



THE COURT OF APPEAL

UNAPPROVED

Record No. 2020/126

Faherty J.

Neutral Citation Number [2022] IECA 27

Collins J.

Binchy J.

BETWEEN/

FINBAR TOLAN

PLAINTIFF/APPELLANT

- AND -

**MCLAUGHLIN AND GREANEY INSURANCES LIMITED T/A FUTURE AND
ZURICH INSURANCE PLC**

DEFENDANTS/RESPONDENTS

JUDGMENT of Mr. Justice Binchy delivered on the 3rd day of February 2022

1. The plaintiff/appellant is a farmer and cattle dealer with land holdings in County Mayo. The first named defendant/respondent (hereinafter “Future”) is an insurance brokerage with whom the appellant has had dealings over a long number of years. The second named defendant/respondent (hereinafter “Zurich”) provided the appellant with an insurance protection policy in respect of his farming activities and certain farm buildings from April 2015 until April 2018 (the “Policy”).

2. The appellant claims that, on 23rd February 2017, as a result of storm Doris, damage was caused to two cattle sheds on his farm. He says that initially he thought that he would repair the damage to the sheds without recourse to the Policy (as he thought that the repairs would not be costly), but having received a quotation to repair the damage, he elected to make a claim under the Policy (the “Claim”) because the cost of repairs was far greater than he had expected.

3. The appellant then contacted Zurich directly for the purpose of making the Claim and in early May 2017 a meeting was arranged on site between the appellant’s loss adjuster and a loss adjuster appointed on behalf of Zurich. As a result of this inspection, Zurich learned, for the first time, that the buildings in respect of which the Claim was made, i.e. the cattle sheds, were older and of a different construction type than it had understood at the time that it issued the Policy. As a result, and also because in Zurich’s view, the Claim was made outside the time limit prescribed by the Policy, Zurich declined to indemnify the appellant in respect of the Claim. However, it did not repudiate the Policy. Instead it decided to deal with the matter on the same basis that it would have done had the correct information been provided at the time of inception of the Policy. It therefore withdrew storm cover retrospectively (from the time of inception of the Policy in 2015), and refunded to the appellant such portion of the premia received from the appellant as was attributable to the storm cover on the cattle sheds, and otherwise continued to provide cover to the appellant in accordance with the Policy.

4. The appellant, however, remained dissatisfied, and following a period of engagement between the appellant and Zurich, the appellant issued these proceedings on 25th January 2018, following upon which Zurich declined to renew the Policy upon its expiration in April of that year.

The Pleded Case

5. While the appellant was represented by solicitors and counsel in the court below, he drafted the plenary summons and statement of claim in the proceedings himself, and he also conducted his appeal before this Court himself. In his plenary summons he claims (and here I paraphrase):

1. A declaration that he is entitled to payment, from Zurich, in respect of the costs of repair or replacement of the buildings damaged by the storm, pursuant to the terms of the Policy;
2. An order for specific performance of the Policy, or damages in lieu, as against Zurich;
3. Damages for loss of health and inconvenience as against both defendants;
4. Damages for breach of contract, breach of duty and misrepresentation, including aggravated or exemplary damages as against both defendants.

Statement of Claim

6. In his statement of claim delivered on 24th July 2019, the appellant states that in or about April 2016 he attended at the premises of Future to renew his farm insurance policy for the following year. As he had always done, he dealt with a Ms. Noreen Gilligan. He says that no changes to his existing policy were required. He claims that he attended the offices of Future every year for the purpose of renewing his farm insurance policy, and that he relied on Ms. Gilligan to obtain the best quote available, and he also relied on her to represent him in the event of a claim under the policy, and to ensure that the policy was honoured by the insurers.

7. He claims that he was not questioned by Ms. Gilligan either when incepting a policy or renewing his policy each year, until he sought cover for a slatted beef fattening unit valued at over €200,000, which he had constructed in 2007. He claims that because of the high value

of this unit she enquired of him as to its year of construction. However, he claims, she never questioned him about the “value or year of anything else”.

8. He claims that two cattle sheds were damaged in a storm on 23rd February 2017, as a result of which it was necessary for him to make a claim under the Policy. He engaged loss adjusters, Auray Assessors, who attended on site with loss adjusters appointed on behalf of Zurich. He claims that as a result of an error at the time he applied for the Policy, the cattle sheds were stated to have been constructed at the same time as the slatted unit (2007) and this was not correct. As a result, he claims the respondents are refusing to honour the Claim. He lays the blame for this error with Future, as he maintains it was an error of Ms. Gilligan’s making, she being the only person he ever dealt with in Future. He says that the cattle sheds were built long before the slatted unit and at no time did he ever submit to the respondents that they had been constructed in 2007. He says that one of the cattle sheds was valued at €25,000 and the other at €35,000. He submitted a fully vouched claim for repairs to the cattle sheds in the sum of €77,000 which he says the respondents have “refused to honour”.

9. He claims that the respondents are refusing to renew the Policy, and as a result he is unable to obtain quotations from any other insurers. He claims that the respondents are accusing him of misrepresentation in relation to the cattle sheds, and this has caused him upset to the point that it has affected his health.

10. He claims that the refusal by the respondents to honour the Claim is wrongful and in breach of the terms and conditions of the Policy, and he repeats his claims for the reliefs set forth in the plenary summons as described above.

Defence of Future

11. In its defence delivered on 4th September 2019, Future admits having acted as broker on behalf of the appellant, but pleads that he never sought insurance for cattle sheds until 2013 when he also sought storm insurance for the same. As originally filed the defence said

2007 and not 2013, but when the case was being opened counsel for Future applied to amend the defence in two minor respects, this being one, and the trial judge granted that application although the appellant objected. While the appellant has not appealed against the decision of the trial judge to permit the amendment, he has purported, in his submissions, to object to this and the other amendment permitted by the trial judge.

12. Future pleads that in 2015 the appellant specifically informed it that the cattle sheds were built in 2007 and that the appellant confirmed this both orally and in writing. It is pleaded that the appellant did not inform Future that there was any distinction in age between the slatted unit and the cattle sheds. The reference in this paragraph of the defence to the year 2015 arises from the second amendment permitted by the trial judge. As originally filed the defence stated “at all material times” and not “in 2015”.

13. It is pleaded that the appellant was specifically asked questions about the age and value of the cattle sheds and that the appellant was provided with a questionnaire by Future addressing these issues, and the appellant provided the information for completion of the questionnaire. This information was then passed on by Future to Zurich. Future denies any errors in the completion of the documentation relating to the application for insurance to Zurich, on behalf of the appellant.

14. Future pleads that any information contained in the Policy was provided by the appellant himself. It further pleads that it is a stranger regarding the making of the Claim and other matters involving the appellant and Zurich concerning the processing of the Claim.

15. Future denies withdrawing cover or refusing to honour the Claim. Any decisions in this regard were decisions taken by Zurich. Future denies failing or refusing to honour its obligations to the appellant. Any losses allegedly sustained by the appellant have been caused by his own actions, and specifically by his failure to provide Future with the correct

information as regards the age and antiquity of the cattle sheds. Furthermore, he failed to notify Zurich of the Claim in a timely manner.

