

**EASTERN CARIBBEAN SUPREME COURT  
SAINT LUCIA**

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

Claim Numbers: **SLUHCV2016/0332**

Between

**NOEL JOSEPH  
Belair, Castries**

Claimant

and

**ST LUCIA MOTOR AND GENERAL INSURANCE COMPANY LIMITED  
Micoud Street, Castries**

Defendant

**Appearances:** Mr. Alvin St. Clair of Counsel for the Claimant  
Mr. Callistus Vern Gill of Counsel for the Defendant

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**2020: June 10<sup>th</sup>**  
**2020: October 2<sup>nd</sup>**  
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**RULING**

**Introduction**

- [1] **SANDCROFT, M. [Ag.]**: This is an application by the claimant for summary judgment against the Insurance Company for failure to settle the judgment debt that was granted against the insured who was the defendant in other proceedings brought by the claimant.

**Background/Chronology**

- [2] The claimant corresponded by letter dated the 17<sup>th</sup> day of May 2016 to the defendant giving the defendant notice of the claimant's intention to institute legal proceedings against "Steven Augustin" owner of vehicle number PJ 3487 regarding an accident which occurred on the 5<sup>th</sup> day of June 2015.

- [3] The claimant filed a claim against **(1) STEVEN AUGUSTIN, and (2) LYNDELL JACOB**, which was given the number **SLUHCV2016/0331**, indicating that it was filed in 2016.
- [4] On the 12<sup>th</sup> April 2017 a Judgment following a mediation agreement was filed and entered on the 3rd day of May, 2017, in **SLUHCV2016/0331** against the defendants **(1) STEVEN AUGUSTIN and (2) LYNDELL JACOB**.
- [5] The aforesaid information was extracted from the police report prepared in relation to the said accident, which gave information to the effect that Steven Augustin was insured with the defendant Insurance Company with a policy certificate number **STLMGA 15257** which was a policy that covered a Mazda vehicle.
- [6] The Defendant wrote back, acknowledging the receipt of the letter and stating that neither the name "Steven Augustin" nor "PJ 3487" appear on their records.
- [7] The certificate issued by the defendant is with respect to the name "Stephen Augustin" number **STLMGA15257** covering the date of the accident, as does the police report which has been noted.
- [8] The certificate of insurance was given to the claimant by Stephen Augustin after the claimant began to pursue him under the judgment in suit **SLUHCV 2016/0331**.

### **Claimant's Submissions**

- [9] The claimant posited that it was the defendant who had the duty to show that they were not notified. That the onus of proving that the defendant did not have notice regarding notices under the policy of insurance and under the Act is on the defendant. In the Trinidadian case of CV 2015-01892 **RICO MOHAMMED vs MARITIME GENERAL INSURANCE COMPANY LIMITED** Honorable Madam Justice Donaldson-Honeywell said at paragraph 25:

**"The onus of proving that they had no notice lies on the Defendant, as Insurers, was established in the Judgment of des Iles JA in Civ Appeal No 18 of 1982 Motor and General Insurance Company Ltd. V Koongie. The Defendant will have a duty in fulfilling disclosure requirements for this matter to reveal all correspondence from the insured that are likely to have made them aware of the underlying matter even before the proceedings were commenced"**

[10] The claimant also posited that according to Lord Justice Kennedy in the English Court of Appeal in Case No: A2/2000/0394 **Derek Wylie on behalf of SMP Motor Policies at Lloyds and Terence Francis Wake** at paragraph 29 of his judgment made these conclusions regarding notice under a similar provision as our section 9 thus:

Pausing there, it seems to me that certain conclusions can be drawn from the authorities.

- (1) To show that the insured had notice of the bringing of the proceedings there must be more than evidence of a casual comment to someone who at times acted as an agent for the insurers (see *Herbert v RPA Company*).
- (2) Any notification relied upon must not be subject to a condition which may or may not be fulfilled (see *Weldrick and Harrington*) but if the only condition is one which requires action from the recipients which they choose not to take then by making that choice they render the notice unconditional and thus effective (see *Ceylon Motor Insurance Association Ltd*).
- (3) The notice can be oral, and it need not even emanate from the claimant (see *Harrington and Desouza*). It can be given before proceedings have commenced, and it need not be specific as to the nature of the proceedings, (*Desouza*) or the court (see *Ceylon and Harrington*).
- (4) Whether in any given case it is shown that the insurer had notice of the bringing of the proceedings (as opposed to the making of a claim) is a matter of fact and degree (*Desouza*).
- (5) The essential purpose of the requirement of notice is to ensure that the insurer is not suddenly faced with a judgment which he has to satisfy without having any opportunity to take part in the proceedings in which that judgement was obtained (*Desouza*)

[11] The claimant further posited that the defendant had stated that the notice to them was with respect to a person named "Steven Augustin" and not their insured whose name is "Stephen Augustin."

