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Case Name:

Alabak Holdings Inc. v. Palios

Between
Alabak Holdings Inc. and 603736 Ontario Inc., plaintiff, and
Nicholas Palios, defendant

[2003] O.J. No. 1750
Court File No. 00-1826

Ontario Superior Court of Justice
Matheson J.

Heard: January 6-10, 13-16 and 20, 2003.
Judgment: April 16, 2003.
(98 paras.)

Barristers and solicitors — Negligence — Particular negligent acts — Settlements — Failure to inform client — Considerations in determining liability.

Action by Alabak Holdings against the defendant Palios for damages for negligence. Palios was the lawyer for Alabak and its principal Alabakopoulos since 1991. Alabak owned a building that was damaged by fire on July 5, 1999. The limit on the building insurance was $750,000. A settlement meeting was held on December 10, 1999. The insurer initially offered $400,000. This was rejected by Alabakopoulos. Palios persuaded the insurer to increase its offer to $700,000. This was in addition to the $75,000 that Alabak received. Alabak claimed that Palios was liable for solicitor's negligence, breach of contract and breach of fiduciary duty. It also claimed that its consent to the settlement was not informed. Palios's documentary record of his dealings with Alabak was deficient. He did not have Alabak prepare a list of damages to the building or its loss of income. He did not get written quotes on the cost of the building. He also did not fully explain the terms of the policy to Alabakopoulos. He did not retain an accountant to go over figures with him and was not proactive in his dealings with the insurance company. However, he met frequently with Alabakopoulos between the date of the fire and December 10. Alabakopoulos was also knowledgeable about the contents of the policy which was not a difficult contract to understand.

HELD: Action dismissed. Palios was not negligent in his duties as a solicitor. There was informed consent by Alabak to the agreement that was made on December 10. Palios was not negligent because of the time that he spent with Alabakopoulos and the letters that he wrote.

Counsel:

Graydon Sheppard, for the plaintiff.
Gerald A. Swaye, Q.C. and Steven Faye, for the defendant.

MATHESON J.:—

ISSUES

¶ 1 The issues that this court has been asked to give judgment on are as follows:

a. Is the Defendant liable for solicitor's negligence, and/or breach of contract and/or breach of fiduciary duty?

b. If the court so finds on one are all of the above what are the damages?

c. Alternatively, if the Plaintiffs consented to the December 10, 1999 settlement, was there `informed consent'?

d. If there was no informed consent, what are the damages?

e. Should punitive or aggravated damages be awarded because of the conduct of the Defendant?

FACTUAL SITUATION

¶ 2 The Plaintiff company Alabak Holdings Inc. (Alabak) is a corporation that is owned by Demitrios Alabakopoulos (Demitrios) and Stephanie F. Alabakopoulos (Stephanie). This building had been acquired by Alabak in 1994 for the sum of $315,000. It had on the ground floor a business known as Flowers by Sally, a retail store and nine apartments on floors two and three.

¶ 3 The business, known as Flowers by Sally, had been acquired by the plaintiff company 603736 Ontario Inc. (603736) in the mid 1980s. It was operated by Stephanie and later on by Demitrios after he retired from a local steel company.

¶ 4 At the time of the fire, July 5th 1999, the second and third floors were under renovations, and all except one tenant had been asked to leave or the tenancy was vacant. The one residential tenant, John Harris, assisted Mr. James Rehor (Rehor) who was doing the renovations.

¶ 5 The evidence, given by Rehor, that the renovations were to have been completed by September 30, 1999. At the time of the fire the second floor had been gutted and work was starting on the third floor. There were no structural changes to the building. It was estimated by him that the work would cost no more than $60,000, although he had no written contract with the Plaintiffs. The Plaintiffs had purchased and received 14 kitchen cabinets the Friday before the fire.

¶ 6 The property had been insured by General Accident, see exhibit #5. The Broker had been Sedgwick Limited of Hamilton and the amount of the policy for the building was in the amount of $750,000.

¶ 7 The Defendant, Nicholas Palios (Palios) had been the lawyer for the Plaintiffs and for the Alabakopouloses in their personal capacity. It would appear that there was a social relationship as well. He is a member of the Law Society of Upper Canada since his call in 1990. He indicated that he started doing the Plaintiffs legal work in 1991.

