

**IN THE SUPREME COURT OF BELIZE, A.D. 2002**

**ACTION NO. 180**

	( DENNIS MYERS	Plaintiff
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<b>BETWEEN</b>	( AND	
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	(	
	( REGENT INSURANCE COMPANY LIMITED	Defendant

—

**BEFORE** the Honourable Abdulai Conteh, Chief Justice.

Mr. Dean Barrow S.C. for the Plaintiff.  
Mr. E. Andrew Marshalleck for the Defendant.

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**JUDGMENT**

1. This case is really about what can safely be described as the “Rogue Agent”.
  
2. The facts briefly stated are as follows:  
  
Mr. Dennis Myers, the plaintiff, owned property on the Placencia peninsula, in the Stann Creek District, which he had rented to Ms. Candy Powers (who later testified for the Defendant, Regent Insurance Co. Ltd.). Southern Belize had the misfortune to have been visited by Hurricane Iris in October 2001, and the Placencia peninsula was severely affected as a result. A direct consequence of this was the destruction of Mr. Myers’ property which was insured with Regent Insurance Co. Ltd.
  
3. Mr. Myers was away from Belize at the time as he was in Canada; but quite how his claim for compensation for the loss of his house came to be lodged with the Defendant Company is not clear. Mr. Myers stated in evidence however that it was Ms. Candy Powers

who first notified the Defendant Company of his loss although she did not do so on his behalf.

4. The upshot of processing Mr. Myers' claim for compensation was that a Mr. Kevin Flynn came into the picture. Since then this Mr. Flynn, seems to have dropped out of sight, but not without consequences that have given rise to this case. Hence the epithet "rogue".
5. It was agreed to settle Mr. Myers' claim for the loss of his property for the sum of \$51,250.32. The Form of Acceptance of this sum by Mr. Myers was tendered in evidence as Exhibit DM 1. Mr. Myers testified that he faxed the Form of Acceptance to Mr. Eldon Logan of the Defendant Company.
6. However, the receipt or rather the non-receipt of the proceeds of the settlement by Mr. Myers has given rise to this action. Mr. Myers claimed that he never received the money. The defendant insurance Company for its part, claimed that it made out a cheque in the name of Mr. Myers the plaintiff, in full and final satisfaction of his claim. A photocopy of the cheque was put in evidence as Exhibit EL 1.
7. From the evidence, it transpired that the evanescent Mr. Kevin Flynn received the cheque and has, since then, vanished from sight.

Mr. Myers was the only witness to testify on his own behalf as the plaintiff. He testified that in the course of the settlement of his claim he spoke to Mr. Eldon Logan of the Defendant Company who he said gave him a "designated representative", Kevin Flynn and that Flynn was in Placencia looking at files and was driving around claims adjusters doing assessment and looking at properties that had been damaged by the hurricane in Placencia. He further said

he was told that this Kevin Flynn was the brother of the Chief Executive Officer of the defendant company, Regent Insurance. He also testified that Kevin Flynn's responsibility was to take the cheque (presumably in settlement of Mr. Myers' claim) and transfer it to his, that is, Myers', Canadian account.

8. Mr. Myers in his testimony also said that prior to his telephone conversation with Mr. Logan, he had never met Kevin Flynn, and he denied ever authorizing him as his agent. He also said that after sending his Form of Acceptance to the defendant, he never received his cheque in satisfaction of his claim. When he inquired of Mr. Logan of the defendant Company he was told Kevin Flynn has collected the cheque, and there was nothing the defendant could do as the cheque had been cashed and Kevin Flynn had left the country.

9. Mr. Myers was vigorously cross examined by Mr. Marshalleck on behalf of the defendant. I must say he did not fare well and appeared at times unsure or confused about the questions and his answers on the crucial issue of whose agent Kevin Flynn was in collecting the cheque from the defendant in settlement of his claim left much to be desired as can be gathered from the following exchanges during the trial.

10. "Q: I am going to further suggest to you that it was at that time that you appointed Mr. Kevin Flynn to be your agent for the purpose of pursuing your claim against Regent?

A: Based on the information I received from Mr. Logan yes.

Q: You appointed him Mr. Myers.

THE COURT: Listen to the question please. It is a suggestion because you have said "Ms. Powers was never my agent. I never terminated her." Now he is putting a question

to you in the form of a suggestion that after you had terminated Ms. Powers' agency you then appointed Mr. Kevin Flynn to pursue the claim on your behalf with Regent?

A: Yes.

THE COURT: What is yes?

A: Yes. Based on the information received from Mr. Logan in the Regent Insurance Office that Mr. Flynn was going to be handling my file in Placencia.

Q: Mr. Myers, you appointed Mr. Flynn to handle your file to pursue the claim?

A: Mr. Logan appointed him for me.

Q: And you accepted that appointment? You ratified it, Mr. Myers?

A: Yes, I accepted Kevin Flynn ...

Q: So Kevin Flynn was acting as your agent in pursuing your claim against Regent?

A: On behalf of Regent Insurance, yes.

Q: How can it be on behalf of Regent Insurance, Mr. Myers?

