

**A C WARD & SONS LTD v CATLIN (FIVE) LTD (Court of Appeal)**

*Summary judgment application failed due to the draconian nature of the policy terms*

Following a warehouse theft, the Appellant insurers, Catlin (Five) Limited ("Catlin") refused to pay a claim for stock by the Respondent insured, Ward & Sons ("Ward") under a Multi-line Commercial insurance policy ("the Policy"). The Policy contained warranties as follows: (i) an approved burglar alarm to be in full and effective operation at all times when the warehouse was closed; and (ii) defects occurring in any protections would be promptly remedied.

Over a weekend in March 2007 burglars entered the warehouse and stole about £450,000 worth of cigarettes and alcohol. In the process they disturbed a vibration sensor but the burglar alarm was not triggered. The warehouse had remotely monitored CCTV that was fitted with motion detectors but the cameras failed to transmit during the burglary and, in any event, no alarm was raised by the monitoring agency, UK Business Watch. Following Catlin's refusal, Ward brought proceedings against Catlin, who in turn applied for reverse summary judgment. Catlin argued that the warranties in the Policy were more properly construed as suspensive conditions (limiting the risk) as highlighted in the cases of *Kler Knitwear v Lombard General Insurance* and *CTN v General Accident*. Catlin argued the effect was that Ward was, in essence, "off cover" whilst it failed to comply with the warranties. Due to Ward's non-compliance, Catlin was entitled to summary judgment.

Mackie J held that the terms, so described in the policy as warranties, should not be construed as suspensive conditions but as warranties. Summary judgment was refused as it was held that Ward had an arguable case and was therefore entitled to a final determination based on a review of the full material. Catlin appealed on the grounds that the judge had erred in not finding on the facts that Ward was in breach of the warranties and therefore had no prospect of succeeding in its claim.

The Court of Appeal held, dismissing the appeal, that: (1) Mackie J had been correct to find that it was not the case that Ward had no prospect of success; (2) the more unreasonable the effect of the terms of a policy the more clear and explicit such terms should be (Catlin's draconian interpretation of the warranties meant that unless the approved burglar alarm was in full and effective operation when the warehouse was closed, then the entire policy was automatically discharged); and (3) the warranties contained standard terms and therefore the court's decision in this case could affect insureds other than Ward and, therefore, the construction of the warranties and their effect should be determined at trial on their own facts.

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