¶ 8 Palios received a call from Stephanie in the early morning of July 5th. He attended at the site later that day and talked with both Stephanie and Demitrios, as well as others who were there from the fire department and the insurance companies.

¶ 9 The City of Hamilton gave an Order of Comply (exhibit 23) on July 5, 1999 to Demitrios and by posting on the building. This was an order to make the building safe.

¶ 10 The firm of Triple M was retained to do the remedial work. This was done after Demitrios and Randall Paul Corsini (Corsini), who was the insurance adjuster from Crawford Adjusters, had some discussion. There is some dispute as to what was said and who did what at this time. I will deal with that later on. Mr. Alabakopoulos states that Palios was present when the guesstimate was made by Triple M, Corsini says that Palios was not present.

¶ 11 There was also some suggestion at the time that the fire could have been started by an arsonist. The Alabakopouloses were questioned in the normal course of the investigation. No charges have been laid and there is no suggestion that they were or are suspects.

¶ 12 There were a number of meetings with the Alabakopouloses and the insurance company representatives. There were a number of telephone communications, correspondence as well. Since there is a difference of opinion as to what was said and what individual did, I will deal with those later in this Judgment.

¶ 13 Suffice it to say that the parting of the ways of the Plaintiffs and the Defendant occurred shortly after the meeting at Palios's office on December 10, 1999.

THE FIRST ISSUE IS TO DETERMINE WHETHER THE DEFENDANT IS LIABLE FOR SOLICITOR'S NEGLIGENCE, BREACH OF CONTRACT OR BREACH OF FIDUCIARY DUTY.

¶ 14 The Court is cognizant of the fact that Stephanie during this trial was in a great deal of pain because of her illness, and that the court did adjourn on several occasions to allow her time to compose herself.

¶ 15 She is the wife of Demitrios. They have been married for some 33 years and have two children. They acquired the building, known as 123-127 James Street North, Hamilton for $315,000 by way of a Power of Sale.

¶ 16 The building was going to be renovated, for an amount of $60,000-$65,000 and convert the second and third floors into 14 apartments from the then nine.

¶ 17 She indicated that she had good tenants and that there was a 90% occupancy rate. See exhibit #3, tab 110. In her cross examination she was confronted with her Examination for Discovery on October 24, 2001 at question 41, to which she gave the following answer:

> "We had apartment number one, which was Paul Hudgins, he was involved with drugs and was friends with apartment 2. Those two fellows were evicted because of --- the police actually caught them selling drugs. And apartment number 3, John Lambert, he was one that we did evict because he hadn't paid rent."

She also indicated that one of the tenants had threatened to burn the building down.

¶ 18 In the evidence given by the accountant for the Plaintiffs, Robert Claire Phillips, it would appear that the historical occupancy rate was 77.78%, at least for the year 1998.

¶ 19 I am not impressed with the evidence given on that point by Stephanie. One would have expected more and better records kept of these matters.

¶ 20 It would also appear that she was the business person in these dealings. She was the one that arranged for the insurance coverage on the building. She apparently did the preparation of whatever documents that the companies were to produce.

¶ 21 She indicated that the businesses next door and across the street may launch civil actions against them because of the fire. To date no action has been brought, some three and a half years later.

¶ 22 She indicated that Palios was their lawyer and she expected that he would provide them with legal advice throughout this matter. After the fire there were meetings with him at his office. She claims that Palios did not provide or mention a Proof of Loss forms. She stated that she did not know of a Proof of Loss until she saw lawyer Logan, which was after the retainer of Palios had ended. She denies seeing Proof of Loss, dated July 19, and August 27, 1999.

¶ 23 She also denies seeing proof of loss in letter from Steve S. Dreyer (Dreyer), who was the Claims Analyst for the insurer CGU, dated August 27, 1999. In that letter Dreyer enclosed a Proof of Loss. She states that she gave this to Palios and does not remember the contents. This letter, which was filed as exhibit 10, tab 63, very clearly sets out the position of the insurer with respect to its liability. It also deals with the issue of rebuilding and the issue of the contents. It quite clearly states that the limits for contents has been exceeded and that they will pay only $75,000, which were the limits.

¶ 24 Her credibility on this issue is in question.

¶ 25 There were a number of letters which she says that she did not receive.

¶ 26 There were a number of meetings from the date of the fire until the meeting of December 10, 1999.

