

**MATSUNAGA FISHING
COMPANY
vs.
NEW HAMPSHIRE INSURANCE
COMPANY**

**Civil Action No. 82-0009
District Court NMI**

Decided December 20, 1983

**1. Civil Procedure - Summary
Judgment**

Summary judgment is appropriate only if no material factual issues exist and the movant is entitled to judgment as a matter of law. Fed.R.Civ.Pro. 56.

**2. Civil Procedure - Summary
Judgment**

On a motion for summary judgment, the Court must construe the pleadings, other record evidence, and attendant inferences most favorably to plaintiff.

**3. Civil Procedure - Summary
Judgment**

In considering a motion for summary judgment, a genuine factual issue may exist only if a viable legal theory would entitle plaintiff to judgment if it proves its asserted version of the facts.

4. Insurance - Fraud

Where an insured knowingly and wilfully overestimates in his proof of loss the value of the property destroyed, such overvaluation will void the policy and defeat any right of the insured to recover.

5. Insurance - Fraud - Intent

An untrue statement, in order to defeat any right of the insured to recover under the policy, must have been knowingly and intentionally made with the intention of defrauding the insurer.

6. Insurance - Fraud - Elements

The factual elements essential to establish insurance fraud by overvaluing property in a proof of loss are the making, knowingly and wilfully, of a material exaggeration of the worth of the property, with the intent and purpose to wrongfully obtain money or gain an unfair advantage over the insurer.

7. Insurance - Fraud - Evidence

Normally, it would be a question for the trier of fact as to whether statements were made with the intent to defraud the insurer; but, it becomes a legal question upon reaching the point where the Court must say that there is no way that this kind of mistake can be seen as innocent.

8. Insurance - Fraud

If an insured, for any reason, knowingly and wilfully makes a material overvaluation in his proof of loss by fire, an intent to defraud the insurer may be inferred therefrom, upon the theory that everyone is presumed to intend the natural consequences of his own deliberate acts.

9. Insurance - Fraud

On a motion for summary judgment, where insured was given ample opportunity to explain why the false statements he made to the insurance company were innocent mistakes rather than intentional misrepresentations made with the intent to defraud, where his answers to direct and straightforward questions are "typical of the mendacious witness" and his testimony "literally changes from minute to minute," and where his answers at one deposition are sometimes at complete variance with the answers at his previous deposition and are often incomprehensible, false swearing is shown as a matter of law, entitling the insurer to summary judgment.

10. Civil Procedure - Summary Judgment

Although a court must, on a motion for summary judgment, view the evidence in a light most favorable to the party opposing the motion, it is not required to consider obviously false testimony. Fed. R. Civ. P. 56.

11. Civil Procedure - Summary Judgment

Party opposing motion for summary judgment does not create issue of fact by contradicting earlier statements as to his intent. Fed. R. Civ. P. 56.

FILED
Clerk
District Court

DEC 20 1983

For The Northern Mariana Islands

By: *[Signature]*
(Deputy Clerk)

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IN THE DISTRICT COURT
FOR THE
NORTHERN MARIANA ISLANDS

MATSUNAGA FISHING COMPANY,) CIVIL ACTION NO. 82-0009
))
) Plaintiff,))
))
) vs.))
)) DECISION
NEW HAMPSHIRE INSURANCE))
COMPANY,))
))
) Defendant.))
_____))

DECISION

This Motion for Summary Judgment is Defendant New Hampshire Insurance Company's second attempt to obtain a judgment in its favor based on the fact that there is no genuine issue regarding Plaintiff's false swearing on his sworn Proof of Loss submitted to the Insurance Company. The first Motion for Summary Judgment was filed on June 17, 1982, wherein the Court found that there were material issues of fact in controversy on this matter and denied the motion.

The present motion is based partly on additional evidence acquired during the past year which Defendant alleges provides uncontradicted facts showing that false declarations and statements were made in order to obtain compensation from the

1 Insurance Company for items not destroyed in the fire. The record
2 here consists of the pleading material, interrogatories and
3 answers thereto, depositions of parties and witnesses, and several
4 sworn affidavits of various persons. The Court has considered all
5 the material contained in the record.

6 [1-3] Summary judgment is appropriate only if no material
7 factual issues exist and the movant is entitled to judgment as a
8 matter of law. United States v. First National Bank of Circle,
9 652 F.2d 882, 887 (9th Cir. 1981). The Court must construe the
10 pleadings, other record evidence and its attendant inferences most
11 favorably to plaintiff. Harlow v. Fitzgerald, ___, U.S. ___,
12 ___, n.26, 102 S.Ct. 2727, 2737, n.26, 73 L.Ed.2d 396, 409, n.26
13 (1982). A genuine factual issue may exist only if a viable legal
14 theory would entitle plaintiff to judgment if it proves its
15 asserted version of the facts. Ron Tonkir Gran Turismo v. Fiat
16 Distributors, 637 F.2d 1376, 1381 (9th Cir. 1981), cert.denied 454
17 U.S. 831, 102 S.Ct. 128, 70 L.Ed.2d 109 (1981).

18 There is no question here that Plaintiff has made
19 numerous contradictory statements regarding the losses incurred in
20 the fire on November 1, 1981. In his sworn Proof of Loss
21 Plaintiff claimed that three fishing boats were destroyed by fire,
22 and demanded payment therefor. However, in his deposition, and
23 sworn affidavit submitted in support of his Opposition to the
24 present motion, he says that only one boat was destroyed by fire;
25 he even admits that he knew at the time of filing the sworn Proof
26 of Loss that only one boat was destroyed.