[12] The claimant also submitted that Lord Justice Kennedy in **Wyle and Wake** stated part of the judgment in **Desouza v Waterlow [1999] RTR 71** thus:

"The insurers, through their counsel Mr. Astor, argued that the interpretation of section 152(1)(a) turns on the use of the word 'the' in front of the word 'proceedings', and therefore what has to be given by way of notice to the insurers is notice of the particular proceedings brought by the third party. In my judgment, the sub-section is not to be interpreted in that way. As notice of the bringing of proceedings can be given before those proceedings are commenced, that is to say at a time when the proceedings do not

exist, the notice that has to be given to the insurers is information that the third party intends to commence an action against the insurers insured. Once the insurers have had that knowledge there is an onus on them to inform themselves of the precise details of the proceedings."

[13] The claimant further submitted that the reasonable inference to be drawn from the above was, and indeed, that equity dictated that for a reasonable, level-headed insurance company, one not tending to avoid its contractual and statutory obligations, that the letter of the claimant of 17<sup>th</sup> May 2016 did put the defendant on notice, whereby the defendant was duty bound to check their records for both "**Stephen Augustin**" and "**Steven Augustin**", the defendant in suit **SLUHCV 2016/0331** and call their insured and make inquiries and so give themselves the opportunity to participate in the proceedings.

[14] The claimant also submitted that the defendant did not inform themselves that their insured "Stephen Augustin" may well be "Steven Augustin" referred to in the letter of the claimant dated 17<sup>th</sup> May 2016.

[15] The claimant posited that by the interpretation and clear words of section 9(2) of the Motor Vehicle Insurance (Third-Party Risks) Act it can be extrapolated that notice can be given prior to filing, one, secondly, notice can be given 7 days after filing and thirdly the court has a discretion to apply equitable principles given the circumstances and deem, notwithstanding non-compliance with the first or the second, that notice is proper and sufficient.

[16] The claimant further submitted that this matter was not only concerned with a statutory duty and breach of the same, but principally with a contract of insurance, a contract which is premised on the principle *uberrimae fidei*, utmost good faith; that the actions of the defendant may well be defined as action which offends that principle.

[17] The claimant also posited that should the court find that the letter of the claimant does not fall within the parameters of the first limb, then the court, in the interest of justice and indeed to ensure that the defendant meets its statutory duty under the Act, in accordance with equitable principles must find that there was indeed notice given to the defendant under section 9, in all the circumstances.

[18] The claimant finally posited that this case is a case where 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.

### **Defendant's Submissions**

[19] The defendant submitted that having received the notice of intended proceedings in relation to a specific person "Steven Augustin" and the specific vehicle registration number PJ3487, that they provided a clear and unambiguous response to the claimant's legal practitioner which should have placed them on "notice".

[20] The defendant also submitted that in relation to one "Steven Augustin" and motor vehicle registration number PJ3487 it had no notice of proceedings as this information did not refer to any of its insured.

[21] The defendant further submitted that reference to a judgment and to certain amounts in a letter of 5<sup>th</sup> of April 2018, almost a year after the date of the said judgment of April 12, 2017, did not qualify as notice of proceedings as contemplated by the Motor Vehicle Insurance (Third-Party Risks) Act Cap 8:02.

[22] The defendant posited that the claimant failed to act within a reasonable time thereafter to bring the notice of proceedings to the attention of the defendant.

[23] The defendant also posited that according to the Trinidad case of **Capital Insurance Ltd. v. Fraser** 71 WIR 382, in a decision of the Court of Appeal of Trinidad & Tobago, the Court held that section 10(2) (a) Trinidad & Tobago Motor Vehicles Insurance (Third Party Risks) Act, which is similarly worded to section 9(2) of the Saint Lucia Act, that it had to be 'pretty strictly fulfilled'.

