

**EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA**

**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

Claim Number: **SLUHCV2019/0312**

Between

DWIGHT JOHN

Claimant

and

MASSY UNITED INSURANCE LIMITED

Defendant

Appearances:

Mrs. Cynthia Hinkson-Ouhla of Counsel for the Claimant
Mr. Sahleem Charles of Counsel for the Defendant

2020: July 20th
2020: October 21st

JUDGMENT

Introduction

[1] **SANDCROFT, M. [Ag.]**: This is an application by the defendant for summary judgment against the claimant. The defendant believes that the claimant's Statement of Case is anaemic. He has sought to have the defence struck out on the grounds that there are no reasonable grounds for bringing the claim and that the claimant has no reasonable prospects of succeeding on the claim in these proceedings.

[2] The facts are basically not in dispute. The main issue is that the claimant applied for comprehensive insurance in response to which he was provided with car insurance and third-party insurance. The proposal form contained four options (i) comprehensive (ii) Third party, fire, and theft (iii) third party (iv) Act. The Claimant ticked the box which stated comprehensive. The Confirmation of motor insurance form describes the type of cover as comprehensive. The policy issued by the Insurance

Company provided insurance for damage to the Taxi and third-party liability. The claimant was involved in an accident on 4th March 2017. The car was written -off and he received the sum of \$57,802.61 as compensation for the loss of the car.

Background/Chronology

- [3] The claimant is a self-employed taxi driver. The defendant is an Insurance Company. Since 2009, the claimant had consistently requested comprehensive insurance on his proposal form submitted to the defendant. The defendant had provided the claimant with insurance indemnifying him for damages to the motor vehicle and compulsory third-party risks.
- [4] The claimant was injured in an accident on 4th March 2017; the defendant had however indemnified the claimant with regard to the loss of the motor vehicle. However, the defendant refused to indemnify the claimant for the losses incurred due to the personal injuries sustained on the basis that the insurance coverage provided made no such provision.
- [5] In acknowledgement of the payment the Claimant signed a receipt which states:

Received from MASSEY UNITED INSURANCE LIMITED

The sum of Fifty -Seven Thousand Eight Hundred and Two Dollars (EC\$57, 802.61) in full and final settlement discharge of a motor claim under Policy No CA01808310CC in respect of a total loss of my/our vehicle registration number TX 325 consequent upon an accident on or about 4th March 2017.

- [6] The defendant relied on that receipt, which was prepared and drafted by them to say that the claimant by signing the said receipt has waived his right to claim damages for personal injuries. The claimant contended that no such right was waived since in stark contrast to the motor vehicle, no mention was made of personal injuries in the receipt.
- [7] The defendant also relied on an arbitration clause in the contract which stated that failure to refer to arbitration is fatal to the claim. The claimant contended that the court had authority to stay the proceedings.

[8] The insurance contract had stated that 'the insured, by a proposal and declaration which shall be the basis of this contract and is deemed to be incorporated herein, has applied to the Company for the insurance hereinafter contained and has paid or agreed to pay the premium as consideration'. There is no dispute that the claimant paid the premium as consideration for such insurance. The Confirmation of Motor Insurance Form described the type of cover as comprehensive.

[9] By orders of May 25th, 2020, Master Sandcroft [Ag.] ordered that the parties file written submissions in relation to the interpretation of the insurance contract between the Claimant and the Defendant in the current proceedings.

Claimant's Submissions

[10] The claimant had posited in his Statement of Claim ("SOC") filed 25th June 2019 at paragraph 3 that he sought insurance coverage from the defendant in 2019 for the following coverage:

- i. Personal injuries to the claimant;
- ii. Injuries to passengers;
- iii. Motor vehicle coverage.

[11] The claimant also posited that the policy specifically stated that the proposal form was the basis of the contract and was deemed to be incorporated as part of the contract.

[12] The claimant further posited that the meaning to be ascribed to the word 'comprehensive' is its natural meaning. The courts had not pronounced any legal meaning to the word comprehensive which excluded indemnification for personal injuries.

[13] The claimant also submitted that for an interpretation to be necessary the contract must contain an ambiguity. The contract stated that the proposal form was the basis of the contract and formed part of the contract. The ambiguity was created by the different meanings ascribed to the word comprehensive, which raised a question as to its proper meaning in the mind of a reasonable person. The description comprehensive did not provide business efficacy to the contract.

[14] The claimant submitted that there was a difference between the Common law and Article 945. Article 945 required the interpreter to give the parties' common intention precedence over the wording of the contract. Under English Common Law, the interpretative starting point was the words of the contract which were used to ascertain the objective meaning of the words used in the context.

[15] The claimant further submitted that the provisions dealing with interpretation of a contract are contained in Articles 945 to 953 of the Saint Lucia Civil Code (The Civil Code). The question before the court was whether there was any ambiguity in the contract. The ambiguity arose from the individual different meanings that each party had ascribed to the word comprehensive. The claimant is relying on the ordinary meaning of the word, whereas the defendant is relying on the technical restrictive meaning of the word. This ambiguity must be resolved by the applicable rules of statutory interpretation.