16. Finally, it is pleaded that had the appellant provided the correct information he would not have been able to secure storm cover in respect of the cattle sheds having regard to their age and antiquity.

Defence of Zurich

17. In its defence, Zurich pleads that there was a material misdescription in the proposal form/submissions submitted on behalf of the appellant when the Policy was inceptioned in 2015. Specifically that the cattle sheds were stated as being constructed of “block” and roofed with galvanise, and that they were built in 2007, all of which was incorrect. Accordingly, Zurich pleads that it was entitled to repudiate liability in respect of storm cover on the cattle sheds, which it did by letter dated 12th July 2017.

18. Zurich further pleads that it was entitled to repudiate cover in respect of the cattle sheds on the basis that the appellant did not notify the incident giving rise to the Claim (which allegedly occurred on 23rd February 2017), until 26th April 2017, contrary to condition number 2 of the Policy. It is also pleaded that the cattle sheds were not maintained in good condition, contrary to condition number 9 of the Policy.

19. By reason of the foregoing, Zurich was entitled to withdraw cover in respect of storm damages to the cattle sheds, and while it could have repudiated the entire Policy, it did not do so. However, when the Policy came up for renewal the following year it declined to renew the same as it was entitled to do.

20. More generally, Zurich denies that it has been guilty of any alleged breach of contract, breach of duty, negligence or misrepresentation. It puts the appellant on full proof that he has been refused insurance cover by other companies, or that his health has been affected as alleged.

21. The proceedings came on for hearing before O'Connor J. on 26th November 2019, and were heard over four days. In a concise judgment delivered on 3rd April 2020, O'Connor J. dismissed the proceedings, and subsequently made an order for costs against the appellant.

Evidence in the High Court

Evidence of the Appellant

22. In his evidence in chief, the appellant related that he had been dealing with Future for approximately 15 years. Over the years he was assisted by a Ms. Noreen Gilligan of Future, who gave evidence at the trial. He said that in 2013, he decided to obtain storm damage cover for his property, including the cattle sheds. He explained that the sheds involved comprised the large slatted shed built in 2007, and the older cattle sheds, which he thought had been constructed in the early to mid-1900s. He said that the cattle sheds were constructed of stone and galvanise (meaning the roof was constructed with galvanised sheeting) as well as “some blocks”. He said that Ms. Gilligan never asked him about the date on which the older sheds were constructed. She did ask him about the larger slatted unit, because she expressed surprise at the value of it, which was €200,000. He said that if she had asked him about the year in which the cattle sheds were constructed he would never have said 2007. Moreover, if she had asked him, he would not have been able to provide an answer because to this day he does not know when the cattle sheds were built. However, the few people that he had discussed the matter with had expressed the opinion that the cattle sheds had probably been constructed in the early to mid-1900s.

23. Counsel for the appellant asked him did he explain to Ms. Gilligan “the difference in the material” between the slatted shed and the older cattle sheds, to which he replied he did not. He was asked did he explain to Ms. Gilligan that the cattle sheds were constructed with stone, and he confirmed that he did so. He said the only issue when he was incepting the Policy with Zurich was the value of the slatted unit.

24. Counsel for the appellant asked him to explain the discrepancy appearing in insurance documents, which, in the case of the Aviva policy indicated that the cattle sheds had been constructed in 2002 and in the case of the Zurich policy indicated that they had been constructed in 2007. He replied that it was only when he obtained documentation through his data access request (in the course of these proceedings) that he became aware for the first time that Ms. Gilligan had stated in the Aviva documentation that the cattle sheds were constructed in 2002. He said that he did not inform Ms. Gilligan that the cattle sheds had been constructed either in 2002 or 2007. He believes that Ms. Gilligan made an error or errors in providing this information to the insurers. When completing the proposal form for Zurich, Ms. Gilligan would have had all his information from the previous proposal to Aviva, so he was at a loss to understand how she could have included different years of construction, both of which were incorrect, in the different proposal forms. He clearly laid the blame for these errors with Ms. Gilligan.

25. Counsel opened the questionnaire completed at the time the appellant applied for insurance with Aviva, which the appellant confirmed was the information provided to Aviva. Little more was said about this document in his evidence in chief other than to suggest that Ms. Gilligan would have relied upon this when assisting the appellant apply for insurance with Zurich, on 10th March 2015. The court was then brought to a document entitled “Farm submission for quotation”. This was a document submitted to Zurich in 2015 for the purpose of obtaining a quotation. The appellant was asked was he given this quotation form to which he replied that he probably was, but he left it to Ms. Gilligan to do the best that she could for him. In answer to a question from the trial judge he said that he believed he was given the form at the time that he was taking out the Policy.

26. The next document opened to the court was the quotation received from Zurich. Amongst other things this provided that the “outbuildings must be of standard construction”.

The appellant was asked did he know what was meant by “standard construction” to which he replied that he would understand that to mean that the buildings would be constructed with concrete or stone or blocks.

27. The appellant then went on to describe how, subsequent to the sheds being damaged in the storm, he engaged loss adjusters to process a claim in respect of the damage caused. He related how his loss adjuster, a Mr. Grimes, arranged to meet with a Zurich representative on site, on 3rd May 2017. (It will be recalled that the buildings had been damaged in the storm Doris in February 2017. Mr. Grimes attended on site for the first time on 25th April and notified Zurich the following day of the damage to the buildings). This inspection was arranged prior to the demolition of the buildings, which was necessary for safety reasons. In reply to a question as to the response of Zurich to the Claim, the appellant said that his loss adjuster informed him that Zurich had indicated that they would not be honouring the Claim because the appellant had made a misrepresentation as regards the Policy.

28. The appellant then went on to describe the difficulties that he claims he encountered from around April 2018, when Zurich refused to renew the Policy. This caused him difficulties with other insurers, and his evidence was that, at the time of the trial, he had no insurance cover, including cover to drive his tractor on the public roadway.

29. In cross-examination, the appellant confirmed his signature on the storm questionnaire completed for the purpose of obtaining a quotation from Aviva. He acknowledged that the cattle sheds were stated to have been built in 2002, and that that was incorrect. He also acknowledged that they were stated to be constructed with block, and that that too was incorrect. It was put to him that Ms. Gilligan would say that all of the information provided in this form was provided by the appellant to Ms. Gilligan. In answer to this the appellant stated: “Judge, if that is the case how did Ms. Gilligan in 2015 send the same documentation to another insurance company with the exact same details on it with the year 2007 on it?”

This was a theme to which the appellant returned again and again in his answer to questions in cross-examination.

30. The appellant was asked if he had read the document to which he replied: “I don’t believe I would have read every document Judge.” While he acknowledged signing the form, he said that he placed a lot of trust in Ms. Gilligan. He said that he had a working relationship with her going back over many years and he believed that she would obtain the best policy that she could for him.