1 In his sworn Proof of Loss Plaintiff claimed the loss of
2 a Furuno Echo Sounder, however no evidence or remnants of a Furuno
3 Echo Sounder were ever found after the fire. In fact, this same
4 echo sounder was sold by Matsunaga to Guy Gabaldon on November 30,
5 1981 and was used for some time thereafter on a fishing boat.

6 In his sworn Proof of Loss Plaintiff demanded payment for
7 the loss of five outboard engines. However, shortly before the
8 fire, Guy Gabaldon was in the warehouse and saw only three
9 outboard engines, and a fourth was outside on a 2.5 ton skiff.
10 This outboard motor was then purchased by Mr. Gabaldon on November
11 30, 1981. The remains of only three outboard motors were found
12 after the fire.

13 These clear and undisputed facts thus establish that (1)
14 on November 1, 1981, a fire occurred in the warehouse in which
15 Matsunaga kept fishing equipment; (2) on November 30, 1981
16 Matsunaga sold some fishing equipment to Guy Gabaldon; (3) on
17 December 2, 1981 Matsunaga, in a sworn Proof of Loss, claimed that
18 this very same equipment had been destroyed by the fire on
19 November 1, 1981; and (4) much of this same equipment is still in
20 existence today. There is thus no question that the sworn Proof
21 of Loss submitted by Matsunaga to the Insurance Company contained
22 material false statements.

23 [4] The insurance policy provision under which Defendant
24 seeks to prevail on his motion for summary judgment specifically
25 provides, at Paragraph 13:

26 If the claim be in any respect
 fraudulent, or if any false decla-
 ration be made or used in support

1 made to cheat or defraud anyone," and "[t]hat the mistake was an
2 honest one." However, in his deposition of April 2, 1982,
3 Matsunaga stated that only one boat actually burned in the fire,
4 and when he was redeposed on March 10, 1983 Matsunaga admitted
5 that he knew that three boats were not destroyed in the fire.
6 This implies at least a knowing and wilfull misstatement.

7 Further evidence in support of a fraudulent intent is
8 found in Matsunaga's claim that one hundred thirty-five anchors
9 were destroyed in the fire. This is the same number of anchors
10 that Mr. Shiiko brought from Hokkaido to Saipan, and had listed in
11 his equipment inventory. While Matsunaga claimed one hundred
12 thirty-five anchors in his Proof of Loss, he stated in his two
13 depositions that he never counted the number of anchors that were
14 destroyed in the fire. However, in his affidavit of December 15,
15 1983 he states, "[t]hat on or about November 2, 1983 [sic],
16 immediately after the fire, I personally counted 135 anchors that
17 were damaged by the fire." (Emphasis added). Mr. Shiiko, while in
18 Saipan in January 1983, found and identified 42 of those same
19 anchors in another warehouse not involved in the fire.

20 [7.8] Normally, it would be a question for the trier of fact as
21 to whether the statements were made with the intent to defraud the
22 insurer, but it becomes a legal question upon reaching the point
23 where the Court must say that there is no way that this kind of
24 mistake can be seen as innocent. Tenore v. American and Foreign
25 Insurance Co. of New York, 256 F.2d 791 (9th Cir. 1958).

26 Moreover, it is well settled as a general proposition that if an

1 insured, for any reason, knowingly and wilfully makes a material
2 overvaluation in his proof of loss by fire, an intent to defraud
3 the insurer may be inferred therefrom, upon the theory that
4 everyone is presumed to intend the natural consequences of his own
5 deliberate act. Singleton v. Hartford Fire Insurance Co., 127
6 Cal.App. 635, 16 P.2d 293.

7 [9] Here, Matsunaga was given ample opportunity to explain
8 why the false statements he made to the insurance company were
9 innocent mistakes rather than intentional misrepresentations made
10 with the intent to defraud. His answers to direct and straight-
11 forward questions are, as Defendant claims, "typical of the
12 mendacious witness," and his testimony "literally changes from
13 minute to minute." Matsunaga has clearly and unequivocally stated
14 that there was only one boat lost in the fire. The fact that
15 there was only one boat lost in the fire is corroborated by all
16 the evidence. Matsunaga was given the opportunity on April 2,
17 1982 and again on March 10, 1983, as well as in this instant
18 Motion, to explain his mistake in listing an item not destroyed as
19 being destroyed. His answers at the March 10th deposition are
20 sometimes at complete variance with the answers at his previous
21 deposition, and are often incomprehensible. His affidavit
22 accompanying the Opposition to this Motion states that his wife
23 typed the Proof of Loss and that she inadvertently included three
24 boats therein. This is at odds with all prior testimony.

25 [10, 11] As the Court noted in its denial of Defendant's previous
26 Motion for Summary Judgment, Plaintiff should not be allowed to

1 create his own issues of material fact simply by stating one thing
2 at one time and then later contradicting himself. This is exactly
3 what Matsunaga appears to be attempting to do here. While the
4 Court must, of course, take the evidence most favorable to the
5 Plaintiff, it is not required to consider the obviously false
6 testimony of Matsunaga. Moreover, there is actually no factual
7 dispute here. Virtually everything stated and every value recited
8 has issued from the deposition testimony of Plaintiff or from
9 documents authored and identified by him.

10 It is hard to imagine a more clear example of an instance
11 where the question of fraud or false swearing becomes one of law.
12 This Court has no difficulty in finding that there exist no
13 genuine issues as to material facts and that Plaintiff has
14 forfeited all rights under the insurance contract by Matsunaga's
15 submission of a fraudulent Proof of Loss.

16 Defendant's Motion for Summary Judgment is hereby
17 GRANTED.

18 Judgment will be entered for Defendant against Plaintiff
19 and the Clerk is ordered to enter such judgment.

20 DATED this 20TH day of December, 1983.

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25 JUDGE ALFRED LAURETA
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