¶ 27 There was a meeting on July 6. Present at that meeting were Mr. Southward and Sasha from Southwork Consultants, Alison from the City, Corsini and Dreyer the adjusters, Palios, Rehor and Tim McGuire of Triple M. At that time Tim McGuire indicated that he could do the work that was required by the City (see Exhibit 23) in the range of $20,000 to $25,000 to do the job. This was agreed to by Mr. Alabakopoulos.

¶ 28 There was a meeting at which the insurance paid $75,000 in two cheques. There were discussions with respect to the bill of Triple M that had gone up to about $79,000. Mr. Dreyer indicated that he thought they could get 10% off this account, but both the Alabakopouloses don't remember that. They were offered the sum of $250,000 as a partial settlement. That was rejected because it had Triple M on the cheque. It is noted that Justice Cavarzan found them liable for the amount of $79,948.58 (see exhibit 21).

¶ 29 The Alabakopouloses felt that they had no knowledge of the insurance policy and what they could get out of it of a financial nature. I find that the policy was negotiated by Mrs. Alabakopoulos with the broker Sedgwick, that she spent a lot of time with the policy, one need only look at the notes that she made on the policy (see exhibit 5). The policy was discussed with Mr. Alabakopoulos with Mr. Tiller of the National Fire Association, right after the fire until their retainer was ended some 3 days later, when Mr. Alabakopoulos found that they were not adjusters.

¶ 30 Leaving aside the meeting of December 10, 1999 at the Defendant's law office. If one looks at the letter of Mr. Robert Phillips, the accountant for the Plaintiffs dated December 14, 1999 to Mr. Palios. It would appear that he realized that there were limits on the policy. He noted that the limits for the building was $750,000. He proposed that there should be a settlement of $800,000 (see exhibit #24). This was some $100,000 more than the settlement figure.

¶ 31 I find that the Alabakopouloses were knowledgeable about the policy limits.

¶ 32 There were statements made by them that Palios had not told them about Proof of Loss forms, yet they signed one when they received the $25,000 and $75,000 cheques. They have denied that they received a number of letters that enclosed or referred to the Proof of Loss forms. Their credibility on that issue is much in question.

MEETING OF DECEMBER 10, 1999

¶ 33 This meeting is key to this court case. The various parties have vastly different views as to what was said and done.

¶ 34 They are in agreement that at the offices of Palios, the following individuals were present: Demitrios, Stephanie, Palios, Dreyer and Regan.

¶ 35 There is much dispute between the Alabakopouloses and the others that attended the meeting. I found that Demitrios was most argumentative, confrontational and dogmatic when he was being crossed examined. He indicated that his wife kept notes of the various events; his wife denies that she kept any notes.

¶ 36 I found that Dreyer and Regan gave their testimony in a calm straightforward manner.

¶ 37 When there is conflict between the testimony of the Alabakopouloses and Palios, I accept that of Dreyer and Regan.

¶ 38 I find that the Plaintiffs met with the Defendant on December 10, 1999, shortly before Dreyer and Regan arrived. They covered some of the matters that were to be discussed later. I find that the Plaintiffs were aware that this was a meeting to try and resolve the issues.

¶ 39 I base that on the fact that they were to have had their accountant present, but unfortunately he was not present because of an illness. I also find that Palios was aware of the fact that they had an accountant. They elected to proceed with the meeting, notwithstanding that the accountant was not available. It is probable that if the accountant had been present these present difficulties would not have proceeded. All three elected to proceed.

¶ 40 I find that the manner in which the meeting took place was not out of the ordinary. There was a preliminary meeting of all the parties, where general issues were discussed and positions taken.

¶ 41 Regan and Dreyer wanted to talk with counsel alone, which is quite normal. There was a coming and going to the Plaintiffs, positions were discussed and a settlement was made in the amount of $700,000. The Plaintiffs had already been paid $75,000 for the contents and retained ownership.

¶ 42 I find that Stephanie did ask if the cheque would be available before Christmas, and Mr. Dreyer indicated that he would do his best. They shook hands and Mr. Regan left for another meeting. Mr. Dreyer stayed for a little while and then left.

¶ 43 There was an agreement arrived at, that was for the amount of $700,000 and the Plaintiffs would be responsible for the Triple M claim and any other third party claims.

