

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)**

GRENADA

CLAIM NO. GDAHCV2016/0012

BETWEEN:

NEWIM LIFE & GENERAL ASSURANCE COMPANY LTD

Claimant

and

SELWYN REDHEAD

Defendant

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:

Mrs. Daniella Williams Mitchell and Mr. Jordan Marshall for the Claimant

Mr. Derick Sylvester and Ms. Alicia Lawrence for the Defendant

2022: March 7
May 3

JUDGMENT

- [1] **ACTIE, J:** This claim raises the issue as to whether the claimant is entitled to avoid a policy of insurance on the basis of non-disclosure or misrepresentation of a material fact.

Claimant's case

- [2] By claim form filed 18th January 2016 the claimant claims:

- (1) A declaration that it is entitled to avoid the policy of insurance dated 12th May 2011 and any judgment given in relation to the motor vehicle accident which occurred on the 10th day of October 2012, between motor vehicle

registration numbers PAD985 and PAA680 on the ground that the policy was obtained by the non-disclosure of material facts and/or by the representation of facts which were false in some material particular.

(2) Costs.

- [3] Under a policy of insurance dated 12th May 2011 which was effected over vehicle registration number PAA680 (hereafter “the Vehicle”) the defendant was insured by the claimant company. By certificate of ownership obtained on 11th January 2016, however, the actual registered owners of the Vehicle at the time the policy was effected were Cosmos Williams and Richard Steele, not the defendant. Nevertheless, evidenced on the claimant’s Private Motor Car Insurance Proposal form for the said policy (hereafter “the proposal form”), the defendant attested to the Vehicle being registered in his name for the purposes of insurance.
- [4] The claimant avers that the representation by the defendant that he was the registered owner of the Vehicle was a material statement of fact which was adopted by the claimant, and which influenced its judgment in ascertaining whether or not to take the risk in insuring the vehicle. The claimant contends that under no circumstance would it have authorised the issuance of the said policy of insurance to the defendant as the defendant had no insurable interest in the vehicle. The risk of effecting insurance coverage for the claimant’s vehicle was based on the information provided by the claimant in the proposal form which the claimant relied on.
- [5] For this reason, the claimant claims that it is entitled to avoid the policy and any judgment given in relation to the Vehicle pursuant to Section 14 (3) of the Motor Vehicle Insurance (Third Party Risks) Act Cap 202. This is in light of a collision that occurred during the currency of the policy between the vehicle registration number PAD985 owned and driven by Nigel Dexter Noel and the said Vehicle, driven by Mark Duprey at the time, for which the said Nigel Dexter Noel, on 9th November 2015, issued an action in the High Court against the registered owners

and Mark Duprey, claiming damages for loss and damage as a result of the motor vehicle accident¹.

Defendants' case

- [6] The defendant contends that at all material times he was the owner of the Vehicle pursuant to the Motor Vehicle Insurance (Third Party Risks) Act. He states that he purchased the Vehicle from Cosmos Williams and Richard Steele for \$13,500.00, and that upon purchasing the vehicle he paid the relevant fee at the Inland Revenue Department and signed the appropriate transfer form.
- [7] The defendant denies non-disclosure since he paid for the car and was issued a receipt. However the receipt is not before this court. He states that the vendors who sold the car had to sign the transfer form to complete the transfer, and the vendors only completed the process after the accident had occurred. The defendant states that he honestly believed himself to be the owner and/or registered owner of the Vehicle by virtue of him paying the relevant transfer fee and possessing the vehicle.
- [8] The defendant further contends that the non-disclosure was not material in that it did not, nor could it have, influenced the judgment of the claimant in determining whether to take the risk and for what premium and on what condition. Any nondisclosure would have been caused and/or contributed to by the servant and/or agent of the claimant to properly read, explain and/or give the defendant the opportunity to understand and interpret the nature of the questions in the said proposal form. Further, any mistake on the said proposal form must be attributed to the claimant's servant and/or agent who filled out same. The defendant states that at no time was any question on the policy explained to him nor was it asked whether he understood the questions put to him. At no time was he advised of his right to seek and obtain independent legal advice prior to providing the answers to questions asked to him by the claimant's servant.