Article 945 of the Civil Code states:

'When the meaning of any part of a contract is doubtful, its interpretation is to be sought from the common intention of the parties rather than from a literal construction of the words. '

[16] The claimant posited that the aforesaid article differed from the English common law position but that whichever method of interpretation was used the outcome would be the same. At paragraph 41-058 of the Thirtieth Edition of **Chitty on Contracts** it is stated that:

'Insurance contracts are subject to the same approach as to contractual construction as other contracts, namely that the words of the contract will be interpreted to divine their contextual meaning consistently with the sense and purpose of the policy, even if it is at odds with the literal meaning of the contract. '

[17] The claimant further posited that should the use of the word comprehensive be restricted to the cover indemnification for damage to the motor vehicle and excludes the indemnification for compensation for personal injury losses without expressly stating that such liability was excluded. That the defendant was seeking to restrict the meaning of the word comprehensive to the technical meaning, without defining the meaning in the definition section of the aforesaid contract. The word comprehensive meant all-inclusive, and that the inability to agree on the meaning of the word

comprehensive meant that there was no common intention of the parties. This situation has caused some doubt as to the meaning of comprehensive according to the contract. The contract is a standard form contract prepared by the defendant. Article 951 states:

“In cases of doubt the contract is interpreted against him who has stipulated and in favour of him who has contracted the obligation.”

Article 947 states:

Expression susceptible of two meanings must be taken in the sense which agrees best with the context.

The claimant had posited too that the ordinary meaning of comprehensive agreed best with the context and it was the proposal form that required comprehensive insurance for a taxi-driver who was self-employed.

[18] The claimant also posited that in regard to the English position, there is no judicially accepted meaning of the word comprehensive and therefore the restrictive technical meaning which the Defendant is seeking to ascribe to the word ought to be rejected in favour of the ordinary meaning being put forward by the Claimant. Under English law it is also the rule that in cases of doubt the contract will be interpreted contra proferentem.

[19] The claimant posited in conclusion that the defendant had failed to justify its application of its restrictive meaning of the word comprehensive. Consequently, the ordinary commercial meaning of the word ought to prevail. That the contractual provisions as they were do not provide comprehensive insurance to the claimant which was what he specifically requested on his proposal form. Therefore, the defendant was in breach of its obligation to the claimant, whether one applied the English law or the provisions of the Saint Lucia Civil Code.

[20] The claimant had further submitted that Article 917A of the Saint Lucia Civil Code was the statutory provision which determined the source of authorities pertinent to interpretation of contracts in St. Lucia. That the general law is that the law of contract ought to be construed resorting to the English Common law except when the express words of the Civil Code created a conflict with the common

law. Put another way, reliance on the English Common law is permissible when the authorities are in accordance with the expressed provisions of the Articles of the Civil Code.

[21] The claimant also submitted that in determining whether there was a conflict or which law was applicable, the party seeking to rely on English authorities must not be selective in the applicable law but must explore the state of the English Common law. In the Court of Appeal decision of **Sonia Johnny v. The Attorney General** SLUHCVP2017/0036, it was expressly stated that the ambit of the common law was what determined the answer as to whether the English Authority should apply, as opposed to the Quebec Authorities. See paragraph 20 :

“the error of the judge lay, not in applying the common law, but rather, in circumscribing the amplitude of the common law by adopting too restrictive of an approach, thereby disabling herself from considering issues such as good faith, reasonableness and abuse of contractual rights.” Under Quebec law, which is the source of binding authorities for the Saint Lucia Civil Code, a purposive approach is adopted when construing contracts. It therefore follows that, narrow, or restrictive constructions should not be relied on to interpret contractual provisions.

[22] The claimant posited that the defendant relied heavily on English and other authorities without first ascertaining their applicability to the issues before the court. The guiding principle of the Saint Lucian Civil Code with regard to contracts, was that good faith is presumed and statutorily implied in all contracts before, during and after the performance of the contract. This doctrine is contained in Article 956 which states:

“The obligations of a contract extend not only to what is expressed in it, but also to all the consequences which by equity, usage or law, are incident to the contract according to its nature. “

Good faith is not taken to mean absence of malice but reasonableness and refraining from abuse of contractual rights. The approach is explained in the case of **Houle v Canadian National Bank** 1990 3 922 which examined the mirrored provision in the Quebec Code contained in our **Article 956**. **Houle** also referred to **Article 985**. That the manner in which the defendant sought to rely on the English authorities submitted on behalf of the defendant adopted a narrow, restrictive approach to

interpreting the contractual provisions. This was neither permissible nor acceptable as the English Common law also recognized the principle of good faith.