31. It was put to the appellant that later in the same year (2013) the Aviva policy lapsed owing to a failure of payment of premium, and that in order to revive the policy, it was necessary to complete a fresh proposal form. The appellant confirmed that this was so. It was drawn to his attention that the cattle sheds were again described in this form as being constructed of concrete and roofed with galvanise, and it was put to him that this was not correct. In reply he said that “there is concrete in the sheds as well, although they are not all concrete”. On further questioning however he agreed that the cattle sheds were made primarily out of old stone but he said that “inside there would be a lot of concrete inside in the walls”. He acknowledged his signature on this document, and he also acknowledged that the form contains an express provision (immediately above his signature) stating that all of the information provided therein is true, accurate and complete. However, again he suggested that the responsibility for the content was that of Ms. Gilligan, stating that: “what I am also saying is, Judge, that Ms. Gilligan often asked me to sign a form and she would go down and look to get the best quote for me and I entrusted her to do that.” In answer to a subsequent question, however, he agreed that Ms. Gilligan was relying upon him to provide accurate information.

32. The appellant was then cross-examined about the process of obtaining a quotation from Zurich. It was put to him that Ms. Gilligan would say in her evidence that the submission to

Zurich was completed on 10th March 2015, when the appellant attended in Ms. Gilligan's offices for the purpose of completing the necessary form in order to obtain a quotation from Zurich. The appellant replied that this was unlikely because he would have had no need to seek a new quotation as early as 10th March since the Aviva policy was not due to expire until approximately 25th-27th April. He then denied that Ms. Gilligan would have completed the submission to Zurich based on answers which he provided. He said that she would have done so by reference to information she already had on file. He repeated this answer in response to a similar question.

33. It was then put to the appellant that he attended at Ms. Gilligan's offices on 24th April 2017 to consider a quotation received from Zurich based on the submission that Ms. Gilligan had sent to Zurich on behalf of the appellant. He agreed that he had met with Ms. Gilligan for this purpose. He agreed that they would have gone through the quotation from Zurich, which stated that the cattle sheds were "2007". The appellant was asked why he did not inform Ms. Gilligan that this was incorrect, to which he replied that he "always left it to Ms. Gilligan to deal with the matter [for me]". He went on to say that the main thing that she would require him to do would be to sign a direct debit. He said that the first that he became aware that the sheds had been described as being 2007 was when the loss adjusters met on site.

34. It was then put to the appellant that he had another opportunity to look at the information provided following upon the issue of the Policy. It was drawn to his attention that the Policy described the cattle sheds as being "standard cattle sheds (2007)". He was asked if he had seen this and he said he did not believe so. Again he said he trusted Ms. Gilligan. Then he raised an issue about not receiving post. He went on to say that Ms. Gilligan was prone to making errors. Immediately after saying that however he again

repeated that he trusted Ms. Gilligan to do the best deal that she could to get insurance for him, and he left her to do that.

35. He agreed that he would have received the Policy schedule, and when asked if he would have read it, he replied that he did not read the bit where she had “2007 down”. He then went on to ask again why she would put down the year 2002 on one application and 2007 on the other. He said that had he noticed the year 2007 on the Policy he would have brought it to her attention immediately. He was again asked if he read the Policy document, and he again replied that “I wouldn’t always have read them, Judge, no. I wouldn’t have read them entirely because I am only a farmer and I was dealing with these people for so long that I trusted my insurance was left in their hands and I believed I was in safe hands.”

36. The appellant was asked if he received the renewal notice for 2016. He said he did not receive it and he discovered that this was because there was an incorrect address stated in the Policy. He said that he discovered this when he went to the offices of Future, in order to renew the Policy. The appellant had lands rented in a number of different townlands and he noticed that the correct addresses of some of these lands were not properly reflected in the schedule to the Policy, and this was something he was very careful about so as to ensure that his activities at these various locations had appropriate cover. In the course of a discussion about his correct postal address, the appellant agreed that the cover letter from Future sending the renewal notice for 2016 was addressed to his correct postal address in County Mayo. The renewal notice referred to the cattle sheds and immediately after reference to them in brackets is “2007”.

37. The appellant was then asked about the renewal notice for 2017. Again he would not accept that he received it by post but in any case his evidence was that he used to call in to the offices of Future for the purposes of renewing his insurances and he agreed that he called in to meet Ms. Gilligan on 20th or 21st April 2017. He was asked why he did not then inform

her of the damage to the cattle sheds, and he answered that he had engaged the services of an expert to deal with that issue for him. A provision in the renewal notice requiring him to notify any change in circumstances was drawn to his attention, and he agreed that he would have been generally aware of such an obligation. It was also put to the appellant that he had an opportunity on this occasion to let Ms. Gilligan know that the year 2007 was incorrect as regards the cattle sheds, and he replied that had he been aware of this he would have brought it to her attention. He was asked if he read the renewal notice to which he replied that he would not always read the policy in full and that he relied on Ms. Gilligan.

38. The appellant agreed that he is a literate man and that he himself drafted the statement of claim in these proceedings, which runs to 35 paragraphs. He acknowledged that he has represented himself in other litigation, to which he had referred in the statement of claim in these proceedings.

39. While the appellant would not acknowledge that he received, by post, his policy schedule each year, he did acknowledge that if he did not receive it by post, he would collect it from the offices of Future, so that, on his own evidence, he did, one way or another, receive his policy schedule annually.

Evidence of Ms. Gilligan

40. Ms. Gilligan explained that she has been working with Future, and its predecessor, Lyons insurance, for over 25 years. It is a general insurance brokerage. She has considerable experience in working in the farming sector, including in the provision of storm cover for farms. She confirmed that she had been dealing with the appellant from 2010 onwards.

41. Ms. Gilligan stated that the appellant always did his business in the office, and so he would call into the office for renewals or substitution of existing policies. He has both farm insurance and commercial policies. He would probably be in the offices of Future four or five times a year.

42. Ms. Gilligan explained that before 2013 the appellant had no storm cover for the properties. The request for storm cover was prompted by Aviva when the slatted unit was added to the appellant's farm policy. Aviva said that storm cover could only be provided on receipt of a satisfactory storm questionnaire, which is provided by Aviva. Ms. Gilligan said that she contacted the appellant, and he called into the office to complete the questionnaire. This was on 1st February 2013. She said that she actually had two questionnaires completed, one for the two cattle sheds and one for the slatted unit, in order to avoid any confusion. Her attention was drawn to the questionnaire relating to the cattle sheds. She confirmed that she knew nothing of these buildings previously. She was entirely dependent upon the appellant to provide information about these buildings, including their age and construction type. She had no other source for this information. The appellant, who was sitting with her in the same office, provided this information and then signed the form in her presence.

43. Ms. Gilligan was asked to comment upon the statement by the appellant that he did not provide this information. She replied that storm cover is based on the year and type of construction. From her experience in these matters, she knows the questions to ask and she knows that the answers to these questions determine eligibility for cover. She explained that she works in an office and so she has to ask the questions in order to get the requisite information for the completion of the necessary documents in order to request a quotation. She has no other way of knowing about a farmer's outbuildings. She said that the appellant did not tell her that the cattle sheds were of stone construction. As to the relevance of the age and construction type of the buildings, Ms. Gilligan said that in her experience insurers do not provide storm cover on 80 year old stone buildings. Had the appellant provided the correct information, he would have obtained fire and storm cover on the slatted house, but fire cover only on the cattle sheds. She explained that there can be exceptions to this, but this would only ever follow upon further investigation relating to the condition of the buildings.

