

FIREPOWER DEBT GP INC., AS AGENT

THEREDPIN, INC. and THEREDPIN.COM REALTY INC.

Applicant

and

Respondents

Court File No. CV-18-599644-00CL

January 2, 2018

The main issue in this case was whether funds in the TRP Commission account were held in trust for the TRP Agents. The Agents and Lloyd's argued that they were. FirePower and Trilogy argued that they were not. I held the funds in dispute in the TRP Commission account were not held in trust for the Agents.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at TORONTO

COSTS OUTLINE OF THE APPLICANT

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The Agents argued at the hearing that they should be awarded their costs in any event of the outcome, given their unique position and the extent of the uncertainty around the central question. Even though the Agents were unsuccessful, I agreed with their counsel that, in the circumstances, the Agents' costs should be paid from TRQ assets, and not by the Agents themselves and that other costs should not be visited on the Agents either. No other party disagrees with this disposition.

However, Fire Power and Trilogy argue that:

- a) Lloyds should be responsible for their costs; and
- b) Lloyds should pay the Agents' costs

rather than those costs contingent
at TRP's assets.

The principal issue arises from
the Lloyds policy of insurance
covering loss of commission due to
insolvency. Lloyds is liable to
pay claims in respect of the
Agents' commission to a maximum
of \$100,000 per occurrence. Lloyds
maintains that, because a number
of the Agents' claims exceed \$100,000,
it will have a potential liability
under the policy of about
\$1.8 M. This is roughly half of the
estimated commission that will
become owing.

~~Lloyds~~ The Auditor agrees
that Lloyds had a significant

Commercial interest in the outcome of these proceedings because, had its position that the commission account was subject to a trust prevailed, it would have had no liability under the policy.

Lloyds tries to cloak itself in the same ~~justification~~ justification used to relieve the Agents of liability for any ~~expenses~~ costs. I do not agree.

Lloyds supports the beneficiaries of its policy, as insurers do, to avoid having to pay under the policy if the funds were trust funds.

It did not prevail.

(5)

Unlike the Agents whose personal livelihood is involved, Lloyds is a purely commercial player. It unrolled a risk and was unsuccessful in its attempt to avoid the loss.

In my view, since Lloyds is exposed to roughly half of the commission shortfall, it should be responsible for roughly half the costs of the successful parties -

Fire Power and Trilogy.

Lloyds shall therefore pay \$16,000 to Fire Power and \$6,000 to

Trilogy, partial indemnity all inclusive.

Regarding the \$45,000 awarded to the Agents, ~~it~~ it has not been

shown that the policy makes
 Lloyds liable to indemnify the
 Agents for their costs. I agree with
 Lloyds that the language of the policy
 seems to say it is not. For this
 reason I decline to make any
 further order regarding the disposition
 of the Agents costs.

Per J.