[23] The claimant also posited that the United Kingdom Supreme Court, in the case of **Wood (Respondent) v Capita Insurance Services Limited (Appellant)** [2017]UKSC 24, recently provided guidance on the interpretation of contracts. Lord Hodge with whom all the other Judges agreed, stated at paragraph 10 of the judgement:

*“The court’s task is to ascertain the objective meaning of the language which the parties have chosen to express their agreement. It has long been accepted that this is not a literalist exercise focused solely on a parsing of the wording of the particular clause but that the court must consider the contract as a whole depending on the nature formality and quality of drafting of the contract, give more or less weight to elements of the wider context in reaching its view as to that objective meaning. In **Prenn v Simmons** Lord Wilberforce affirmed the potential relevance to the task of interpreting the parties’ contract of the factual background known to the parties at or before the date of the contract excluding evidence of the prior negotiations.”*

[24] The claimant further posited that whilst prior negotiations are excluded from the English approach to interpretation, no such restriction was placed by the relevant sections of the Saint Lucia Civil Code. Article 956 clearly states that the obligation of a contract extends not only to what is expressed in it **Hutton v Watling and Another** [1948] 1 AER 803 could hardly have considered to have given regard to the equitable consequences of the contract.

[25] The claimant also posited that at paragraph 11 of the **Wood** case, it was further stated that when there are rival meanings the court can give weight to the implications of rival constructions by reaching a view as which construction is more consistent with business common sense. That it is not business common sense to describe a service or a product in a manner which could be misleading. As has been done in this case. Paragraph 13 of the judgment succinctly opined that ‘textualism and contextualism are not conflicting paradigms in a battle for exclusive occupation of the field of contractual interpretation.’

[26] The claimant also submitted that whilst the aforesaid approach was somewhat in line with Articles 945 and 956 one must pay heed to the differences, notably, the subjective element involved in interpreting contracts which are included in Articles 945 and 956.

[27] The claimant posited that the defendant's case was that the Claimant signed the proposal form requesting comprehensive insurance and the Insurance contract met the requirement as per the Insurer's definition of comprehensive. That in providing insurance coverage an insurer was mandated by law to provide no more than third party cover under the **Motor Vehicle Insurance (Third Party Risks) Act** Chapter 8.02 of the Revised Laws of Saint Lucia ("Third Party Risk Act"). Therefore, an insurer is required to do no more than to meet that legal obligation. Moreover, once a driver is covered for third party risks the Insurer is free to describe any additional coverage as comprehensive irrespective of whether such a description is obviously misleading.

[28] The claimant also posited that the afore-mentioned approach reinforced the superior bargaining power of the Insurance Company and the courts should be very mindful of meting out injustice by applying strict common law principles of freedom of contract. There is no freedom of contract in the circumstances before the court as the contract was a standard form contract. Furthermore, if the insurer's stance is a common practice, great care should be taken by the courts to avoid the injustice created by rigidly applying strict common law principles. If it was a practice to describe coverage as that provided by the defendant to the claimant as comprehensive, then the abuse of contractual right is even more egregious since there was no opportunity for the claimant to negotiate better terms and conditions. This has created a take it or leave it situation. An approach which was not in accordance with that of Quebec and England which acknowledged and applied the doctrine of good faith to their interpretation of contracts. In any event there is no business efficacy to be derived from describing such limited insurance coverage as comprehensive.

[29] The claimant also submitted that the meaning ascribed by the insurer was not within the natural or ordinary meaning of the word. Neither was it applicable, given the contextual circumstances from which it arose. A self-employed taxi driver seeking comprehensive insurance would objectively be seen to be requesting insurance coverage for his own personal injuries in particular, as well as damages to other vehicles and other people who were injured. The defendant insurer is an expert in its field. The contract is a standard form contract. The claimant relied on the knowledge and good

faith of the Insurance Company. That the defendant now sought to deny compensation for personal injuries to the claimant on the basis that an insurer was obligated by law to provide no more than third- party liability.

[30] The claimant further submitted that the defendant had failed to show why its obligation to provide third party insurance to all drivers or owners of vehicles justified the use of the word comprehensive in the manner and circumstances the defendant had chosen to provide such insurance coverage. Further, Article 985 of the Saint Lucian Civil Code states that a person who performs his obligations with imprudence, neglect or want of skill is responsible for damages caused and is not relievable from obligations thus arising. The insurers, by describing limited insurance coverage as comprehensive and not offering alternative or additional insurance to meet the claimant's obvious particular needs failed to perform its obligations to the standard required from a reasonable insurer.

[31] The claimant also posited that the Court had never been asked to make such a determination and the opportunity is ripe for the Court. In determining the issue, the court must consider the relevant authorities only. This would exclude the authorities of **Newton Bentley v United General Insurance Company Ltd v General Insurance Company Ltd. Jamaica Civil Appeal No 91 of 2004** and, **Motor union co Ltd. V Linzey 1959 1 WIR 534**, which are not part of the English common law nor do they form part of Quebec jurisprudence. On a further note, with regard to the **Newton Bentley** case, which was a decision based on its own peculiar facts, its factual matrix made it distinguishable from the case at bar. Thirdly, it cannot be seen to establish any legal authority for the notion that 'a comprehensive insurance' policy does not cover first party personal injuries.