44. Ms. Gilligan said that if she had to engage in an exercise of checking answers provided by her customers, she would not be able to do her job. There is a relationship of trust between customer and broker, and she depends upon the customer to ensure that the information in the form is correct, otherwise her job would become impossible. Ms. Gilligan gave evidence in relation to the lapse of the Aviva policy later in 2013 owing to a default in the direct debit. It was necessary to get a new proposal form completed. She identified the proposal form which was completed and signed by the appellant on this occasion, and confirmed that the appellant signed this form in her presence.

45. In relation to the Zurich policy, Ms. Gilligan confirmed that the appellant called into the office to complete the submission to Zurich in March 2015. She recalled the appellant saying that he wanted to get a better quote. Contrary to what the appellant had stated in evidence, this was not too early to set about obtaining an alternative quotation, given that the Aviva policy renewal date was in the middle of the following month.

46. Ms. Gilligan confirmed that the submission to Zurich was made on 10th March 2015. She had a very specific memory of going through this with the appellant because it is what she described as a “live submission”, i.e. the information is input into an online submission form which is submitted electronically to Zurich. For that reason the appellant did not actually sign the form. Ms. Gilligan identified the form sent to Zurich. She was very clear that she could not make a submission of this kind without the client’s instructions which almost invariably she took in person and not over the phone. She confirmed that the appellant was in attendance in the office to provide her with the necessary information. This included a statement that the “cattle sheds is (sic) block galvanised shed and 2007”. In answer to a specific question she confirmed that this information was provided by the appellant.

47. Ms. Gilligan was asked why she did not compare the information in the Zurich form with the information he had provided two years earlier for the purpose of the Aviva policy.

She answered that this was because she had no reason to do so. He already had storm cover on his buildings and he was in the office for the purpose of providing the information necessary to make the application for a quotation to Zurich. If the appellant had told her that the buildings were 80 years old she would certainly have looked back to the Aviva policy, but having regard to the information that he provided she had no reason to do so. In general terms, it is not her practice to look back at older documents because the forms require up-to-date information and very often things will have changed between the date of a previous application and a current application.

48. Ms. Gilligan then explained that following upon the submission to Zurich, a quotation was received which included a statement of fact upon which the quotation was based. This statement of fact forms part of the contract of insurance. It identifies each section of cover. Ms. Gilligan confirmed that the appellant attended with her in her office to go through this document, to confirm the accuracy of the information. She said that generally she takes clients through the statement of fact quotation and advises them that they can make such amendments as are required. It is important if any changes are required that they are made at this stage, as otherwise the information already provided forms part of the contract of insurance. She confirmed that she would have reviewed the description of the cattle sheds with the appellant and he raised no issues regarding their description. She confirmed that, on the instructions of the appellant, she accepted the quotation on behalf of the appellant on Monday, 27th April 2015, the appellant having attended with her on the previous Friday, 24th April.

49. Ms. Gilligan confirmed that the Policy document itself issued on 19th May 2015. This was posted to the appellant. She confirmed that a copy of the letter before the court sending the Policy document to the appellant was simply a file copy which for that reason was not signed. The signed letter would have been sent to the appellant. The Policy includes a

schedule which describes the cattle sheds as being 2007. Ms. Gilligan confirmed that the appellant did call into the office to transact business but it was her practice always to post the Policy schedule the client so that she has a record that it has been sent to the client.

50. Ms. Gilligan then dealt with the 2016 renewal notice and confirmed that the appellant had contacted her to correct an error in relation to the risk addresses of certain townlands. She was asked how the appellant could have known of the incorrect address information, to which she replied that he checked the schedule.

51. Ms. Gilligan confirmed that the following year, 2017, she was in contact with the appellant about arrears of payment of premium. This began in February 2017 and she had some difficulty in contacting the appellant. When she did succeed in contacting him, in March, the storm damage had already occurred, but the appellant made no mention of it. When she subsequently became aware of the storm damage claim she was surprised because normally clients contact their broker to ask for assistance in reporting the damage and any possible claim to the insurer. She had previously assisted the appellant with another claim. All of this was followed by the renewal notice for 2017 which was received in April. This was sent to the appellant on 12th April. It contains the same information regarding the cattle sheds. The appellant attended in the offices of Future on 20th April to pay his arrears and renew the policy. He made no mention of the storm damage.

52. At the conclusion of her evidence, Ms. Gilligan was asked by the trial judge if she actually recalled the appellant attending at her offices on 10th March 2015 to complete the submission to Zurich, as distinct from just relying upon the documentary record. Ms. Gilligan said she did have a specific recall because the online Zurich form had only been in use for about a year and she had not used it very often. So she would not have been comfortable completing it over the phone, and it is for this reason that she has a specific recollection of the appellant attending in her offices on 10th March 2015.

53. Ms. Gilligan was also asked by the trial judge if she was aware that the appellant was claiming that he could not get insurance for his tractor, and whether anything could be done about that? She said she was aware, and she had tried to obtain a quote for him from Aviva, but it was unwilling to quote due to the ongoing claim against Zurich. So she advised the appellant to try FBD. The trial judge asked if there is a scheme whereby people who cannot get insurance in the open market, can obtain it through the scheme, and Ms. Gilligan replied that there is a declined cases scheme, but she did not believe it applied to tractors.

54. The above is a summary of what to me appear to be the salient points of the evidence in chief of Ms. Gilligan. Obviously she was cross-examined on this evidence but nothing of significance arises out of the cross-examination and at the hearing of this appeal the appellant did not rely on anything said by Ms. Gilligan in reply to questions under cross-examination.

Evidence of Mr. Jason Byrne, Zurich

55. At the time of giving his evidence to the High Court Mr. Byrne was head of agribusiness in Zurich. He explained the process, in general terms, whereby proposals are made and quotations issued by Zurich in connection with agribusiness. When the submission for quotation is received electronically, this is inputted into the in-house underwriting processing system. Based on the information received in this case from Future nothing would have given rise to any particular concerns as to risk. Mr. Byrne was asked what would have been the position if Zurich had been given the correct information in this case, and he replied that if they have been informed that the year of construction of the cattle sheds was approximately 80 years ago, and that the construction type was stone as opposed to block, the buildings would not have been deemed to be of modern construction and storm cover would not have been provided in respect of the cattle sheds, although it would have been provided in respect of the slatted unit. Fire cover would have been provided for all buildings.

56. Mr. Byrne then described the process that was followed after receipt of the Claim, which was two months after the storm damage occurred. This delay in itself, he said, “raised serious concerns”. He was asked about the approach of Zurich in light of the misdescription of the cattle sheds. He considered that the appropriate course to take was to consider what would have occurred had the correct information been provided in the first place. He was not in favour of voiding the Policy as he felt that that would be both draconian and contrary to directions of the insurance ombudsman in previous cases. So he decided to continue the Policy but with fire cover only in respect of the cattle sheds, and to return, on a pro rata basis, such part of the premium as related to storm damage for the cattle sheds.

