 2006 New England Jury Verdict Review & Analysis

CHENEVERT vs. REJEAN REMILLARD INSURANCE AGENCY.
97-18

DATE OF VERDICT/SETTLEMENT: October 24, 1999

TOPIC: PROFESSIONAL NEGLIGENCE OF INSURANCE AGENT - FAILURE TO MAKE CERTAIN PROPER COVERAGE WAS EFFECTED AS ALLEGEDLY REPRESENTED - CONSUMER PROTECTION VIOLATION ALSO ALLEGED AGAINST DEFENDANT INSURANCE AGENCY - PLAINTIFF SUFFERS THEFT LOSS FOLLOWING PURCHASE OF UNFINISHED HOME.

SUMMARY:

Result: Defendant's Verdict

ATTORNEY:

Plaintiff's: Gary E. Mastin of Draymore, Mastin & Goldberg in Springfield, Ma for plaintiff.

Defendant's: John B. Stewart of Moriarty, Donoghue & Leja in Springfield, Ma for defendant.

JUDGE: Judd Carhart

RANGE AMOUNT: \$0
STATE: Massachusetts

COUNTY: Hampden County

INJURIES:

PROFESSIONAL NEGLIGENCE OF INSURANCE AGENT - FAILURE TO MAKE CERTAIN PROPER COVERAGE WAS EFFECTED AS ALLEGEDLY REPRESENTED - CONSUMER PROTECTION VIOLATION ALSO ALLEGED AGAINST DEFENDANT INSURANCE AGENCY - PLAINTIFF SUFFERS THEFT LOSS FOLLOWING PURCHASE OF UNFINISHED HOME.

FACTS:

This was a professional negligence action brought by purchasers of a Homeowners insurance policy through the defendant insurance agent. The plaintiff subsequently suffered a loss by theft and coverage for the loss was denied by the insurer. The plaintiff contended that the defendant insurance agent negligently failed to make certain that the plaintiff had the proper coverage, including theft coverage, and that the defendant represented that the plaintiff was covered for all foreseeable losses.

The plaintiff contended that at the time he purchased insurance coverage, he advised the agent that the house he was purchasing was just a shell and required significant additional work. He did not tell the agent when he was planning to occupy the house and he was not offered special coverage for theft. The plaintiff contended that he was simply told by the agent that he was 'all set.'

Six weeks after the occupancy date noted on the Homeowners application, the plaintiff had still not moved into the premises. Kitchen cabinets costing \$8,700 were charged on a contractor account and delivered to the house. According to the plaintiff, the cabinets were installed and then 'disappeared.' The plaintiff immediately reported the loss to the insurance agent and the police and five days later, purchased a second set of cabinets costing \$3,700, again charging them to a

(Publication page references are not available for this document.)

contractor's account.

The plaintiff claimed that the defendant insurance agent was negligent in failing to make certain that the plaintiff was purchasing all the insurance coverage he would need and that the agent was negligent in specifically advising the plaintiff about theft coverage as an available added option.

The defendant agent disputed the plaintiff's assertion that he was advised the house was only a shell. The defense asserted that the plaintiff told the agent that there was only minimal finishing work to be done on the house and that he would be occupying the house before the end of the month. The application signed by the plaintiff noted the unfinished state of the house and the planned occupancy date. According to the defendant agent, the plaintiff was offered a special endorsement providing theft coverage for a home under construction, but declined to purchase it.

Various evidence was offered by the defendant insurance agent suggesting that the plaintiff was strapped for cash in finishing the house and did not plan of spending more than \$2,000 to finish the kitchen. The defendant theorized that the theft claim may have been orchestrated as a way of paying the contractor. The contractor's check to the cabinet supplier, paying for the first set of cabinets some months later, noted a Lot number where he was building his own house.

The plaintiff sought approximately \$8,700 in compensatory damages on common law counts, plus a claim for triple damages and attorney's fees on the Consumer Protection count.

In answers to special questions, the jury found that the agent had no duty to advise the plaintiff concerning insurance coverage; that the agent made no knowing misrepresentations concerning coverage; and that the defendant did not breach any contract with the plaintiff. The jury returned a verdict for the defendant on the professional negligence claim. The Court found for the defendant on the Consumer Protection claim.

COMMENTARY:

The facts were clearly in dispute as to what the plaintiff told the agent about the house and his coverage needs, as to what the agent advised the plaintiff to purchase, and whether the plaintiff was specifically offered theft coverage. The plaintiff's credibility was, therefore, very important in enabling him to make his case against the defendant for professional malpractice. The defendant's position may have been helped by the plaintiff's somewhat incriminating circumstances, i.e., that plaintiff appeared strapped for cash, that he was on a budget of approximately \$2,000 to finish the kitchen and that the contractor account for the allegedly stolen cabinets listed a different address.

Jury Verdicts Review Publications, Inc.

PUBLISHED IN: New England Jury Verdict Review & Analysis, Vol. 15, Issue 7

1999 WL 33488883 (Unknown State Ct.), 15 N.Eng. J.V.R.A. 7:C8

END OF DOCUMENT