[32] The claimant further posited that a broad and purposive approach should be adopted when interpreting the contract. The court should weigh both contextual and the textual considerations and give regard to good commercial sense. That a misdescription of a commodity or service cannot be upheld as good commercial practice. In the circumstances the contract has to be interpreted contra proferentum and in favour of the claimant. The decision in **Hutton v Watling [1948] 1 ALL ER 803** conflicted with Article 956 to the extent that Article 956 permitted extrinsic documents to be used to determine the obligations to be included in a contract. However, the decision embraces the doctrine of good faith.

[33] The claimant also submitted that the authorities on which the defendant sought to rely were not applicable either because they conflicted with the express provisions of the said Code or they did not fully express the state of English law or because they were excluded by virtue of the provisions of Article 917A of the Civil Code.

[34] The claimant further submitted that the claimant's case was that the defendant failed to provide him with comprehensive insurance. There was an inconsistency with what was requested on the claimant's proposal form and what was provided. The proposal form was stated to form the basis of the agreement deemed to be incorporated as the agreement. Further, Article 946 states:

‘When a clause is susceptible to two meanings, it must be interpreted as of that which would have effect and not as that which would have none. ‘

Whilst no other meaning can be ascribed to comprehensive insurance, the provision of exclusive insurance cover solely for damages to a motor vehicle in response to a request for comprehensive cover is a failure to give effect to the meaning of the word comprehensive. The word comprehensive ought not to be interpreted in such a restrictive way as to give such a narrow meaning to the word. Therefore, applying Articles 945 and 956, it is clear that the Defendant breached the contract by failing to provide comprehensive insurance.

[35] The claimant also submitted that the word comprehensive generally connoted all-inclusive, complete or including all or almost all elements of something. The contract supplied by the defendant to the claimant in response to the claimant's specific request for comprehensive insurance, created restrictive coverage exclusively limited to risk of damage to the motor vehicle. If one examined the proposal form, there was a sliding scale of what type of insurance coverage was available and it was reasonable to conclude that comprehensive included all the alternatives plus something extra. That is why the defendant also included separate coverage for third party although the claimant did not tick the Third-Party box.

[36] The claimant further submitted that there was nothing in the document which precluded the claimant from filing for damages for personal injuries. The claimant's claim is that the defendant failed to include coverage for first party injuries in the policy described as comprehensive. The receipt does not acknowledge payment for personal injuries. In fact, it clearly states that the compensation is "in

respect of a total loss of my/our vehicle registration number TX 325 consequent upon an accident on or about 4th March 2017.

[37] The claimant finally posited that this case is a case whereby summary judgment ought to be granted in favour of the claimant and that the defendant do pay to the claimant the full sum claimed, interest and costs to be assessed if not agreed upon.

Defendant's Submissions

[38] The defendant submitted that the claimant sought redress in contract not by way of specific performance of an obligation under the contract but by way of damages for alleged breach of an implied term. There is acknowledgement by the Claimant that the contract as executed does not contain an obligation to compensate him for personal injury and an admission by him at paragraph 3 of his Reply to Defence that there was no meeting of the minds. Thus, the alleged breach is restricted to a term which the Claimant seeks to imply or to have written into the contract.

[39] The defendant also submitted that it was the defendant's case that it never intended to enter into binding obligations with the claimant beyond the compulsory requirements of the Third-Party Act and never represented otherwise to the claimant.

[40] The defendant further submitted that the Proposal Form signed by the claimant and the Policy document as exhibited in these proceedings, form the contract between the parties as it relates to the provision of the comprehensive insurance coverage.

[41] The defendant posited that the motor policies would include the compulsory cover against Third Party Risks and other Risks if the Insurer after assessing the Risks agreed with the Insured to provide that cover beyond that which is legislated as a stated premium. There was no evidence that the premium charged to the claimant included any extra cover for him personally.

[42] The defendant also posited that the Claimant signed the proposal form which clearly describes comprehensive coverage as follows:

“Third Party liability for injury to persons and damage to property. Loss of or damage to the insured vehicle by accident, fire or theft, hurricane, earthquake, volcanic eruption, flood or any convulsion of nature, riot, strike or civil commotion” [emphasis mine].

[43] The defendant further posited that at all material times the contract of insurance was governed by the **Third-Party Act** which clearly limits coverage to third party risks. In the **Third Party Act** no mention is made of First Party coverage nor was there any term of 1st party coverage in the contract of insurance entered between the claimant and the defendant.

[44] The defendant submitted that the principle enunciated in **Newton Bentley v United General Insurance Company Ltd** CIVIL APPEAL No. 91 of 2004, a 2006 Court of Appeal decision emanating from Jamaica whereby it was held that a comprehensive policy of insurance did not cover personal injury to the insured Appellant, is applicable to the present case as the Claimant in the current proceedings, like the Appellant in **Newton**, has signed an insurance policy for comprehensive insurance without more and the terms of this policy are clearly expressed and defined in the insurance contract.

[45] The defendant further submitted that the Claimant has not relied upon or pleaded fraud or misrepresentation and accordingly is bound by the terms of the insurance contract which he duly signed (**per L’ Estrange v Graucob** [1934] 2 K.B. 394).