THE COURT: He is putting it to you that Mr. Flynn was acting as your agent in pursuing your claim against the defendant.

A. Yes.

THE COURT: He was acting as your agent?

A: As an agent for Regent Insurance.

THE COURT: I don't think you understand the question.

MR. BARROW: His Lordship is telling you listen to the question.

THE COURT: Listen to the question. He is putting it to you Mr. Flynn was acting as your agent in pursuing

the claim against the defendant. Not agent for the defendant. Your agent. Do you understand the question?

A: I understand the question but it is hard to put an answer to it because it is a grey area.

THE COURT: That is a matter of law, but what is your answer to the question?

A: Yes.

THE COURT: He was acting as your agent?

A: Yes.

Q. (by Mr. Marshalleck): Did you instruct Mr. Kevin Flynn to receive the cheque from Regent on your behalf?

A: I assume Mr. Logan did because he sent the file down to Mr. Flynn.

Q: Did you ask Mr. Flynn to convert the monies to Canadian dollars?

THE COURT: The first question first. Did you instruct Mr. Flynn to receive the cheque from the Defendant?

A: Yes.

Q: And you further instructed him to convert the Belize dollars to Canadian dollars and to remit them to one of your accounts?

A: That is correct.”

I have quoted extensively from the exchanges during Mr. Myers testimony as this is important to determine, on the evidence, whose agent the disappeared Kevin Flynn was when he received, as it appears from the evidence in this case, on the instructions of Mr. Myers, the cheque in settlement of his claim, and nothing was seen of or heard from him since.

Four witnesses testified for the defendant. In my view the only really relevant testimony as to the receipt of the cheque in settlement of Mr. Myers claim for the damage to his property came from Mr. Eldon Logan, the technical supervisor of the defendant. Mr. Logan testified that it was agreed to settle Mr. Myers' claim for the sum of \$51,250.32, as stated in the Form of Acceptance (Exhibit DM 1) and a cheque for this amount was made out to Dennis Myers, the plaintiff in this case. This cheque, Mr. Logan further testified, was kept in the defendant's office until instructions were received from the plaintiff for the release of the cheque to Kevin Flynn who had been given details of Mr. Myers' bank account. Mr. Logan testified that Kevin Flynn presented a fax with instructions from Mr. Myers on collecting the cheque from the defendant. Mr. Logan also testified that the plaintiff had requested that his cheque in settlement of his claim be paid in foreign currency, but he was told that settlement could only be effected in Belize dollars.

Mr. Paul Bulman also testified for the defendant. He testified as to the mechanics of how the cheque in question in this case came to be cashed by Kevin Flynn. He testified that he knew Kevin Flynn and had occasion to negotiate on his behalf a cheque by the defendant for the sum of \$51,250.32. Mr. Bulman further testified that he was at the bank processing funds for disbursement for his establishment, Serenity Resort, when he was approached by Kevin Flynn to run a cheque for him together with cheques he, Mr. Bulman, was processing. This cheque evidently was the cheque made out to the plaintiff by the defendant in settlement of the plaintiff's claim.

When asked if Kevin Flynn indicated why he would need \$51,250.32 in cash, Mr. Bulman testified that Kevin Flynn was

going to transfer the money in Canadian funds to Mr. Myers as per a fax he had in his hand at the time.

*Determination*

I now turn to a determination of the issues raised in this case from the evidence. The principal issue is really this: **Whose agent was Kevin Flynn?**

From the evidence, and on a balance of probability, I am satisfied that the plaintiff Mr. Myers instructed and authorized Kevin Flynn to collect the cheque in the amount of \$51,250.32 (Exhibit EL 1) from the defendant and to convert the proceeds into Canadian dollars to remit to his (Mr. Myers) bank account. These instructions were said to be contained in a fax which Mr. Myers acknowledged probably sending to Kevin Flynn. Although this fax or a copy of it was not produced in evidence, its absence is not in my view inconsistent with the defendant's case: the original of the fax would be with the sender, Mr. Myers, the plaintiff. He of course, could only produce it at the risk of undermining his case. And Kevin Flynn, the recipient, is, of course, no where to be seen. But Mr. Logan and Mr. Bulman testified that Kevin Flynn did have such a fax with him.

I am therefore satisfied that from the evidence, the defendant paid over the cheque for the settlement of the plaintiff's claim to Kevin Flynn, but would not have done so unless satisfied that the said Kevin Flynn had been so authorized by the plaintiff to collect the cheque.

Accordingly, I find that Mr. Myers must bear the loss of the proceeds of this cheque.

From the evidence Mr. Myers' other claim in relation to his boat was satisfactorily settled by payment directly to his bank account by the defendant.

I conclude therefore that it was the fact that Mr. Myers instructed Kevin Flynn to collect his cheque from the defendant that directly facilitated Kevin Flynn perpetrating what is clearly a theft or misappropriation of the proceeds of the cheque. For this Mr. Myers must bear the loss.

Accordingly, I dismiss his claim against the defendant and enter judgment for the defendant.

I award costs of this action to the defendant in the sum of \$3,000.00.

**A. O. CONTEH**  
**Chief Justice**

**DATED: 22<sup>nd</sup> February, 2005.**