



SEA TRIALS

by James E. Mercante, Esq.



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

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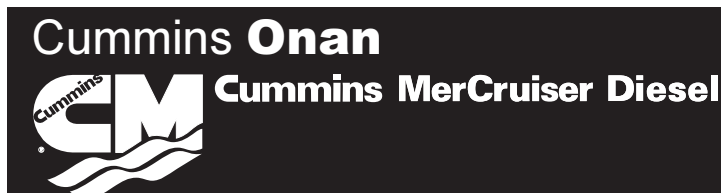
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