[46] The defendant also submitted that there existed no express term of the contract which could permit the claimant coverage for his own personal injuries under his policy of insurance with the defendant nor has fraud or misrepresentation been alleged by the claimant. Due to the foregoing, the Defendant cannot be said to be in breach of contract.

[47] The defendant posited that no term can be implied into the contract given the nature and terms of the contract and further there is also no implied term of the contract upon which the claimant can rely that could permit him First Party coverage under the policy within the context of **Article 956 of the Civil Code** as the Claimant’s contract of insurance with the Defendant must be construed within the wider context of the **Third Party Act** pursuant to which the contract was entered.

[48] The defendant also posited that the effect of the **Third-Party Act** is that with this third-party insurance policy the First Party (the claimant) is the insured and the Second Party (the defendant) is the insurance company. The Third Party would be any third person. Under this Third-Party policy provision is made for a third party to file a claim for compensation for injury to persons and damage to property and this claim for compensation ought to be filed against the insurer (the Defendant). In the present case, no provision is made for coverage of personal injury to the First Party (Claimant) under the insurance contract between the claimant and defendant. The only coverage provided to the claimant is for “loss of or damage to the insured vehicle by accident, fire or theft, hurricane, earthquake, volcanic eruption, flood or any convulsion of nature, riot, strike or civil commotion”.

[49] The defendant further posited that the claimant cannot seek to imply a term into the contract as the contract at all material times was governed by and made pursuant to the **Third-Party Act** which clearly limits coverage to third party risks thereby making no mention of First Party coverage as it relates to personal injury.

[50] The defendant also submitted that it therefore follows that since the agreement between the Claimant and Defendant has been reduced to writing and signed by both of them, they are bound by their terms whether or not the Claimant has read them or was ignorant of its precise legal effect (**per Chitty on Contracts supra**).

[51] The defendant further submitted that it did not breach its contract with the claimant nor can the defendant be said to be negligent in failing to advise the claimant of what the comprehensive coverage entailed.

[52] The defendant further posited that the claimant acknowledged that the contract did not provide the relief which he was seeking which was why he had failed to plead specific performance. Furthermore, the claimant cannot seek specific performance of something which is not in the executed contract binding the parties i.e. within the four walls of the Claim. Thus, any Claim for specific performance for payment of compensation for personal injury must fail as the parties were not *ad idem* on this issue, a fact which was admitted by the claimant.

[53] The defendant finally purported that summary judgment should be entered in favour of the Defendant thereby dismissing the Claimant's claim with costs as the Claimant has no real prospect of succeeding on the claim or issue **(per rule 15.2(a) CPR)**.

[54] Issues

- (i) Whether the terms of insurance proposal and insurance policy permit the claimant coverage for his personal injuries.
- (ii) Whether summary judgment should be granted to the defendant if the Court finds that the claimant has no reasonable prospects of succeeding on the claim brought in these proceedings.

Analysis & Findings of the Court

Legislative scheme of the MVIA

[55] THE STATUTE – SECTION 4 OF THE MOTOR VEHICLE INSURANCE (THIRD-PARTY RISKS) ACT

Section 4 of the Act outlines the requirements with respect to insurance policies. The applicable subsections are as follows:

“4 (1) In order to comply with the requirements of this Act, a policy of insurance must be a policy which-

(a) is issued by a person who is an insurer; and

(b) insures such person, persons or classes of persons as may be specified in the policy in respect of any liability which may be incurred by him or them in respect of any death of or bodily injury to including emergency treatment therefore performed by a duly registered medical practitioner or damage to the property of any person caused by or arising out of the use of the motor vehicle or trailer mentioned in the policy on a public road.”

“4 (7) Notwithstanding anything in any written law, rule of law or the Common Law, a person issuing a policy of insurance under this section shall be liable to indemnify the person insured or persons driving or using the vehicle or licensed trailer with the consent of the person insured specified in the policy in respect of any liability which the policy purports to cover in the case of those persons.”

“4 (8) A policy shall be of no effect for the purposes of this Act unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate (in this Act referred to as a “certificate of insurance”) in duplicate in the prescribed form and containing such particulars of any conditions subject to which the policy is issued and of any other matters as may be prescribed, and different forms and different particulars may be prescribed in relation to different cases or circumstances.”

15. Section 10(1) of the Act provides as follows:

“If, after a certificate of insurance has been delivered under section 4(8) to the person by whom a policy has been effected, judgment in respect of any such liability as is required to be covered by a policy under section 4(1)(b) (being a liability covered by the terms of the policy) is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel, or may have avoided or cancelled, the policy, the insurer shall, subject to the provisions of this section, pay to the persons entitled to the benefit of the judgment any sum payable thereunder in respect of the liability, in addition to any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any written law relating to interest on judgments.” 16.