¶ 44 Mr. Palios, from the date of the fire until the 10th of December 1999, saw the Plaintiffs on a regular basis. It would appear that he spent an inordinate amount of time with them either together or with Mr.

Alabakopoulos. There is some question as to whether he told them about the fact that taxes could be reduced because of the damage. Also whether he was diligent in getting the matter moving at a faster pace towards settlement. It would appear that the Alabakopouloses were relying on Mr. Rehor as well in the dealings with the insurance company.

¶ 45 The question arises were the Alabakopouloses informed enough to make the settlement on December 10, 1999.

¶ 46 It would appear that Palios played his part as the lawyer for the Plaintiffs, but was not as diligent as he could be. His notes and dockets leave a lot to be desired. He was not giving the Plaintiffs the written direction that a client could expect. However this was compensated number of meetings that they had with their lawyer.

¶ 47 He did not have the Plaintiffs prepare a list of the damages to the building, the loss of income to the business known as Flowers by Sally, get written quotes on the cost of the building, explain the terms of the policy as fully as one would expect, engaging an accountant to go over the figures with him, he was not proactive in his dealings with the insurance company.

¶ 48 He should have insisted that the accountant be present at the meeting 10th of December. I find that he knew of Mr. Phillips involvement before the meeting.

¶ 49 On the other hand, having the opportunity of viewing and listening to the Plaintiffs, I found that they were very knowledgeable about the matters before the court. Their one blind spot is that they did not see that they had a limit on the building policy of some $750,000, or at least they tried to convey that impression.

¶ 50 This had been explained to them by Mr. Dreyer at the meeting of August 6, 1999, at the offices of the CGU company. Present at the meeting were the Plaintiffs, Ralph Southward, an Engineer. Tim McQuire and Larry MacNamara from Triple M and Jim Rehor, who was doing the renovations before the fire and assisting the Plaintiffs in the contracting side of this problem. It is noteworthy that Palios was not present.

¶ 51 Notes were taken by Mr. Dreyer, see exhibit 111. A discussion of the hiring of Triple M was had. It was acknowledged that written authorization was given by the Plaintiffs for Triple M to proceed, with the assistance of Corsini. There was discussion about this contract. It had gone from an estimate of $20,000-$25,000 to about $87,000. Mr. Dreyer indicated that he would try and see if there could be a reduction. The notes indicate that the Plaintiff agreed to pay the undisputed amount. (They denied this at trial).

¶ 52 Since Palios was not present, it would appear that the Plaintiffs were leaving a lot of the practical issues to Jim Rehor, their contractor.

¶ 53 The Plaintiffs started an action as against CGU, it was settled after they became aware that the lawyer Palios was going to testify against them, and state that they became aware of this in a letter dated May 4, 2000 from Palios to Regan. Palios quite clearly stated that he was of the opinion that a settlement had been reached on December 10, 1999.

¶ 54 It would also appear that the Plaintiffs had gone over the policy with Mr. Dreyer and also with an individual from National Fire Assessment. I was impressed with the knowledge that Stephanie had of the policy, with the one exception as to the limits of the policy. One must remember that she was the individual who negotiated the policy with Sedgwick.

¶ 55 The meeting at Mr. Palios' office on December 10, 1999 started about 9:30 a.m. with Mr. Palios meeting with the Plaintiffs. There is some dispute as to whether Mr. Palios knew that the accountant Phillips would be present. He was not there because of an illness. It is unfortunate that he was not there, for some misunderstanding could have been cleared up at that time.

¶ 56 There was some discussion with the three as to what to expect in the attendance of Corsini and Regan. Regan, the lawyer, was there to arrive at a settlement. It was obvious that the Alabakopouloses wanted to get some form of settlement. Dreyer and Regan arrived about 10:00 a.m. There were discussions with the Alabakopouloses and Palios for a period of time. Regan after a while asked to speak to Palios alone with Dreyer, which he did. He originally offered $400,000 all in. This was rejected by the Alabakopouloses. Surely at this time they were aware that this was a settlement meeting. Eventually Palios went back to Regan and Dreyer. He was able to get them up to $700,000 all in. That included the fact that the Alabakopouloses would be responsible for the Triple M claim as well. Mr. Regan said "Sold for $700,000" and then all the parties shook hands.