[24] The defendant further posited that the notice was insufficient or inadequate when one considered that the incorrectly spelt name did appear to have affected, contaminated or prejudiced the claimant's notice of making the defendant aware of the fact that a person whose name which could

be Stephen Augustin may well be the person referred to in the letter against whom legal proceedings was being initiated.

[25] The defendant finally purported that it did not have notice of the proceedings in Claim number **SLUHCV2016/0331** as contemplated by section 9 of the Motor Vehicle Insurance (Third-Party Risks) Act Cap 8.02 and as such was under no obligation to the claimant with regard to the judgment awarded in the said claim.

[26] **Issues**

- (i) Whether the defendant in respect of the judgment, was given notice before or within seven (7) days after the commencement of the proceedings in which the judgment was given; and
- (ii) Whether summary judgment should be granted to the claimant if the Court finds that the defendant had notice of the proceedings.

**Analysis & Findings of the Court**

[27] **THE STATUTE – SECTION 9 OF THE MOTOR VEHICLE INSURANCE (THIRD-PARTY RISKS) ACT**

**9. DUTY OF INSURERS TO SATISFY JUDGEMENT AGAINST PERSONS INSURED AGAINST THIRD-PARTY RISKS**

**(1) If, after a certificate of insurance has been duly delivered under this Act to the person by whom a policy has been effected, judgement in respect of any such liability as is required to be covered by a policy of insurance under section 4(1)(b) (being a liability covered by the terms of the policy to which the certificate relates) is obtained against any person who is insured by the policy then, although the insurer may be entitled to avoid or cancel, or may have avoided or cancelled, the policy, he or she shall, subject to the provisions of this section, pay to the persons entitled to the benefit of the judgement any sum payable thereunder in respect of the liability, including any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgements.**

**(2) No sum shall be payable by an insurer under subsection (1) — (a) in**

respect of any judgement, unless before or within 7 days after the commencement of the proceedings in which the judgement was given (or within such other period as the court may in its absolute discretion consider equitable) the insurer had notice of the bringing of the proceedings;

[28] The Act provides that no sum shall be paid on a judgment unless before or within 7 days after commencement of the proceedings or within such other period as the Court may consider equitable the insurer had notice of the bringing of the proceedings. (my emphasis)

[29] 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 14 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”.

[30] **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.**

[31] 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 claimant to have given a formal notice to the defendant. It remains, however, a question of fact whether the defendant did have notice of the proceedings, by whatever means the information may have come to its attention, and whether the correct name of the insured would have any bearing on the matter.

[32] The Court noted the correspondences of May 17, 2016 and June 8, 2016 which stated as follow:

**By letter dated May 17<sup>th</sup> 2016 the Claimant’s Solicitor wrote to the Defendant as follows:-**

We act hereon on behalf of NOEL JOSEPH. Police Officer, who has instructed us as follows:

On the 5<sup>th</sup> June 2015 your insured Steven Augustin was involved in a vehicular accident with our client Noel Joseph while our client stood on the side of the road as a pedestrian.

In fact your insured was a passenger in the vehicle which he gave and allowed Lyndell Jacob to drive at the material time.

The letter serves to inform you and notify you that it is our intention to file a claim in the High Court against your insured should you or your insured fail to state that you and your insured will take full and unconditional responsibility' for the injuries, pain and suffering and losses of our client as a result of being run down as aforesaid.

Please indicate whether you are minded to settle this matter so as to avert the filing of the matter in the High Court by the 25<sup>th</sup> day of May 2016 failing which legal proceedings will be filed.

We await your most favourable response and action.

By letter dated June 8. 2016 the Defendant responded as follows:-

RE:     STEPHEN AUGUSTIN  
          VEH. REG. NO: PJ3487  
          YOUR CLIENT: NOEL JOSEPH

Please refer to the caption matter.

We acknowledge receipt of your letter on the above and advise that the name "Steven Augustin" nor vehicle registration number "PJ3487" appears on our records and as such cannot entertain your claim.

Please be guided accordingly.

