

The Economical Fire Insurance Co. v. James D. Cherry & Sons Ltd., [1963] S.C.R. 93

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Commentary

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The Economical Fire Insurance Co. v. James D. Cherry & Sons Ltd.,
[1963] S.C.R. 93.

The plaintiff (respondent) was the appellant's general agent in the fire insurance business in Quebec. The termination clause in the agency contract provided that if the agent was not in default, his records, use and control of expiration "shall be deemed to be the property of the Agent and left in his undisputed possession." During the currency of the agency, the plaintiff accumulated a number of sub-agents who had "expirations" relating to the fire insurance they wrote. After the contract was terminated (the agent not being in default), the defendant invited some of the sub-agents to place their renewal of insurance with it on a direct basis. The plaintiff sued for breach of the termination clause, and was awarded \$8,000.00 in damages at trial. The Court of Queen's Bench, Quebec and the Supreme Court of Canada affirmed the judgment.

Ritchie J. giving the judgment for the Supreme Court held that the defendant violated the termination clause. He explained that "expirations" in the insurance field includes the records of the insurance agency by which the agent has the information about the insured, the terms of his policy and the date it expires. This information enables the agent to contact the insured regarding the maintenance of insurance and the adjustment of the items in changing circumstances. This information is a valuable asset in the nature of goodwill.

By its dealings with the plaintiff's sub-agents, the defendant obtained for its own use the benefit of the expirations, the use and control of which it had agreed should be deemed the plaintiff's property and be left in the plaintiff's undisputed possession. As between the sub-agents and the plaintiff, the records might belong to the sub-agents, but by the contract between the plaintiff and the defendant, the records were the property of the plaintiff, and the defendant had no right to make use of the expirations by this indirect method. The plaintiff having thus been deprived of a valuable asset in breach of his contract with the defendant is entitled to substantial damages from the defendant. R.F.E.