57. As a result of this decision, a letter was sent, on behalf of Zurich, on 12th July 2017, by its loss adjusters, Davies Ireland, to the loss adjusters acting on behalf of the appellant. This letter stated that there had been a material misrepresentation regarding the information provided in relation to the cattle sheds, at inception of the Policy, and had the correct information been supplied, storm cover would not have been provided by Zurich in respect of those buildings. Accordingly, the letter went on to say, cover was to be withdrawn retrospectively in respect of the cattle sheds, and the appellant would be refunded premium on a pro rata basis. It followed that since it was deemed that there never was storm cover in place, Zurich had no liability in respect of the Claim.

58. The letter went on to say that while the decision had been taken on the basis of material misrepresentation, Zurich had asked Davies to point out two other matters. Firstly, while the incident giving rise to the Claim occurred on 23rd February 2017, it was not notified until 26th April 2017, contrary to the obligation under the general conditions of the Policy to notify damage immediately. Secondly, Zurich did not consider that the sheds had been maintained in good condition prior to the storm damage, also contrary to the general conditions of the Policy.

59. Mr. Byrne then dealt with the refusal to renew the Policy in 2018. He confirmed that he was the primary decision maker in relation to the refusal to renew the Policy. Mr. Byrne said that he received an email from a colleague dated 14th March 2018, who had done a comprehensive file review in the context of the renewal process. That colleague was asking for Mr. Byrne's views as to renewal. He drew the attention of Mr. Byrne to litigation in which the appellant was involved with another party (this was reported in the Farmers Journal). Having considered the matter, Mr. Byrne directed that the Policy should not be renewed. His colleague enquired as to the reasons to be given to the appellant. Mr. Byrne's colleague appeared to consider that the reason was related to the other litigation in which the appellant was involved, but Mr. Byrne clarified that this was not the reason. In his evidence he stated that he had "multiple reasons" for not renewing but that the main reason was the misrepresentation on the part of the appellant. In addition other factors included the late notification of the Claim and the failure to maintain the cattle sheds. In answer to a question from counsel, Mr. Byrne confirmed that the fact that the appellant had by this time - in January 2018 - also issued these proceedings, was also a factor. Mr. Byrne concluded this part of his evidence by saying that he did not take this decision lightly, but he considered that the appellant was not willing to work with Zurich in a manner that was fair and reasonable, and this left Zurich with no option other than "not to invite further renewal periods".

60. Mr. Byrne also addressed the issue mentioned by the appellant in his evidence concerning the difficulties he was having because he could no longer drive his tractor on the public road. Mr. Byrne was aware of this issue, because he had been contacted by a Mr. Paul Houlihan of Insurance Ireland, a representative body for the insurance industry, to whom the appellant had made representations in relation to his difficulty in obtaining insurance generally, including insurance for his tractor. Mr. Houlihan was inquiring if Zurich could

offer terms of renewal to the appellant. Mr. Byrne replied that this would not be possible, but as regards the motor section of the Policy, Zurich could, in accordance with the declined cases scheme, provide third party cover subject to the appellant receiving three refusals, including one from Zurich. However, Mr. Byrne stated that he heard nothing further after informing Mr. Houlihan of this, i.e. no request was received from the appellant. In answer to a question put to him in cross-examination, Mr. Byrne said he did not know if Mr. Houlihan relayed this information to the appellant.

61. Other witnesses gave evidence on behalf of both parties, but their evidence was not relied upon by the parties at the hearing of this appeal.

Decision of the High Court

62. At para. 9 of his judgment, the trial judge states:

“No matter how much the plaintiff protests that he did not mention to Ms. Gilligan a date of 2002 in respect of the construction of the shed in February 2013 for the Aviva proposal or a date of 2007 in respect of the construction of the shed in 2015 for the Zurich proposal, the plaintiff cannot escape the fact that the relevant information was included in the copy proposal forms enclosed with a cover letter addressed to him dated 2nd May 2013 and 19th May 2015. More significantly, the plaintiff admits his belief that he would not ‘have read every document’ prior to signing the proposal form.”

63. At para. 12 of his judgment, the trial judge finds, on the balance of probabilities, that Ms. Gilligan did not unilaterally and without input from the appellant enter the incorrect years for the construction of the cattle sheds [on the proposal forms]. He goes on to say that the inconsistency between the 2013 and 2015 proposal forms as regards the date of construction of the cattle sheds (the former stating 2002 and the latter stating 2007), contrary

to supporting the appellant's argument that Ms. Gilligan was acting unilaterally, corroborates the evidence of Ms. Gilligan that the information was provided by the appellant himself.

64. At para. 16 of his judgment, the trial judge refers to the submission for a quotation sent on behalf of the appellant to Zurich in March 2015 to which I have referred at para. 25 above.

He stated:

“The material misrepresentation attributable to the plaintiff related to the age of the cattle sheds which would not have been covered by Zurich if a proper description of the cattle sheds had been given.”

65. The trial judge rejected an argument advanced by the appellant that Ms. Gilligan ought to have spent more time in ensuring that he, the appellant, understood that “the material description of the cattle sheds was vital”. The trial judge stated that apart from the fact that there was no evidence that another broker would have assisted the appellant any more than did Ms. Gilligan, the appellant himself must take responsibility for confirming information before and after the inception of the Policy.

66. At para. 10 of his judgment, the trial judge describes the appellant as being “argumentative” under cross-examination, and in contrast he describes Ms. Gilligan as being “calm and honest when giving her evidence despite the undoubted stress which these proceedings have caused”. In contrast, the trial judge had doubts about the credibility of the appellant, stating at para. 21: “Lastly, the plaintiff's omission to address the availability to him of third party “cover for agri-vehicles” in order to keep his business and, as mentioned by Mr. Byrne in cross-examination, supports the Court's poor view about the reliability of the plaintiff when it comes to understanding and telling the whole truth”.

67. Arising out of all the above, it was the conclusion of the trial judge, on the balance of probabilities, that it was the appellant who was responsible for the provision of the inaccurate information as regards the date of construction of the cattle sheds, and not Ms. Gilligan or

Future. He also concluded that the appellant omitted to alert Future of the error following his receipt of the proposal form, and the Policy.

68. As far as Zurich is concerned, the trial judge accepted the evidence given by Mr. Byrne on its behalf that it would not have insured the cattle sheds if a proper description of the sheds had been given.

Grounds of Appeal

69. In his grounds of appeal dated 11th June 2020, the appellant sets out six grounds, which I paraphrase as follows:

1. That he had a contract of insurance with Zurich, pursuant to which he is entitled to be paid the cost of repairing the damage caused to the cattle sheds by storm;
2. That the trial judge erred in holding that the appellant had no claim for damages arising out of his inability to renew his insurance or obtain alternative insurance cover all of which is a consequence of the actions of the respondents;
3. The trial judge erred in admitting into evidence undated and unsigned documents;
4. The trial judge erred in placing too much emphasis on the innocence of the respondents in circumstances where the appellant is a more innocent party;
5. The trial judge erred in preferring the evidence of the witnesses of the respondents over the evidence of the appellant. The appellant also asserts in this ground of appeal that the respondents coached their witnesses in an attempt to discredit the appellant;
6. The trial judge erred in failing to take into account the consequences for the appellant of the refusal of Zurich to renew his farm insurance policy, i.e. that it would result in the appellant not being able to secure to obtain alternative

insurance. Further, the trial judge erred in not realising that all insurance companies in Ireland, including Zurich, are acting as a cartel.