¹ Claim No. GDAHCV2015/0499

[9] The defendant counterclaims stating that the claimant owes a duty to ensure, in the absence of independent legal advice, that he fully understood and had explained to him the motor car insurance proposal form signed by him. The defendant contends that the claimant breached this duty and claims that he suffered loss and damage as a result.

[10] The defendant counterclaims for:

- (1) a declaration that the claimant is entitled to honour the policy of insurance dated 12th May 2011 and any judgment in relation to the motor vehicle accident which occurred on 10th October 2012 on the ground that the policy was not obtained by material non-disclosure or by representation of fact which was false in some material particulars;
- (2) General damages for negligence and/or breach of statutory duty;
- (3) Interest; such further and/or other relief as the Honourable Court deems just and Costs.

Legal Analysis

Whether there was any non-disclosure or false representation of facts made by the defendant to the claimant

[11] An assured owes a duty of disclosure to the insurer, which duty extends only to facts which are known (or deemed in law to be known) to one party and not the other². The learned editors of **MacGillivray on Insurance Law** set out the duty as follows:

² MacGillivray on Insurance Law, 12th edn, para 17-009

“Subject to certain qualifications considered below, the assured must disclose to the insurer all facts material to the insurer’s appraisal of the risk which are known or deemed to be known by the assured but neither known nor deemed to be known by the insurer. Breach of this duty by the assured entitles the insurer to avoid the contract of insurance so long as he can show that the non-disclosure induced the making of the contract on the relevant terms.”³

[12] Furthermore, the learned editors of **Halsbury’s Laws of England** state:

“The proposer is under a duty to disclose to the insurer all material facts as they are within his knowledge. The proposer is presumed to know all the facts and circumstances concerning the proposed insurance. Whilst the proposer can only disclose what is known to him the proposer’s duty of disclosure is not confined to his actual knowledge, it also extended to those material facts which, in order [sic] course of business, he ought to know.”⁴

[13] This rule of law is premised on the understanding that an insurance contract is a contract based on the utmost good faith. If the utmost good faith is not observed by either party, the contract may be avoided by the other party⁵.

[14] It is the defendant’s position, firstly, that he paid for the Vehicle in the sum of \$13,500.00 and thereafter took possession of same. He states that he was not aware that only one of the prior owners signed the prescribed form transferring ownership of the Vehicle to him at the time of taking out the policy. The defendant also argues that the Motor Vehicles Insurance (Third Party Risks) Act makes provision for a person in actual charge or possession to be subscribed as an owner. This latter argument does not hold weight as this provision in the Act relates solely to unregistered vehicles. In the instant case, the Vehicle was registered, albeit in the previous owners’ names.

[15] It must be stated that the defendant provides no documentation or supporting witness to corroborate his above stated version of the facts. Moreover, the defendant admitted in cross-examination that this was not his first time owning

³ Supra n. 3

⁴ SKBHCVP2014/0001 Dennis Browne v Nagico Insurance Company Ltd

⁵ High Court Civil Claim No. 340 of 2006 Beacon Insurance Co Ltd v Fitz Jackson

and insuring a motor vehicle. In fact, he owned, registered and insured three vehicles before the Vehicle in issue.

[16] **Section 11(1)(b) of the Motor Vehicles and Road Traffic Act CAP 201** mandates that on change of possession of a motor vehicle, the registered owner and the new owner **shall** within seven days after such change of possession make application in writing signed by both of them to the Licensing Authority giving the name and address of the new owner the date of change of possession, and such application shall be accompanied by the certificate of registration and the prescribed fee.

[17] There is no evidence as to the defendant's compliance with the above mentioned. There is before the court, however, a certificate of ownership of the Vehicle which evidences that the Vehicle was registered in the names of Cosmos Williams and Richard Steele on 13th April 2007. One month thereafter, the defendant on 12th May 2007 signed the claimant's Private Car Proposal on which Richard Steele, one of the registered owners, is named as an authorised driver. Richard Steele is also stated to be the brother of the defendant.