[33] That the onus of proving that they had no notice lies on the defendant, as Insurer, was established in the judgment of des Iles JA in **Motor and General Insurance Company Ltd. V Koongie** Civ Appeal No 18 of 1982. The defendant will have a duty in fulfilling disclosure requirements for this matter to reveal all correspondence from the insured that are likely to have made them aware of the underlying matter even before the proceedings were commenced.



[34] On the face of it, even if the defendant only got notice when the claimant sent it after some time there is precedent for a finding that the said time was equitable. This is so because as Mc Millan J explained in **Blizzard and Others v Motor and General Insurance Company** HCA No 2292 of 1981 the 29 days was within the three month period under Section 10(3) of that Act when the defendant as insurer can either:

- a. Avoid the policy;
- b. Take steps to defend the action; or
- c. Take steps to settle the action.

It will be difficult, in the circumstances, for the defendant to prove any prejudice from an erroneous name, if any, in receiving notice of the underlying matter.

[35] In all the circumstances although there may not be a strong probability that the defendant can establish both that they had no notice of the proceedings within the prescribed period and that the name that they received notice for from the claimant was erroneous, these remain issues to be tried. Accordingly, paragraphs 1 and 6 of the Defence are noted by this Court. In order to further determine the matter, however, the Defendant will be directed to file an affidavit in support of the contention at paragraphs 1 and 6.

[36] Having determined that only one aspect of the defendant's case, in relation to paragraphs 1 and 6, is of note, it remains to be determined whether there should be Summary Judgment for the claimant as it relates to that limb - paragraphs 1 and 6 of the Defence. Part 15.2 of the CPR 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."**

[37] The remaining issue to be determined, if the matter is to proceed, is whether the defendant had the required 7 days' notice of the underlying matter and if not, whether the notice it had was erroneous because it was said to have the wrong name. In addressing whether paragraphs 1 and 6 of the defence has any real prospects of success, the hurdles that may be faced by the defendant in succeeding on this limb of the defence were hereinabove underscored. However, I have decided that the said paragraphs did raise an issue as it was not entirely clear on the face of the pleadings that no grounds for defending the matter were disclosed therein.

[38] For the same reasons it is not my finding at this stage that the defendant has no realistic prospect of success on the aforesaid limb of its defence. Accordingly, my determination is that summary judgment will not be granted on any part of the Defence. Instead the defendant will be required to submit supplemental affidavit evidence in support of the said limb to be considered during case management.

[39] There is in this case direct evidence or information from which it can be inferred that the Insurer was informed and given notice of the legal proceedings to be brought in the High Court touching and concerning the claim by way of correspondence on May 17, 2016. There is also evidence or information that would lead the Court to conclude that the Insurer had written back to the legal practitioner for the claimant, which would have been outside of the period of May 25, 2016 stipulated in the claimant's correspondence when issued on the June 8, 2016, some one week after the notice of legal proceedings was brought to the attention of the Insurer or was sent to them, so that they were aware of the legal proceedings for the claim in the High Court and would have therefore been in a position to either accept or reject liability.

[38] Therefore, in resolving the present 'Issue' I find then that the application for summary judgment against the defendant for not defending the claim when it would have received notice of the proceedings of the claim could not properly be said to be in respect of the current claim form that is before the court for determination.

[39] There is no question then that the claimant gave notice under first limb, in that he wrote to the Defendant before or prior to the filing of proceedings. The question however, which is brought into focus by the defendant's Defence and submissions is one as to the sufficiency of the notice. Was

the notice proper, notwithstanding that it incorrectly spelt the name of the defendant's insured.

**[40] Order**

- (i) The claimant's application for summary judgment is refused at this time on the basis of the foregoing reasons.
- (ii) No order as to costs.
- (iii) The defendant is granted leave to file its amended defence and supplemental affidavit with respect to the claimant's particulars of claim, if necessary, within 28 days of this judgment. Unless the defendant files and serves its amended defence and supplemental affidavit by October 30, 2020, the Defence shall stand struck out.
- (iv) The claimant shall file a Reply to the amended Defence and supplemental affidavit, if necessary, within 28 days of service of the amended Defence and supplemental affidavit.
- (v) The matter is to be referred to mediation.
- (vi) The matter is to be set for further case management on December 17th, 2020, at a further sitting of the Master's Court in Saint Lucia.
- (vii) The claimant shall file and serve this order.

**Ricardo Sandcroft**  
Master [Ag]

**By the Court**

**Registrar**