¶ 57 Mrs. Alabakopoulos asked when the cheque would be forthcoming. Dreyer responded in about 3 weeks. They shook hands and then Mr. Regan left. Mr. Dreyer left shortly thereafter, and the Alabakopouloses left about 4:30 p.m. It was a long day.

¶ 58 I accept the testimony of Mr. Regan and Mr. Dreyer where there is a conflict between them and the Alabakopouloses. They had nothing to lose by making the statements that they did. The action as against CGU, the company that they represent had been settled.

¶ 59 There was another action brought by Triple M for the amount of $79,948.58. This matter was determined by Justice Cavarzan on March 26, 2001 in favour of Triple M as against the Plaintiffs in this matter, [2001] O.J. No. 1298. I am satisfied that the settlement entered into by the Plaintiffs was an informed agreement, not withstanding the shortcomings of the legal impute provided by the Defendant.

¶ 60 The question then is was Palios negligent in allowing them to agree to that settlement.

¶ 61 I must first make a finding as to whether or not the Defendant Nicholas Palios was negligent in his dealings with the Alabakopouloses. They had been his clients since the early 1990s. There is no question that he had many meetings with the plaintiffs, and there is no indication that there were other legal matters that Mr. Palios was dealing with during this period of time.

¶ 62 The Plaintiff called a very senior lawyer, who is well respected by the court. He was called as an expert to assist the court in its determination of solicitor negligence and interpretation of insurance contracts. This lawyer is in a firm who is acting for the Plaintiffs in another action that is related to this one. One of his new partners, Michael Jarger, had acted for the Plaintiffs in another related action while with Mr. Sheppard's firm.

¶ 63 I felt that there was the appearance of a conflict and thus ruled that he could not testify in this matter. Rather than delay this matter for a considerable period of time, counsel for the Plaintiff elected to proceed without delay.

¶ 64 I feel that Mr. Justice Cromarty in Morris v. Jackson [1984] O.J. No. 1341 at paragraph 110: summed it up correctly:

> "In my opinion a judge of this court who in practice has been both a barrister and solicitor, can and may assess a solicitor's professional behaviour without expert opinion evidence to assist him."

¶ 65 I feel that I am capable of making a finding one way or the other having been at the bar and on the bench for some 37 years.

¶ 66 The Supreme Court in Central Trust Co. v. Rufuse at 31 D.L.R. (4th) 481 at page 29 of the Quicklaw report stated:

> "A solicitor is required to bring reasonable care, skill and knowledge to the performance of the professional service which he has undertaken: see Hett v. Pun Pong (1890), 18 S.C.R. 290 at p. 292. The requisite standard of care has been variously referred to as that of the reasonably competent solicitor, the ordinary competent solicitor and the ordinary prudent solicitor."

In County Personnel (Employment Agency) Ltd. v. Alan R. Pulver & Co. (a firm) [1987] 1 All E.R. 289 (C.A.) at page 295, the court stated:

> "It seems obvious that legal advice, like any other communication, should be in terms appropriate to the comprehension and experience of the particular recipient. It is also, I think, clear that in a situation such as this the professional man does not necessarily discharge his duty by spelling out what is obvious. The client is entitled to expect the exercise of a reasonable professional judgment. That is why the client seeks advice from the professional man in the first place. If in the exercise of a reasonable professional judgment a solicitor is or should be alerted to the risks which might elude even an intelligent layman, then plainly it is his duty to advise the client of these risks or explore the matter further."

Justice Trafford in ABN Amro Bank Canada v. Gowling, Strathy & Henderson 20 O.R. (3d) 779 at page 11 of the Quicklaw citation stated:

> "Any attempt by a solicitor to limit his/her retainer to a scope less than that required of a reasonably competent and diligent solicitor should be done in simple, concise and precise language reduced to writing. Any ambiguity in any such communication, whether it be written or oral, should be resolved against the solicitor. To do otherwise is to leave a client without the quality of legal services he/she would otherwise be entitled to as a matter of law and the freedom to retain and instruct another solicitor of choice if so advised."

¶ 67 The Law Society of Upper Canada has published a Professional Conduct handout which outlines the duties and obligations of lawyers in this Province.