[18] Taking the facts as they appear, therefore, the defendant had a duty to disclose that he was not the registered owner of the Vehicle. However, the defendant at trial states that the proposal form was completed by the claimant's agent. He states that he has had three vehicles insured with the same company. He indicated that he was aware of the process to obtain the registration and transfer form from the Inland Revenue to complete the change of ownership. He admits that the Inland Revenue would not have accepted the form unless the seller signs the transfer form.

[19] Michelle Chase, a witness for the claimant, states that she approved the insurable risk based on the answers given in the proposal form. In cross examination she was asked whether it was the responsibility or portfolio of the customer service representative to explain the meaning of the term "registration" on the form in which she responded in the affirmative. Ms. Chase was further

asked whether proof of registration was necessary, she stated that the response on the form was sufficient. It is the evidence that the company didn't check whether the defendant was the registered owner at the time of the policy was issued. This was only done after the accident.

[20] Patsy Lewis, a witness for the claimant, in cross examination states that she was not a customer service representative but assisted whenever there was shortage of staff. She states that it is now a normal practice and a requirement for persons requiring coverage to produce evidence of registered ownership at the Inland Revenue but she could not recall what was the practice in 2011 when she completed the form for the defendant.

[21] It is defence counsel's submission that the defendant believed the phrase 'registered in your name' meant that he had paid the prescribed fee at the Inland Revenue and signed the relevant form. The defendant avers that it was not explained to him that any other procedure was required before he could be the 'registered owner' in the sense that the claimant alleges.

[22] The proposal form question of whether a vehicle is registered in an assured's name is not a complicated one. The term "registered" is given its ordinary meaning with respect to vehicle registration. Further, the policy in issue is not the first time the defendant has insured the Vehicle, and he was never denied the right to obtain legal advice in relation to obtaining insurance over same.

[23] The defendant has failed to convince this court on a balance of probabilities that as a businessman, he would pay a significant amount of money to purchase a vehicle and not be in possession of some documentary proof to his claim of ownership, nor ensure that same is transferred to his name. The defendant offers no explanation as to why the transfer of ownership was completed in 2013 and does not support his statement that one of the owners signed the transfer while the other did not. Neither does he explain why Richard Steele, one of the previous owners, is included as an authorised driver evidenced in certificates of insurance for the periods 21st May to 20th July 2007, 8th August 2007 to 20th May 2008, 21st May 2008 to 20th August 2008, and 21st August 2008 to 20th May 2009.

[24] The defendant has failed to provide the court with pertinent evidence to shed light on the entirety of the factual matrix involving his transaction in obtaining possession of the Vehicle, and therefore the court finds for the claimant, in that the defendant breached his duty of disclosure by affirming that the statement that he was the registered owner was true.

Whether the non-disclosure or false representation of facts was material and induced the claimant to enter into the policy of insurance contract with the defendant

[25] The court having determined that there was non-disclosure by the defendant, it follows that the materiality of the non-disclosure must be discussed.

[26] A circumstance is material if it would have an effect on the mind of a prudent insurer in estimating the risk⁶. The court in **N.E.M. (West Indies) Insurance Limited v Eugenia Vernet Brooks**⁷, outlined that the law of materiality has three main features:

- (1) "The yardstick of the 'materiality' of a circumstance that has not been disclosed, or has been misrepresented prior to the conclusion of the contract of insurance is the notional influence on the judgment of a prudent underwriter. It is not the actual influence on the judgment of the actual underwriter;
- (2) In order to be 'material', the non-disclosed or misrepresented circumstance must be one that, if disclosed or properly represented, the prudent insurer would want to take into account when reaching his decision whether or not to accept the risk and, if so, on what terms;
- (3) The consequence of material non-disclosure or misrepresentation prior to the conclusion of a contract of insurance or reinsurance is that the insurer may avoid the contract."⁸