Submissions

70. The main focus of the appellant's submissions on this appeal related to the conclusions of the trial judge on the facts. He argued that the trial judge erred in preferring the evidence of Ms. Gilligan over his evidence in finding that the information provided both to Aviva in 2013, and again to Zurich in 2015, had been provided by the appellant to Ms. Gilligan. He said that there was no evidence produced that he had signed a proposal form or questionnaire for the purpose of applying to Zurich for a quotation. In so far as there is any error, it is the responsibility of Ms. Gilligan. He would have no reason to provide misleading information in relation to the cattle sheds.

71. He also said that the only documents that he received in relation to the Zurich policy was the Policy schedule each year. In both his oral and written submissions, he laid considerable emphasis on the fact that Policy schedule does not state that the "year of build" of the cattle sheds is 2007. So therefore there was no error appearing on the face of the Policy schedule that would have caused him to contact Future to make a correction. He would have done so if necessary – he said he had had to contact Ms. Gilligan on occasions down through the years to make corrections.

72. That being the case, he submitted that the real issue in this appeal is that he had a valid contract of insurance with Zurich in the relevant period, i.e. April 2016 to April 2017, during which storm damage – which was covered under the Policy – was caused to his cattle sheds. He is therefore entitled to indemnity under the Policy. If there is any difficulty with inaccurate information, that is not of his making, and the responsibility for that rests with Future.

73. The appellant submitted that the trial judge erred in allowing into evidence unsigned documents, and in particular the submission to Zurich for a quotation.

74. The appellant further submitted that the trial judge appeared to be of the view that the appellant was late in notifying the damage to the cattle sheds to Zurich. The appellant denied that he was late in doing so and submitted that he had originally intended to carry out the repairs himself. It was only when it became apparent that he could not do so that it became necessary for him to notify the damage and the Claim. He submitted that there is no provision in the Policy which prescribes a period for the making of a claim.

75. The appellant's written submissions contained reference to authorities as regards interpretations of contracts that are of no relevance to this appeal. He also purported to advance an argument that there was a public law dimension to these proceedings by reason of the legal requirement to have insurance in order to drive on the public road. This line of argument however was misconceived and was not advanced by the appellant in his oral submissions.

76. The appellant referred the Court to the judgment of Hardiman J. in *Kelly v. Bus Átha Cliath* [2000] IESC 50. The appellant urged the Court to follow the approach taken by Hardiman J. in that case. The issues that presented in that appeal arose out of a lack of clarity as regards the findings of fact made by the High Court in a judgment delivered *ex tempore*. This led the Supreme Court to set aside the order of the High Court and to remit the proceedings to the High Court for a re-hearing on all issues. The appellant submitted that this Court ought to adopt the same approach in this matter, in the light of the conflicting evidence as regards the inception of the Policy.

77. Otherwise, the appellant accepted that the authorities relied upon by the respondents as regards the duties of an insured person to an insurer correctly reflect the legal obligations of the insured. In other words, he accepted that he, as the insured, had an obligation to

provide true and accurate information at the inception of the Policy and thereafter on a continuing basis to keep Zurich informed as to any relevant changes in circumstances.

78. The appellant submitted that the conclusion of the trial judge that the appellant had failed to follow through on the option of obtaining insurance for his tractor through the declined cases scheme undermined his credibility in the eyes of the trial judge and may have affected his other conclusions. In his written submissions, the appellant states that he pursued this option and obtained a refusal from Aviva and FBD, and then approached Ms. Gilligan with a view to obtaining insurance for his tractor. However, Ms. Gilligan informed him, incorrectly, that that scheme did not apply to tractors. This submission gave rise to a robust response in the submissions of both respondents, which I address below.

Submissions of Future

79. It is submitted on behalf of Future that at the core of the appeal is an attack on the findings of fact made by the trial judge. These were primary findings of fact based on the evidence and there was no basis to disturb them. Future relies upon the principles set down in *Hay v. O'Grady* [1992] 1 IR 210, and *Leopardstown Club Ltd v. Templeville Developments Ltd.* [2017] 3 IR 707, wherein Denham C.J. considered the well-established principles identified in *Hay v. O'Grady*, and, at para. 82, stated as follows:

“The principles identified by the *Hay v. O'Grady* jurisprudence include the following:-

- an appellate court does not proceed by way of a full rehearing of the case;
- an appellate court is bound by the findings of fact of a trial judge which are supported by credible evidence;
- in general, an appellate court proceeds on the findings of fact of the trial judge;
- the fact that there is contrary evidence does not alter the position;

- an appellate court should be slow to substitute its own inferences of fact where such depends upon oral evidence, and a different inference has been drawn by the trial judge;
- the fact that there is some evidence before the trial judge which may lead to a different conclusion does not alter the fundamental principle;
- a finding of the credibility, or not, of a witness as a primary finding of fact.”

80. Denham C.J. then proceeded to consider the decision of the Supreme Court in *McCaughey v. Irish Bank Resolution Corporation Ltd.* [2013] IESC 17 and stated at para. 88:

“... an appellate court should not interfere with the primary findings of fact by a trial court which has heard oral evidence, unless it is so clearly against the weight of the evidence as to be unjust.”

81. Future submits that it was clear on the evidence that on two separate occasions the appellant signed documentation containing information about the cattle sheds which he acknowledged in evidence to be wrong. Moreover, the evidence established that the appellant failed to take opportunities to correct the information provided. Furthermore, the appellant proved himself capable of reading and understanding policy documents and correcting inaccuracies.

82. Future submits that the findings of the trial judge on the facts are unimpeachable. These include his finding that “on the balance of probabilities [that] Ms. Gilligan did not unilaterally and without input from [the appellant] enter the incorrect years for the construction of the cattle sheds.”

83. Future refers to the following passage from *Buckley On Insurance Law* (4th edn, Round Hall 2016), at para. 2-131 wherein it is stated:

“If the client withholds material information from the broker or provides false answers to questions asked of him, he cannot subsequently complain if the insurer avoids the policy or refuses indemnity...

There is an onus on the broker to know which facts are material and which are not. If the broker fails or chooses not to ask material questions in the proposal form, he is liable to the client if the insurer avoids the policy.”

84. Future submits that Ms. Gilligan was acutely conscious of the materiality of the year of build of the cattle sheds and their construction type and therefore specifically asked the appellant for the necessary information. It is submitted that she trusted the information provided by the appellant and she had no obligation to look back at information previously provided in connection with other applications. Reliance in this regard was also placed upon the decision of the Court of Appeal of England and Wales in the case of *Darville v. EA Norcutt & Co Limited* (Unreported, 18th March 1991), cited at para. 2-145 of *Buckley On Insurance Law*, wherein it was stated:

“While it is the broker’s job, as agent for his client, to help him ascertain the material facts, the broker does not have to reach the standard of a detective or enquiry agent....”

85. Moreover, even if the entry of “2007” in the submission form was a mistake on the part of the broker, the appellant attended with Ms. Gilligan in order to review the statement of fact and the quotation, following receipt of these documents.