¶ 68 It is clear that the Plaintiffs had many visits with their lawyer, and that he wrote them of the progress of the file. It is also apparent that the Plaintiffs were knowledgeable about the insurance contract. The contract when broken down is not a difficult contract to understand. It had been one over with individuals other than Mr. Palios with the plaintiffs. It was clearly pointed out by Corsini and Lawyer Regan on the 10th of December what there liabilities were. Mr. Palios at that time also outlined the various defenses that the CGU could use to put before a court, i.e. the fact that they had not obtained prior approval of the renovations, the arson fire, the vacancy of the building etc.

¶ 69 It is clear that the accountant of their's Mr. Phillips clearly understood that there was a limit on the policy and it appears that the Plaintiffs accepted that position, which was the basis of the agreement reached on the 10th of December.

¶ 70 It is unfortunate that the notes and dockets of Palios were in such a state, but that may have been compensated by the number of meetings.

¶ 71 I find that taking into accountant the complexity of the matter, which was not great; the time spent with the Alabakopouloses and the letters written by Palios that he was not negligent in his duties as a lawyer.

¶ 72 There is a concern that I have and that is the Defendant was going to sign an affidavit prepared by Mr. Regan (see Exhibit #95) except for one matter in the affidavit. He also wrote to Mr. Regan on May 4, 2000, which indicated that he was prepared to testify and what he would say. It would appear that as a result of that letter, the action as against CGU was withdrawn. That letter, in my opinion, should not have been written. Mr. Palios ought to have sought the advice of senior counsel if not the Law Society. I find that Mr. Palios was not negligent in the advice he gave to the Alabakopouloses. I also find that the agreement entered into on the 10th of December, 1999 was an informed agreement.

¶ 73 I do find that there was a breach of fiduciary duty to his clients by writing the letter to Mr. Regan on May 4, 2000. However, the lawyer that the Alabakopouloses had gone to after Mr. Palios, a Mr. Logan, apparently had that information from Mr. Palios. Certainly if the lawyers who started the action against CGU by the Alabakopouloses had contacted they would have been made aware of the situation and what Palios would have stated, and thus review whether it was advisable to start the action. I find however that no damages flow from this breach of fiduciary duty.

¶ 74 If I am wrong in finding that the Defendant Palios was not negligent in the performance of his legal duties to the Alabakopouloses, or if I was in error in finding that there was a binding agreement on the 10th of December, 1999, what would the damages be?

¶ 75 The Defendant retained the services of Pocrnic Realty Advisors (see exhibit 123). In his very thorough report, he came to the opinion that this property would have had a value of some $260,000 as of July 3, 1999, one day prior to the fire. This report was not seriously challenged by the Plaintiff.

¶ 76 The Plaintiffs had been trying to sell the property before the fire with George Mah of Re/Max Escarpment Realty Inc. they are listed as follows:

1. July 24, 1997 until 31 December, 1997 listing price $688,000
2. February 24, 1998 until July 10, 1998 listing price $599,000
3. July 17, 1998 until December 31, 1998 listing price $549,000
   (See exhibits 107-109).

Mr. Mah indicated that he got no meaningful offers.

¶ 77 There was an other offer with John W. Harvey Ltd. for the period of July 17, 1998 until December 31, 1998. The listing price was $549,000. Nothing came of that listing either. (See exhibit #109).

¶ 78 It was apparent that they were anxious to sell, at least until they started the renovations, but that it was not the most attractive area in Hamilton for a sale at those prices.

¶ 79 It was quite clear, that notwithstanding their position, the Plaintiffs did not have the intention to rebuild. They had not taken one step to implement that plan. From July, 1999 until December, 2002, nothing was done. It was apparent that they had significant mortgages and that would affect their ability to

get financing for the replacement of the building.

¶ 80 If they would rebuild then the policy would pay up to $750,000 and the Plaintiffs would be responsible for the rest.

¶ 81 Since they were not going to rebuild, what would the value of the building be? The Pocrnic value was $260,000. The listing value by the Plaintiffs was between $688,000 and $549,000. I would think that considering that they did not have any bids on the building at that price that the value would be in the range of $350,000. That is taking the value if there were a willing buyer.

¶ 82 The Plaintiff originally asked for inflation protection of $25,539.00, but abandoned that when they conceded that the Plaintiffs were not going to rebuild.

¶ 83 The Plaintiff claimed a rental loss of some $61,750. It is worth noting that the limits of this policy are $84,000 and must be claimed for only one year following the fire. The Plaintiffs' accountant had in its letter of December 14, 1999 (see exhibit 24) suggested that for settlement purposes, $33,000 be the figure.

