

NAUGHTON

THE HIGH COURT

95

1984 No. 7776P

BETWEEN:

TED (OTHERWISE EDWARD) NAUGHTON

Plaintiff

and

ASSICURAZIONI GENERALI S.A.

Defendant

Judgment delivered by the President of the High Court on the
4th day of February 1985

This is an application brought by the Defendant (hereinafter referred to as "The Company"), for an Order staying the proceedings instituted by the Plaintiff herein on the grounds that this honourable court has no jurisdiction to try the proceedings.

As appears from the Plenary Summons and the Statement of Claim delivered on the 25th day of October 1984 on behalf of the Plaintiff, this is a case in which the Plaintiff claims a sum of £200,000.00 together with interest therein and damages for breach of contract against "The Company".

The Plaintiff claims that the said sum of £200,000.00 is due by "The Company" to the Plaintiff on foot of a policy of Insurance Numbered OM/5/01/46 and alleged to have been made between the Plaintiff and "The Company" whereby "The Company" agreed to insure the Plaintiff's interest in a stallion named "Golden Fleece" for the sum of two hundred thousand pounds against the risks and upon the terms and conditions set forth in the said policy of Insurance.

The grounds upon which "The Company" makes in this application are set forth in the affidavit of Brian J. Strahan, a partner in the firm of Solicitors acting on behalf of "The Company" and sworn on the 15th day of November 1984.

These grounds are stated in Paragraph 3 of the said affidavit as being:-

- (a) "The Company" is neither domiciled or resident within the jurisdiction;
- (b) The contract of insurance was made in England, the policy issued in London, the law of contract is English law and the contract impliedly designates the High Court of Justice in England as the forum for the resolution of disputes;
- (c) There are proceedings already pending in London;
- (d) The most appropriate forum for litigating the dispute between the parties herein is the High Court of Justice in London.

These grounds are elaborated upon in the affidavit of the said Brian J. Strahan.

The Plaintiff opposes this application on the grounds set forth in his affidavit sworn herein on the 21st day of November 1984.

In his said affidavit, he states at Paragraph 2 thereof that:-
"the policy herein was issued by "The Company" a company incorporated with limited liability in Italy, that "The Company" is the holder of an authorisation under the European Communities (Non-Life Insurance) Regulations 1976 to carry on business in this State, that such authorisation is only granted in respect of a company which has in the State an office opened during normal business hours for the transaction of Non-Life Insurance business, that its office within the State is at Greenside House,

Cuffe Street, in the City of Dublin, that Peter D. M. Prentice is its authorised agent having a permanent residence and abode in the State for the purpose of the aforesaid regulations and that "The Company" has carried on for many years past and still carries on insurance business within the State."

It is clear from consideration of the pleadings exhibited in Mr. Strahan's affidavit that neither the Plaintiff or "The Company" are party to the proceedings pending before the Queen's Bench Division, Commercial Court, in the High Court of Justice in London.

In his affidavit, the Plaintiff avers that:-

"the issues raised between the parties to the proceedings in the United Kingdom, while they relate to the stallion "Golden Fleece" raises issues materially different from the issues raised in the present proceedings"

and that:-

"it is more convenient and less costly that my claim should be determined within this jurisdiction having regard to the witnesses likely to be called by me and also having regard to the fact that if I am involved in litigation involving a large number of plaintiffs and a large number of defendants in the United Kingdom and in which issues with which I am not concerned are litigated, the costs and expenses incurred by me are likely to exceed greatly the cost and expense of litigating my claim in this jurisdiction."

Having carefully considered the entire of the contents of both affidavits, the Exhibits referred to in the affidavit of Mr. Strahan and the submissions made by Counsel on both sides, I am satisfied

that:-

"The Company" carries on business within this State,

that it is the holder of an authorisation under the European Communities (Non-Life Insurance) Regulations, 1976 to carry on business in this State,

that it is amenable to the jurisdiction of this Court,

that, accepting that the contract of insurance has to be interpreted in accordance with the laws of the United Kingdom, the Plaintiff is entitled to institute proceedings within this Court, within this State, and having regard to the matters set forth in Paragraph 3 of his affidavit and Paragraph 7 thereof, it is proper that he should be entitled to proceed with his claim in this Court, and that it would be less costly and more convenient for him so to do.

For these reasons, I refuse the application made on behalf of "The Company" to stay these proceedings on the grounds that this Court has no jurisdiction to try the proceedings.

I am satisfied that it has.

Alan Hamilton.