Section 12 of the Act provides as follows:

“12 (1) Where a certificate of insurance has been delivered under section 4(8) to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any of the following matters:

(a) the age or physical or mental condition of persons driving the vehicle;

- (b) the condition of the vehicle;
 - (c) the number of persons that the vehicle carries;
 - (d) the weight or physical characteristics of the goods that the vehicle carries;
 - (e) the times at which or the areas within which the vehicle is used;
 - (f) the horse power or value of the vehicle;
 - (g) the carrying on the vehicle of any particular apparatus; or
 - (h) the carrying on the vehicle of any particular means of identification other than any means of identification required to be carried by or under this Act, shall, as respects such liabilities as are required to be covered by a policy under section 4(1)(b), be of no effect.
- (2) Nothing in this section shall require an insurer to pay any sum in respect of the liability of any person otherwise than in or towards the discharge of that liability, and any sum paid by an insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this section shall be recoverable by the insurer from that person."

[56] What then is the legal status of the proposal form? The proposal form concludes with a declaration, which is often required to be separately signed by the proposer so as to draw his particular attention to the importance of what he is signing, by which he warrants that the statements contained in the proposal are true, or agrees that they are to be the basis of the contract between the parties, or accepts that their truth is to be a condition precedent to the validity of the contract. All three variations of the same term may be included, and an additional clause may be inserted to the effect that no material information has been withheld. The purpose of the formulae is usually to incorporate the proposal into the eventual policy. If it is incorporated the proposal becomes a contractual document by reference to which the insurers' rights to repudiate are governed. If there is no incorporation the proposal provides a record, for the purpose of applying the common law rules, for establishing facts expressed and, by inference, facts withheld from the insurers: **Halsbury's Laws of England**, volume 60 (2011) paragraph 74.

[57] The objective of these provisions is to create a scheme of compulsory motor vehicle insurance. As Walker JA observed in **Globe Insurance Company of the West Indies Limited v Johnson and Stewart (Globe Insurance)** SCCA No 70/1999, judgment delivered 14th April 2000, page 22, “the scheme of the Act is to protect innocent third parties who suffer injury as a result of the negligent conduct of motor vehicle operators on the public roads”.

[58] **Kelly and Ball Principles of Insurance Law in Australia and New Zealand** (Butterworths, Loose leaf) state at 7.2 what they term the “First principle”:

Words and phrases used in an insurance contract are normally to be given their ordinary meaning...As Lord Greene MR said in Hutton v Watling [[1948] Ch 398, 403]: The true construction of a document means no more than that the court puts upon it ...the meaning which the other party...would put upon it as an ordinary intelligent person construing the words in a proper way in the light of the relevant circumstances.

[59] Having considered the submissions herein, I am of the view that the claimant is correct in saying that on a literal interpretation there is no need for the defendant to have gone through the terms of the said Insurance Policy with the claimant to have given an express understanding of the Insurance Policy signed by the claimant.

[60] It is trite law that an insurance policy is, in essence, a contract between the parties and is subject to general contractual principles. Parties can agree to whatever terms they wish provided that these terms are not in contravention of any law. Consequently, an insurance policy may contain terms limiting the user of the motor vehicle and making provisions for the insurer to avoid liability, if the user of the vehicle does not conform to the terms expressly set out in the insurance policy. This view is enunciated by Gordon JA (Ag) in **The Administrator General v National Employers Mutual Association Limited** where he said at page 477:

“... the policy of insurance embodies a contract between the insured and the insurers and that this policy can contain terms limiting the user of the vehicle and providing for the avoidance of the policy and the avoidance of liability if the user of the vehicle does not conform with terms stipulated in the contract.”

[61] The submission of the claimant appears to be that the contract between the claimant and the defendant was made by way of the proposal form and therefore the defendant is bound by the terms set out in the proposal form. It is his argument that the proposal form in fact permits the selection of the option to have comprehensive coverage and this in fact is what was selected by the claimant at the time of signing of the proposal form. It follows that if he is correct, the defendant having contracted to provide comprehensive coverage to the claimant, will not be legally entitled to avoid the policy on that basis.

[62] Also, the absence of a contractual relationship between the claimant and the defendant does not prevent the appellant from seeking redress before the court. McDonald-Bishop J, in **Conrad McKnight v NEM Insurance Company** Claim No 2005 HCV 3040, delivered 13 July 2007 at paragraph 8, opined that the MVIA makes it mandatory for motor vehicles to be insured against third party risks before it may lawfully be used on Saint Lucian roads.

[63] Section 4, sub-sections 8 and 9 of the **Motor Vehicles Insurance (Third-Party Risk)** Chap. 48:51 states as follows: “(9) A policy of insurance together with a certified copy of the proposal form upon which the policy was issued shall be delivered by the insurer to the insured before the expiration of a period of one week from the date of issue of the certificate of insurance under subsection (8).” (Sub-section 8 has been set out earlier in this decision).

[64] Generally, a contract is only enforceable as against persons who are party to it. A contract of insurance is no different. However, the Motor Vehicles Insurance (Third-Party Risks) Act provides for a third party to claim against an insurance company for damage or loss suffered in an accident which involves a motor vehicle insured by that particular company irrespective of the fact that the third party would not be privy to the contract of insurance.

