

**COURT OF APPEAL FOR ONTARIO**

**RE: VENUS ALAVIE (Plaintiff (Appellant)) – and – CHUBB  
INSURANCE COMPANY OF CANADA (Defendant  
(Respondent))**

**BEFORE: FELDMAN, CRONK and LAFORME J.J.A.**

**COUNSEL: Christopher I.R. Morrison and Gary R. Will  
for the appellant**

**Sheila McKinlay  
for the respondent**

**HEARD: February 16, 2005**

**On appeal from the order of Justice D. H. Lissaman of the Superior Court of  
Justice, dated July 15, 2004.**

**ENDORSEMENT**

[1] This is an appeal from an order granting the respondent insurer's summary judgment motion and dismissing the appellant's claim against the insurer for recovery of losses arising from the theft of personal property.

[2] Following a theft of personal property at her residence, the appellant submitted a loss claim under a tenant's policy of insurance issued to her by the respondent. Her claim was in the total amount of \$950,000 and included losses in the aggregate amount of \$50,000 said by the appellant to relate to the theft of eight pieces of her own artwork. In attempting to substantiate the value of the stolen artwork, the appellant provided the respondent with false invoices that purported to relate to past sales of similar artwork to independent third party purchasers. The names and other identifying features of the purchasers were deleted from the invoices. In fact, the invoices were falsified and concerned monies received from a third party for purposes unconnected to the sale of the appellant's artwork. When the invoices were challenged by the respondent, the appellant represented that they were genuine invoices and that they reflected true values for her artwork as established by prior *bona fide* sales as reflected in the invoices. The appellant maintained this position when questioned under oath during the discovery process, until she was compelled by court order to disclose the names of the purchasers omitted from

the invoices. Only then did she admit that the invoices and her prior representations concerning their validity were false.

[3] These facts are uncontested in this proceeding.

[4] The motions judge acknowledged in his endorsement that there was no dispute as to the nature and extent of the appellant's wrongful behaviour. Thus, his only task was to assess the uncontradicted evidence before him to determine if it established fraud or misrepresentation of a material fact within the meaning of the insurance policy and under the applicable common law principles, so as to disentitle the appellant to any recovery under the insurance policy.

[5] It has long been established at common law that a fraudulent insurance claim by an insured results in no recovery by the insured under the applicable insurance policy: see *Britton v. Royal Insurance* (1866), 4 F&F 905 at 909. In addition, in this case, the policy contained an express contractual condition stating that no coverage was provided under the policy if the insured intentionally concealed or misrepresented any material fact relating to the policy, either before or after a loss.

[6] The motions judge concluded that the appellant was disentitled by her admitted conduct to any recovery under the policy, both under the applicable common law rule and by virtue of the terms of the insurance policy. As a result, no genuine issue arose for trial and the respondent's summary judgment motion was granted.

[7] The appellant argues that the motions judge erred in reaching these conclusions by finding that her misrepresentations to the insurer were material. She submits that "materiality" required that she inflate the value of her claim. Here, while the invoices were false, they only sought to justify the legitimate value of her artwork, which was a small part of her overall loss claim.

[8] We reject this submission.

[9] The motions judge accepted the respondent's argument on the summary judgment motion that, in light of the appellant's admitted fraud and misrepresentations, no genuine issue remained for trial in this action and, therefore, the appellant's claim for recovery under the policy must fail. We agree.

[10] The interpretive issue raised by the appellant concerning the meaning of "materiality" under the policy and the applicable common law rule does not arise in this case because the appellant's fraud and misrepresentations related directly to the value of her loss claim. The appellant owed a duty of utmost good faith to her insurer. By her wrongful conduct, the appellant breached this duty in her dealings with the respondent.

As a result, no evidence of the value of any part of her claimed loss, even if now adduced, could be trusted or accepted by the insurer.

[11] The appeal is therefore dismissed. The respondent is entitled to its costs of the appeal, fixed in the amount of \$16,000, inclusive of disbursements and Goods and Services Tax.

“K. Feldman J.A.”

“E.A. Cronk J.A.”

“H.S. LaForme J.A.”