¶ 84 The Defendant's position was that if the building were to be rebuilt that the residential loss for the period would be $22,450. That is made up as follows, according to the defense position. John Harris was the only tenant for the period August and September 1999, when Mr. Rehor stated that the renovations would have been completed. Thus there would be a rental loss of two months or $1,100.

¶ 85 For the period of October to the end of February 2000, when the building would have been rebuilt, if the Plaintiffs really intended to rebuild, there would have been a residential loss on the 14 units (not the 9 that were originally there) of some $22,450. This was based on the occupancy rate of some 76.62%, which was the historical rate for the previous 4 years. I find the loss amount for the residential portion at $22,450.00.

¶ 86 There could have been a commercial rent loss for the same period of $12,879.52 based on a monthly rent of some $3,219.88. The evidence led was there was a vacancy at the time of the fire. Notwithstanding that and giving the Plaintiffs the benefit of the doubt there would be a loss of some $12,879.52.

¶ 87 Thus rental loss could be calculated at some $35,329.52. Based on rental loss as outlined in paragraphs 84, 85, 86.

¶ 88 The Plaintiffs claim that there is a mortgage loss of some $22,116.00. That is made up of some $8,629.00 up to the 10th of December 1999, and a further $13,487.00 from the 10th of December 1999 until June 30, 2000. These figures are for interest only.

¶ 89 The defense position is that there should be no claim as there was no proof of loss filed by the Plaintiffs, although they had received the forms. If a claim is to be found the defense states that it should be limited to the time up to December 10, 1999 or $8,629.00. I agree.

¶ 90 The Plaintiffs claim the sum of $79,949.00 for demolition costs. This was the sum that Triple M claimed for the work that they did. Justice Cavarzan dealt with this matter in a Judgment that he delivered on the 26th of March, 2001. (See exhibit 21) which was on the file for the Alabakopoulos firm, so they would have known the situation. The Plaintiffs did not add Mr. Palios as a third party at that time. The Plaintiffs' company was found liable for that amount. I find that that amount was covered by the insurance policy and that the Defendant Palios is not responsible for that amount. It was made clear to the Plaintiffs on the 10th day of December that they were responsible for that. Thus that amount will not be considered as

part of the claim of the Plaintiffs in this case.

¶ 91 The Plaintiffs are claiming the sum of $2,000 for accountants' fee. Since the accountant only provided information after the deal had been accepted. There will be no finding in favour of the Plaintiff on that point.

¶ 92 The Plaintiffs are claiming the sum of $3,690 for the costs that they incurred in starting the action as against CGU, their insurer. I find that if they had contacted Mr. Palios, or solicitor Logan they would have known what Mr. Palios would say. When they did receive a copy of Mr. Palios letter of May 4, 2000, they abandoned that action. See also the letter that Palios wrote to the Alabakopouloses on January 4, 2000, (exhibit 32).

¶ 93 The claim for Electronic Data Processing was agreed at the amount of $4,055.00.

¶ 94 There will be a finding that there was a loss of the kitchen cabinets in the amount of $12,917.85.

¶ 95 The Plaintiff has claimed the sum of $6,333 for Limited Extra Expense. Very little evidence was adduced on this issue. I believe that there would be some extra expenses caused by the fire. Since I was not given much evidence on that point, I feel that the proper amount would be in the amount of some $3,500.

¶ 96 With respect to the claim for Solicitor and Client Accounts in the amount of $75,021.05, as I have stated before these actions or defenses should not have been. I would not find that the Defendant would be responsible for this amount even if I had found differently in the finding of solicitor's negligence.

¶ 97 Therefore there will be a finding that the damages suffered by the plaintiffs is $414,431.37. That is in addition to the $75,000 received before the 10th of December, 1999. Also the Plaintiffs keep the land and building.

¶ 98 Thus there will be judgment as follow:

1. The Defendant, Nicholas Palios, was not negligent in his duties as a Solicitor to Plaintiffs.
2. That there was an "informed consent" by the Plaintiffs to the agreement of December 10, 1999.
3. Action of Plaintiffs dismissed as against Defendants. If I am wrong in finding no negligence or informed consent, damages are found to be $414,431.37.
4. I may be spoken to as to costs.

MATHESON J.

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