⁶ Pan Atlantic Insurance Co Ltd v Pine Top Insurance Co Ltd [1994] 3 All ER 581

⁷ SLUHCV2003/0046

⁸ SLUHCV2003/0046 N. E. M. (West Indies) Insurance Limited v Eugenia Vernet Brooks - para 27

[27] The facts in **N.E.M. (West Indies) Insurance Limited v Eugenia Vernette Brooks**, on which the claimant placed heavy reliance, indicate that Mrs. Brooks in the said proposal form declared as follows:

- (1) That she was the registered/legal owner of the vehicle.
- (2) That the vehicle was a convertible.
- (3) That it was a 1997 model vehicle.
- (4) That it had never been in any previous accidents prior to the proposal for insurance.

[28] Subsequently, a Private Loss Adjuster and Surveyor, investigated the circumstances surrounding an accident involving the vehicle and the Policy of Insurance. His investigations revealed a number of inconsistencies namely, that Ms. Brooks did not appear on any of the Transport Board registers as the registered or legal owner of the vehicle despite the allegation that she purchased it from her boyfriend. She failed to disclose that the vehicle was involved in at least 2 accidents prior to the Proposal of Insurance. The issues which arose for determination were, inter alia, were:

- (1) Whether Ms. Brooks was the registered or legal owner of the vehicle or alternatively, did she have an insurable interest in the vehicle?
- (2) Whether Ms. Brooks failed to disclose and /or misrepresented material facts then known to her but unknown to NEMWIL.

The court held in relation to the registration that there was not an iota of evidence that the insurer was induced by the non-disclosure of the fact that Ms Brooks failed to produce the registration certificate from the transport board. The court held that had it been, the claimant would not have found itself in this legal quandary.

[29] **Section 14 (5) of the Motor Vehicle Insurance (Third Party Risks) Act Cap 202** (hereafter “the Act”) provides:

“In this section, the expression “material” means of such a nature as to influence the judgment of a prudent insurer in determining whether he or she will take the risk, and, if so, at what premium and on what conditions...”

[30] Alison Padfield in **Insurance Claims** ⁹ states the following with respect to circumstances generally accepted to be material:

“For these purposes, a ‘circumstance’ includes any communication made to, or information received by, the insured. As materiality is a question of fact, past cases have no status as precedents on the question of materiality and their only relevance is in providing a ‘sanity test’ or reasonableness check on the conclusion reached by the court on the evidence in a particular case.”¹⁰

[31] Padfield goes on to list said circumstances to include:

- (1) Previous claims;
- (2) Refusal of risk by other insurers;
- (3) Refusal by a previous insurer to increase the insured value under the policy;
- (4) Criminal convictions;
- (5) Excessive valuation; and
- (6) A recent allegation of serious dishonesty.¹¹

[32] Materiality is a question of fact ¹², and accordingly the claimant Insurance Company is required to adduce evidence in this regard¹³. Thereafter, it is the court’s responsibility to assess all evidence to determine whether the insurer has discharged the burden of proving that the non-disclosure influenced it in accepting the risk on the terms that it did¹⁴.

[33] On the evidence before the court, the court is not satisfied that the claimant has sufficiently demonstrated the materiality of the non-disclosure of the defendant.

⁹ (4th edn, Bloomsbury Professional 2016) 238

¹⁰ Ibid para 11.19

¹¹ Ibid

¹² Halsbury’s Laws of England (2018), vol 60, para 40

¹³ Twitz v Ramphal & Anr; Presidential Insurance Company Ltd v Ramphal, High Court, Trinidad and Tobago, CV 2 of 2012

¹⁴ SKBHCVAP2014/0001 Dennis Browne v Nagico Insurance Company Ltd

The claimant makes the bare assertion that the premium of the policy would have been affected had the disclosure been made of the defendant. The evidence for the claimant given by Michelle Chase, then working in the underwriting department of the claimant, does not expound on how the premium would have changed, what amount the premium would have been, or the instances where a policy with the claimant would have been granted to someone who is not a registered owner of a vehicle. Further, the evidence of Patsy Lewis, then Office Clerk of the claimant, was not helpful in furthering the claimant's position.