[65] In my opinion, and as stated by Forte JA in **Administrator General v National Employers Mutual Association Limited** (1988) 25 JLR 459, this section requires three conditions to be met in order to activate the third party's right to recover from the insurer: (i) a certificate of insurance must have been issued by virtue of section 5(1) of the MVIA; (ii) the judgment must be in respect of a liability which

is required to be covered by a policy under section 5(1), (2) and (3) and which has been obtained against the insured; and (iii) the liability must be a liability covered by the terms of the policy.

[66] Mr. Justice Kokaram in **Vanissa Sukhbir v GTM Fire Insurance Company Limited** HCA S416 of 2001 went on to recite the relevant principle in contract law at paragraph 7 as follows;

“The general principles of contract law are applicable to the formation of contracts of insurance. There is no rule of common law requiring contracts of insurance to be in any particular form or in writing at all. Usually these contracts are made by the offer of the proposed insured by the completion of a proposal form which is given to the insurers for their consideration and acceptance. Negotiations may or may not ensue leading ultimately to the issuing of the policy of insurance.

Insofar as the Act is concerned the relevant sections are as follows: Section 3 (1), Section 4(8), Section 5 and Section 20(1). The parties are however free to contract subject to the bid and there are no prescribed forms for a contract of insurance.

A binding contract of insurance however can be made notwithstanding the failure to fill out a proposal form or the issuing of a policy. The only requirement is that there is consensus ad idem on the material terms of the policy. This is a fundamental feature of insurance law:

“An acceptance will be of no effect in law unless the parties have agreed upon every material term of the contract they wish to make. The material terms of a contract of insurance cover, the amount and mode of payment of the premium and the amount of the insurance payable in the event of a loss. As to all these there must be a consensus ad idem, that is to say, there must either be an express agreement or the circumstances must be agreed. Without such agreement, it would be impossible for the courts to give effect to the parties contract except by virtually writing the contract for them which is not the function of the courts to do.

An agreement on these and other less essential terms of the proposed insurance may be achieved either at once, or only after a process of lengthy negotiations as is common in the case of large commercial risk. When negotiations become protracted, and there is subsequently a dispute concerning the existence of a binding contract or its terms, it is necessary to review the whole course of the negotiations in order to see if there was at any stage full agreement on the material of the insurance or, as the case may be, agreement that a particular term was agreed. In carrying out this exercise a tribunal should have regard to

subsequent events which bear upon the question at issue. There is no rule of insurance law that there can be no binding contract of insurance until the premium has been actually paid or the policy has been issued. Once the terms of the insurance have been agreed upon by the parties, there is prima facie a binding contract of insurance until the premium has been issued. Once the terms of the insurance have been agreed upon by the parties, there is prima facie a binding contract of insurance, and the assured is obliged to pay a premium as agreed, while the insurers for their part must deliver a policy containing the agreed terms.” **Mc Gillvray**.

[67] This Court agrees with the law set out by my brother Kokaram J. Therefore, there may be occasions wherein the matters certified in the proposal form are agreed on by both proposed insurer and insured. This is so whether the proposal form is incorporated in the policy or not. The essence of the establishment of the contractual relationship lies with the meeting of the minds in respect of every facet of the contract. So that in this case, for the comprehensive coverage clause to have validity there must have been a meeting of the minds on it.

[68] The Court notes that in this case, that the only evidence before it on these issues is that of the documents attached to the pleadings. The parties have therefore agreed that the court is to have recourse to the said documents in making its determination on this issue.

[69] Annexed to the Defence of the defendant is the Insurance Policy along with The Schedule to the policy and the Proposal Form. Under the rubric “Conditions” set out at page seven of the policy, it is written at clause 1, that the Policy and Schedule are to be read together as one contract. It appears therefore that the Insurer did not treat the Proposal form as being incorporated with the policy thereby forming part of the contract. Despite this however, whether the Proposal Form forms part of the contract is an issue for determination by this Court based not on only that which is stated by the insurer in the policy but by that which the Court so finds after a review of all the available documents.

[70] In **Eastern Caribbean Insurance Ltd v Bicar**, HCVAP 2008/014, delivered 3rd May 2010, the Court of Appeal held that an insured person includes not only the policyholder but also any other person or class of persons specified in the policy. The insurer was required to indemnify such persons in respect of any liability covered by the policy, and to pay to the person entitled to the benefit of the judgment sum in respect of the liability. The grounding of the liability of the insurer to pay a judgment debt in respect of which an authorized driver has become liable is not dependent on a finding of

vicarious liability on the part of the policy holder. The obligations may arise quite separately and independently of the other once it can be shown that the driver falls within the category of persons specified under the particular policy as being covered thereunder.