86. As regards the decision to refuse the Claim, this was a matter for Zurich and not for Future. Moreover, Zurich was willing to continue the insurance contract (without storm cover in relation to the cattle sheds) notwithstanding the misrepresentation of the appellant. The factors which gave rise to the refusal on the part of Zurich to refuse to renew the Policy are not matters in respect of which Future has any responsibility.

87. Future further submits that the evidence of both Ms. Gilligan and Mr. Byrne established that had the appellant disclosed the correct information as regards the cattle sheds, he would not have obtained storm cover for those buildings either from Zurich or any other insurer. This evidence was not challenged. It follows therefore that the appellant cannot point to any losses suffered arising from the misrepresentation, because he could never have obtained storm cover for the cattle sheds.

88. As regards the submissions of the appellant that Ms. Gilligan incorrectly informed him that the declined cases scheme did not apply to tractors, it is submitted on behalf of Future that the appellant gave no evidence to this effect and this allegation appears for the first time in the submissions of the appellant to this Court. The observations of Ms. Gilligan about the scope of the declined cases scheme were made in reply to a question put to her by the trial judge. It was never suggested that she advised the appellant on the issue.

89. As regards the submissions of the appellant that the trial judge erred in permitting Future to amend its defence, this was not a ground of appeal contained in the notice of appeal and should not therefore be permitted. That aside, amendments were merely in the nature of corrections and in no way caused any prejudice to the appellant. Furthermore, the appellant did not seek an adjournment in order to address the corrections, but if he had, there would have been no basis for the Court to grant an adjournment.

Submissions of Zurich

90. Zurich submits that it quoted for a farm policy on the basis of a representation that the cattle sheds were constructed of block in 2007. Both of these fundamental criteria for the provision of cover were incorrect. It followed that Zurich was entitled to repudiate the Policy in relation to the cattle sheds.

91. It is submitted that the appellant has not addressed the decision of the High Court in his submissions. Instead the appellant has, for the most part, purported to give evidence

before this Court, which in some respects was different to the evidence that he gave in the High Court.

92. The main issue for determination before the High Court was who was responsible for the misrepresentation regarding the cattle sheds. However, the source of the misrepresentation was immaterial to Zurich, because either way Zurich was entitled to repudiate the Policy by reason of the misrepresentation. However, as far as Zurich is concerned, the evidence clearly established that the appellant was the source of the misrepresentation and was also in serious breach of the Policy by reason of late notification of the damage to the cattle sheds.

93. Zurich also relies upon the decision of the Supreme Court in *Leopardstown Club Ltd. v. Templeville Developments Ltd.* as regards the jurisdiction of this Court in relation to the findings of fact made by the trial judge. Zurich places particular emphasis on the following passages of MacMenamin J. in that case:

“(111) The task faced by the judges of our appeal courts is already too onerous. But the task would be made yet more onerous were appeals to be reduced to a piece-by-piece analysis of the evidence, in an effort to show, on appeal, that the trial judge might have made more emphasis on, or attached more weight to, the evidence of one witness, or a number of witnesses, or one document, or a number of documents, rather than others on which he or she relied.

(112) The trial judge's major role is to determine facts. To that extent, the role must have a degree of autonomy. With experience in fulfilling that role, there comes expertise. As has been pointed out in other jurisdictions, duplication of the trial judge's assessments by an appeal court will very likely only contribute negligibly to the accuracy of fact determination, but at significant cost in the diversion of judicial resources. Parties to a case on appeal have already concentrated their energies and

resources in persuading a trial judge that their account of the facts is the correct one, requiring them to persuade three more judges at the appellate level is requiring too much. The trial on the merits should be the ‘main event’ ... rather than a ‘tryout on the road.’ (See the judgment of White J. in *Anderson v. City of Bessemer*, 470 U.S. 564 [1958], at p. 74).”

94. Zurich submits that there was ample evidence to support the findings of the trial judge in this case.

95. In its written submissions, Zurich relies on the doctrine of Utmost Good Faith and quotes the following passage from the judgment of Lord Mansfield in *Carter v. Boehm* [1776] 3 BURR 1905 as follows:

“Insurance is a contract upon speculation. The special facts, upon which the contingent chance is to be computed, allowing, most commonly in the knowledge of the insured only.... the under-writer trusts to his representation, and proceeds upon confidence that he does not keep back any circumstances in his knowledge, to mislead the under-writer into the belief that the circumstances do not exist, and to induce him to estimate the risque as if it did not exist. The keeping back such circumstances is a fraud and therefore the policy is void. Although the suppression should happen through mistake, without any fraudulent intention; yet still the under-writer is deceived, and the policy is void; because the risque run is really different from the risque understood and intended to be run, at the time of the agreement.”

96. The evidence given on behalf of Zurich (by Mr. Byrne) was that had the correct information been given, at the time of the quotation, storm cover would not have been provided, and it is highly unlikely that any other insurer would have provided cover either. The trial judge accepted this evidence. Accordingly, it follows that the appellant could have suffered no loss by reason of the repudiation of the storm cover in respect of the cattle sheds.

97. In their written submissions, Zurich also placed reliance upon the late notification of the Claim by the appellant as a basis for repudiation of the Claim.

98. Zurich had no legal obligation to renew the Policy nor to give any reasons for declining to do so. This is clear from the decision of the Supreme Court in *Carna Foods Ltd. v. Eagle Star Insurance Company (Ireland) Limited* [1997] 2 IR 193. The trial judge was correct to rely on this authority and in holding as he did at para. 17:

“The facts relating to the material misrepresentation of the cattle sheds and subsequent late notification of the claim do not permit a review by this court of the refusal to renew in 2018 in the circumstances.”

99. As far as insurance for the appellant’s tractor is concerned, Zurich informed Insurance Ireland (who had contacted Zurich on behalf of the appellant) that it would provide a third party motor quotation in the event that the appellant received three refusals (including Zurich). However, no further contact was received by Zurich from or on behalf of the appellant seeking such a quotation.

Discussion

100. The central issue for determination by the High Court was where responsibility lay for the inaccurate information provided about the cattle sheds, and in particular the year of construction of the same. While there was also an issue about the construction type of the cattle sheds, i.e. whether it was of a type permitted by the Policy, the High Court did not find it necessary to address this issue, because, as the trial judge stated at para. 16 of his judgment, the “material misrepresentation attributable to the plaintiff related to the age of the cattle sheds”. The trial judge concluded that responsibility for the inaccuracy lay with the appellant, and not with Future or Ms. Gilligan, as the appellant claimed.

101. As regards the law regarding misrepresentation in relation to insurance contracts, the appellant accepted, both in his written submissions and his oral submissions that the

authorities relied upon by the respondents correctly represent the law, and specifically that an applicant for insurance has a duty of candour to a prospective insurer, or, in the words of the appellant himself in his written submissions “that nothing should be kept back from a broker or an underwriter” provided (the appellant submits) that the applicant was aware that the information concerned was relevant and failed to disclose it or to correct upon becoming aware of an inaccuracy. The appellant in this case maintains that he was unaware of any inaccuracies in the information provided to the respondents, and of course it is his case that responsibility for such inaccuracies rests with Future.