[34] The claimant has failed to put before the court any precedent which demonstrates that such a non-disclosure is indeed material. Counsel for the claimant strenuously relies on the case of **N.E.M. (West Indies) Insurance Limited v Eugenia Vernetta Brooks**¹⁵, yet this case can be distinguished, in that, the vehicle in issue was unregistered along with the other material nondisclosure in the proposal form. The vehicle in the case at bar is registered, albeit not in the defendant's name.

[35] The claimant has also failed to put before the court any expert evidence which supports its view that the non-disclosure was material. The court in **Brooks** held that there was not an iota of evidence that the insurer was induced by the non-disclosure of the fact that Ms Brooks failed to produce the registration certificate from the transport board. This court is of the same view. The form was accepted and approved by the company without insisting on the presentation of the registration form from the Inland Revenue Department. It is the defendant's evidence that he has been the registered owner of other vehicles insured with the very same company and none of the circumstances listed by Padfield at paragraph 31 hereof was canvassed by the claimant.

[36] It is trite law that he who alleges and seeks to establish their rights in law must prove his case, and on a balance of probabilities. Given this state of the law, and in light of the law generally being sufficiently tender to insurers who seek to avoid contracts for non-disclosure¹⁶, the court is not satisfied that the claimant has

¹⁵ SLUHCV2003/0046

¹⁶ Lord Templeman, *Pan Atlantic Insurance Co Ltd v Pine Top Insurance Co Ltd* [1994] 3 All ER 581

proven that the non-disclosure by the defendant was material. The court is also of the view that the claimant has not demonstrated that the alleged material non-disclosure induced it in accepting the risk on the terms that it did.

[37] It is the argument of the claimant that it would not have authorised the issuance of the said policy of insurance to the defendant as the defendant had no insurable interest in the vehicle.

[38] On the issue of Insurable Interest, **Halsbury's Laws of England, 4th Edition, Vol 25**, at paragraph 633 states the following:

“The precise nature, extent or value of the insurable interest in a contract of insurance is irrelevant. An equitable or beneficial interest of any kind is as effective for this purpose as a legal interest”.

[39] Jones J in **Smith v Fournillier et al**¹⁷ cited Lawrence J in **Lucena v Craufurd**¹⁸ whose statement continues to be of assistance with respect to providing a general definition of insurable interest:

“A man is interested in a thing to whom advantage may arise or prejudice happen from the circumstances which may attend it..... And whom it importeth, that its condition as to safety or that quality should continue: interest does not necessarily imply a right to the whole, or part of the thing, nor necessarily and exclusively that which may be the subject of privation, but the having some relation to, or concern in the subject of the insurance, which relation or concern by the happening of the perils insured against may be so affected as to produce a damage, detriment, or prejudice to the person insuring: and where a man is so circumstanced with respect to matters exposed to certain risks or dangers, as to have a moral certainty or advantage or benefit but for those risks or dangers, he may be said to be interested in the safety of a thing. To be interested in the preservation of a thing, is to be so circumstanced with respect to it as to have benefit from its existence, prejudice from its destruction. The property of a thing and the interest devisable from it may be very different: of the first the price is generally the measure, but by interest in a thing every benefit and advantage arising out of or depending on such a thing may be considered as being comprehended”.

¹⁷ High Court, Trinidad and Tobago, 1209 of 2009

¹⁸ (1806) 2 Bos & PNR 269 at 302

[40] Furthermore, the statement of Brett, M.R. in **Stock v Inglis**¹⁹ is also of some relevance. He states:

“In my opinion it is the duty of a Court always to lean in favour of an insurable interest, if possible, for it seems to me that after underwriters have received the premium, the objection that there is no insurable interest is often, as nearly as possible, a technical objection, and one which has no real merit, certainly not as between the assured and the insurer. Of course, we must not assume facts which do not exist, nor stretch the law beyond its proper limits, but we ought, I think, to consider the question with a mind, if the facts and the law will allow it, to find in favour of an insurable interest.”