[71] Having determined that only one aspect of the defendant's case, in relation to paragraphs 6, 7, 8 and 9, are of note, it remains to be determined whether there should be Summary Judgment for the defendant as it relates to that limb - paragraphs 6, 7, 8 and 9 of the Statement of Claim. Part 15.2 of the CPR, 2000 authorises the Court to "give summary judgment on the whole or part of a claim or on a particular issue if it considers that-

(a) On an application by the Claimant, the defendant has no realistic prospect of success on his defence to the claim, part of the claim or issue." Blackstone Civil Practice 2005 explains at page 355 that "An application for summary judgment is decided applying the test of whether the respondent had a case with a real prospect of success, which is considered having regard to the overriding objective of dealing with the case justly."

[72] The remaining issue to be determined, if the matter is to proceed, is whether the claimant had no reasonable ground for bringing the claim. In addressing whether paragraphs 6, 7, 8 and 9 of the Statement of Case has any real prospects of success; the hurdles that may be faced by the claimant in succeeding on this limb of the Statement of Case were hereinabove underscored. However, I have decided that the said paragraphs did not raise an issue as it was not entirely clear on the face of the pleadings that no grounds for bringing the matter were disclosed therein.

[73] The point being emphasised by this Court is that the CPR 2000 is a new procedural code (it is not an updated version of the old) with expanded powers to manage cases in such a manner that cases that should not go to trial are identified and disposed of early. Striking out is not the only way of stopping cases from going forward. The power of active case management exists at all times the case is within the court system. It is time we left behind the notion of trying to fit the old Civil Procedure Code with all its defects into CPR 2000. We cannot keep pouring new wine into old wine skins, they will burst.

[74] Rule 25 of the CPR pushes the court to identify issues at an early stage. Resolve those that can be resolved at the time the case is before the court. The issues can be identified through pleadings; they can be identified with greater precision during various applications. This court has had experience where during applications the parties see both their case and other side's with greater clarity and that has led to settlements and in some cases discontinuance of the claim. If this happens then the objectives of the new rules are being met. The trial-at-all-cost mentality is behind us. It cannot be that because a particular application is being made the court must sit like a zombie or like Aladdin's genie popping up to do the bidding of he or she who rubbed the lamp, ignore the possibility of clarifying the matters so that a settlement on some or even all issues can be arrived at. Why this can happen is that the litigants are under the specific obligation of assisting the court to further the overriding objective. One way of doing this is admitting facts when the party so doing knows that what is being said is true. We are long past the days of mechanical judicial responses to applications and blinkered vision. The new rules empower the courts to seek to resolve as many issues as possible on each occasion the case comes before the court. This is what active case management looks like.

[75] It was Lord Woolf who pointed out in **Kent v Griffith** [2001] 1 QB 36 that it is not accurate to say that a court should be reticent about striking out a statement case that has no real prospect of success when the legal position is clear and the investigation of the facts would not be of any assistance. Indeed, his Lordship said that the courts are now being encouraged to take issues that have been or can be identified at an early stage and deal with them so that time and expense can be saved. Active case management is an ongoing process. It does not stop because this or that application is being made. It may be that during the application the issues become more sharply defined. The applicable law becomes evident. If that is the case, it makes no sense to say that because there is this particular application then that application alone is an end in itself and the court should not take all opportunity to resolve other issues. Once the parties have the opportunity to make their case then there can be nothing wrong with using case management powers to deal with the case justly and save expense regardless of the application being made.

[76] Lord Woolf indicated in **Kent** that there may be cases where the critical facts need examination in detail but this is not because it arises in any particular corner of the law but because the pleaded

cases show that there are important facts to be determined which cannot be decided on the pleadings.

[77] For the same reasons it is my finding at this stage that the claimant has no realistic prospect of success on the aforesaid limb of its Statement of Case. Accordingly, my determination is that summary judgment will be granted on all parts of the Statement of Case.

[78] The test for summary judgment is whether the respondent has a case with a real prospect of success, which is considered having regard to the overriding objective of dealing with cases justly.

[79] In **Swain v Hillman**, [2001] All ER 91, Lord Woolf, MR said that the words “no real prospect of succeeding” did not need any amplification as they spoke for themselves. The word “real” directed the court to the need to see whether there was a realistic as opposed to a fanciful prospect of success. The phrase does not mean “real and substantial” prospect of success. Nor does it mean bound to be dismissed at trial. They are not meant to dispense with the need for a trial where there are issues which should be considered at trial whether there is a serious issue to be tried.

[80] Therefore, in resolving the present ‘Issue’ I find then that the application for summary judgment against the claimant for bringing the claim that it has no reasonable prospects of success in defending the claim could properly be said to be in respect of the current claim form that is before the court for determination.

[81] In the case at bar, there are no triable issues of fact which cannot be resolved at the summary judgment stage.

[82] **Order**

- (i) The defendant’s application for summary judgment is granted at this time, on the basis of the foregoing reasons.
- (ii) The Claim is thereby struck out on the basis that the claimant has no reasonable ground for bringing the claim.

- (iii) Costs of the application for summary judgment to the defendant in the amount of EC\$1,500.00.
- (iv) The defendant shall file and serve this order.

Ricardo Sandcroft

Master [Ag]

By the Court

Registrar