102. I did not understand the appellant to make any argument, in either this Court or in the court below, that an insurer, when considering what measures to take when faced with a misrepresentation by an insured, was restricted to repudiating the policy of insurance, and could not adopt the measures taken by Zurich in this case, i.e. to withdraw storm cover on the cattle sheds retrospectively with effect from inception of the Policy, while giving the appellant a pro rata credit for premia paid in respect of the cover withdrawn, and otherwise continuing the Policy. As Mr. Byrne explained in his evidence, this course was taken, rather than repudiation, because he considered that repudiation of the Policy would be draconian and also because it was consistent with directions of the insurance ombudsman in previous years. The course adopted by Zurich was in ease of the appellant. In any event, it was not the subject of any challenge by him.

103. As regards the findings of fact by the trial judge, as I mentioned above both respondents rely upon the decisions of the Supreme Court in *Leopardstown Club Ltd. v. Templeville Developments Ltd.* and *Hay v. O’Grady*. The principles identified by these authorities are so clear and so well established as to require no further elaboration on the passages cited above.

104. I have summarised the conclusions of the trial judge at paras. 62-68 above. I am of the view that the trial judge had an abundance of evidence upon which to base these conclusions, and it would be putting it at its lowest to say merely that his conclusions were supported by credible evidence. I am of the view that having regard to the evidence before him, the conclusions that he reached were inevitable, and were the only conclusions that could reasonably be drawn from the evidence. The undisputed evidence included:

- That the cattle sheds were constructed before 1950;
- That the cattle sheds are constructed with stone and galvanise, although there may be some concrete block in the interior, and some cement in the walls;
- That the appellant signed a storm questionnaire in 2013 in order to solicit a quotation from Aviva. This form stated that the cattle sheds were constructed with block, and had been built in 2002;
- That the appellant signed a second proposal form in connection with the Aviva policy in 2013, because that policy lapsed owing to non-payment of premium. This form stated that the cattle sheds were constructed with concrete and galvanise;
- That the appellant attended at the offices of Ms. Gilligan in order to consider the quotation received from Zurich. The cattle sheds were simply described in a table within the quotation as: “Cattle Sheds (2007)”. Similarly, the slatted house was described in the same table as “Slatted House (2007)”. The latter was constructed in 2007;
- That the appellant subsequently received the Policy which described the slatted unit and the cattle sheds in identical terms to the quotation;
- That the appellant received the renewal notice for 2016 (whether by post or when calling to offices of Future is immaterial) and corrected addresses of land

described in the schedule of the Policy in order to be certain that the lands farmed by him were correctly identified for the purposes of the Policy;

- That the appellant called to Ms. Gilligan on 20th or 21st April 2017, after the damage to the cattle sheds, to renew the Policy, but did not mention the damage to the cattle sheds.

105. The above is a summary of the undisputed evidence. As to the disputed evidence, the trial judge preferred the account of Ms. Gilligan to that of the appellant. He had good reason to do so. Firstly, Ms. Gilligan is a person of many years' experience in the insurance industry. She was acutely aware of the significance of the age of buildings in the context of an application for storm cover. Her evidence as to the processes that she went through when taking information from the appellant for the purposes of completing forms to elicit quotations made complete sense and was fully supported by the undisputed evidence.

106. In contrast, the evidence of the appellant was inconsistent and lacked credibility. In particular, his claim that he did not understand the significance of "2007" where it appeared immediately beside the reference to the cattle sheds in the Policy, and that he did not understand this as referring to the year of construction of the cattle sheds was wholly implausible. It clearly had to mean something and if he was in any doubt as to its significance or meaning, the fact that the same number appeared beside the reference to the slatted unit, which *was* constructed in 2007, might have offered him a clue. If he genuinely did not understand it to refer to the year of construction, it was his obligation to inquire what was meant by this apparently random number appearing beside the reference to the cattle sheds, and thereafter to correct the inaccuracy it represented.

107. Similarly, his attempt to suggest that the description of the cattle sheds as being constructed of block or concrete was in any way justified by the fact that some cement and/or block was used in the construction of some internal walls, lacked conviction, to put it mildly.

108. The evidence clearly established that the appellant is articulate, literate and alert to the importance of accuracy in the description of property in the context of insurance policies, because he took the trouble to attend the offices of Future to correct the description of lands farmed by him and in respect of which cover was required.

109. There are other matters to which I could refer, but it is unnecessary as it is apparent from the above that the conclusions of the trial judge on matters of fact were based upon credible evidence and should not be disturbed by this Court. In essence, there was ample evidence from which the trial judge was entitled to conclude as he did that the information concerning the age of the cattle shed was provided by the appellant and that, in those circumstances, Future could not be held in any way responsible for the misrepresentation, which is entirely the responsibility of the appellant. Zurich was, as a matter of law, entitled to repudiate the Policy upon its discovery. Instead, quite reasonably, it elected to withdraw cover in respect of the cattle sheds only. This of course meant that it was quite entitled to reject the Claim.

110. Far from accepting this as a reasonable offer in the circumstances, the appellant chose to issue proceedings against Future and Zurich in January 2018. Against a background of misrepresentation and faced with legal proceedings issued against it by the appellant arising out of his own misrepresentation, it was hardly surprising that Zurich would decline to renew the Policy in April 2018. As a matter of law, Zurich was quite entitled to take this course.

111. The arguments of the appellant advanced at the hearing of this appeal that Ms. Gilligan had incorrectly advised him regarding the possibility of having his tractor insured under the declined cases scheme, do not merit consideration in circumstances where the appellant himself gave no evidence to this effect, it was not put to Ms. Gilligan in cross-examination and her evidence to the court in relation to the issue was in response to a question from the trial judge. There was no evidence that she ever discussed this specific issue with the

appellant, and indeed her answers to the questions put her by the trial judge strongly suggest that she did not.

112. Moreover, while the appellant submitted that his credibility was damaged in the eyes of the trial judge because he did not pursue the option of obtaining insurance cover for his tractor under the declined cases scheme (for which he blamed Ms. Gilligan), it is clear from the judgment of the trial judge that his view of this issue did no more than support views that he had otherwise formed as to the credibility of the appellant. This is clear from the trial judge's own words in the last paragraph of his judgment, in which, having referred to the appellant's omission to pursue third party cover for the tractor, he says that "this *supports* the Court's poor view about the reliability of the plaintiff when it comes to understanding and telling the whole truth" (my emphasis). As is apparent from my conclusions above, the trial judge had an abundance of other evidence upon which to base his conclusion that it was the appellant himself was responsible for the misrepresentations to Zurich about the cattle sheds.

113. For the foregoing reasons, I would dismiss this appeal.

114. Since this judgment is being delivered electronically, I will set out now my provisional views as to costs, which is that the costs of this appeal should follow the event, and that the appellant should pay the costs of both respondents, to be adjudicated in default of agreement. If the appellant wishes to contend that a different order as to costs should be made, he may, within fourteen days of the delivery of this judgment, contact the Office of the Court of the Appeal and request a short oral hearing at which submissions will be made by the parties in relation to the appropriate order for costs. The appellant should note that in the event that he is unsuccessful in altering the provisional order for costs which I have indicated, then he may be required to pay the costs of the additional hearing.

115. Faherty and Collins JJ. have expressed their agreement with this judgment.