[41] Firstly, the position of the claimant with regard to the lack of insurable interest is contradictory to its previous position on the materiality of the non-disclosure that the premium of the policy would have been affected. In this instance, the claimant is stating that it would not have entered into contract with the defendant, whereas, prior, its position was of a difference in terms of a contract it would have entered into with the defendant.

[42] Secondly, it is the evidence of the defendant that although he was not the de facto registered owner of the Vehicle, he was the owner in possession of the vehicle. Further, the defendant raises the point that on the proposal form the Vehicle is indicated to be the subject of a hire purchase or mortgage agreement, the practical effect of which must be deemed to be considered by the claimant in issuing the policy. The Act specifies that the owner of the vehicle subject to a hire purchase agreement is the person in possession of the vehicle under that agreement, and in the instant case, it is the defendant's evidence that he was actually the person in possession of the vehicle.

[43] Based on the foregoing statements of law, and given the evidence of both parties, the court finds that the defendant had an insurable interest in the Vehicle sufficient to obtain a policy of insurance in accordance with the Act.

¹⁹ (1884) 12 Q.B.D. 564 at page 571

[44] In any event, it is the court's view on the evidence that if it was disclosed to the claimant that the vehicle was unregistered, on the balance of probabilities, the claimant would have insured the Vehicle. The very existence of the question and options on the form suggests that unregistered vehicles are capable of being insured, thus the non-disclosure of the registration of a vehicle cannot be said to have induced the claimant to enter into a contract with the defendant.

[45] Consequently, based on the evidence in the round, the claimant has failed to establish that it was induced by the non-disclosure to enter into contract with the defendant.

Whether the claimant is entitled to avoid its policy of insurance with the defendant for non-disclosure of a material fact and or false representation of facts

[46] **Section 14 (3)** of the Act gives the insurer the ability to pay no sum if a declaration is obtained that it is entitled to avoid the policy on the ground that it was obtained by the non-disclosure of a material fact, or by a representation of fact which was false in some material particular. Section 14 (3) states that:

“No sum shall be payable by an insurer under subsections (1) and (2) or under section 14A, if, in an action commenced before, or within three months after, the commencement of the proceedings in which the judgement was given, he or she has obtained a declaration that, apart from any provision contained in the policy, he or she is entitled to avoid it on the ground that it was obtained by the non-disclosure of a material fact, or by a representation of fact which was false in some material particular, or, if he or she has avoided the policy on that ground, that he or she was entitled to do so apart from any provision contained in it:

Provided that an insurer who has obtained such a declaration as aforesaid in an action shall not thereby become entitled to the benefit of this subsection as respects any judgment obtained in proceedings commenced before the commencement of that action, unless before or within seven days after the commencement of that action he or she has given notice thereof to the person who is the plaintiff in the proceedings specifying the non-disclosure or false representation on which he or she proposes to rely, and any person to whom notice of such an action is so given shall be entitled, if he or she thinks fit, to be made a party thereto.”

[47] Based on the failure of the claimant to prove that the non-disclosure by the defendant was material, and further, that the non-disclosure induced the claimant to enter into the contract with the defendant, the claimant is accordingly not entitled to avoid the policy of insurance in issue.

Conclusion

[48] Based on the foregoing, the court finds that the claimant has failed to prove its claim.

[49] It is therefore ordered and declared as follows:

- (1) The claimant's claim stands dismissed.
- (2) The defendant's counterclaim is granted in part.
- (3) The claimant is entitled to honour the policy of insurance dated 12th May 2011 and any judgment in relation to the motor vehicle accident which occurred on 10th October 2012 on the ground that the policy was not obtained by material non-disclosure or by representation of fact which was false in some material particulars.
- (4) Agreed costs to the defendant in the sum of \$5,750.00.

Agnes Actie

High Court Judge

By the Court

Registrar