CARTER V BOEHM [1766]

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Court	King's Bench
Citation(s)	(1766) 3 Burr 1905, (1766) 97 ER 1162
Case opinions	Lord Mansfield

Carter v Boehm (1766) is a landmark English contract law case, in which Lord Mansfield established the duty of utmost good faith or *uberrimae fidei* in insurance contracts.

FACTS

Mr Carter was the Governor of Fort Marlborough (now Bengkulu), which was built by the British East India Company in the island of Sumatra. He took out an insurance policy with Mr. Boehm against the fort being taken by a foreign enemy. A witness called Captain Tryon testified that Mr. Carter knew the fort was built to resist attacks from natives but not European enemies, and the French were likely to attack. The French did attack, and Mr. Boehm refused to fulfil the insurance claim. Mr. Carter sued.

JUDGMENT

Lord Mansfield held that Mr. Carter as the proposer owed a duty of 'utmost good faith' (*uberrimae fidei*) to the insurer under which he was required to disclose all facts material to the risk. He stated,

> *"Insurance is a contract based upon speculation. The special facts, upon which the contingent chance is to be computed, lie most commonly in the knowledge of the insured only; the underwriter trusts to his representation and proceeds upon the confidence that he does not keep back any circumstance in his knowledge, to mislead the underwriter into a belief that the circumstance does not exist, and to induce him to estimate the risk as if it did not exist. Good faith forbids either party by concealing what he privately knows, to draw the other into a bargain from his ignorance of that fact, and his believing the contrary."*

Lord Mansfield went on to hold that the duty was reciprocal and that if an insurer withheld material facts, the example cited being that an insured vessel had already arrived safely, the policyholder could declare the policy void and recover the premium.

Lord Mansfield proceeded to qualify the duty of disclosure, commenting,

"either party may be innocently silent, as to grounds open to both, to exercise their judgment upon....An under-writer can not insist that the policy is void, because the insured did not tell him what he actually knew...The insured need not mention what the under-writer ought to know; what he takes upon himself the knowledge of; or what he waives being informed of. The under-writer needs not be told what lessens the risque agreed and understood to be run by the express terms of the policy. He needs not to be told general topics of speculation"

Lord Mansfield found in favour of the policyholder on the grounds that the insurer knew or ought to have known that the risk existed as the political situation was public knowledge and,

"There was not a word said to him, of the affairs of India, or the state of the war there, or the condition of Fort Marlborough. If he thought that omission an objection at the time, he ought not to have signed the policy with a secret reserve in his own mind to make it void"

SIGNIFICANCE

In Manifest Shipping Co Ltd v Uni-Polaris Shipping Co Ltd [2001] UKHL 1 Lord Hobhouse said,

"As Lord Mustill points out, Lord Mansfield was at the time attempting to introduce into English commercial law a general principle of good faith, an attempt which was ultimately unsuccessful and only survived for limited classes of transactions, one of which was insurance. His judgment in Carter v Boehm was an application of his general principle to the making of a contract of insurance. It was based upon the inequality of information as between the proposer and the underwriter and the character of insurance as a contract upon a "speculation". He equated non-disclosure to fraud. He said at p 1909:

"The keeping back [in] 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 underwriter is deceived, and the policy is void."

It thus was not actual fraud as known to the common law but a form of mistake of which the other party was not allowed to take advantage. Twelve years later in Pawson v Watson (1778) 2 Cowp 786 at 788, he emphasised that the avoidance of the contract was as the result of a rule of law:

"But as, by the law of merchants, all dealings must be fair and honest, fraud infects and vitiates every mercantile contract. Therefore, if there is fraud in a representation, it will avoid the policy, as a fraud, but not as a part of the agreement."