EASTERN CARIBBEAN SUPREME COURT
SAINT CHRISTOPHER AND NEVIS

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SKBHCV2015/0067

BETWEEN:

JULIAN GABRIEL

1st Claimant

ORVILLE THOMPSON

2nd Claimant

And

NAGICO INSURANCE COMPANY LIMITED

Defendant

Appearances:-

Mr. Jomokie Phillip for the Claimants.
Ms. Angelina Gracy Sookoo with Ms. Rénal Edwards for the Defendant.

2017: October 06

JUDGMENT

[1] **WARD, J**.: The claimants are the registered owners of a Nissan Urvan 15 seater passenger bus bearing registration number HA299. The defendant is an insurance company registered pursuant to the laws of St. Christopher and Nevis and with whom the 1st claimant insured the said bus in July, 2010 through the defendant's agent Dish Limited.

[2] On 20th July, 2011 the bus was being driven by the claimants' agent, Triscan Ramplin, when it was involved in a road traffic accident. It sustained substantial damages. It was examined by a professional mechanic who advised that it should be written off since the value of the damages exceeded its pre-accident market

value. The pre-accident value was EC$90,000.00 while the salvage value was EC$4,000.00.

[3] Based on the mechanic's report, the claimants proceeded to Dish Limited's office on 21st July, 2011 to make a claim purportedly based on their policy with the defendant. The defendant refused to honour the policy claiming that it had expired on 19th July, 2011.

[4] The claimants seek a declaration that the period of coverage on insurance policy number SKV7468/10 is 22nd July, 2010 to 22nd July, 2011.The defendant denies that it is liable to indemnify the claimants for the loss claimed.

Issue

[5] The issue in this case is a narrow one: whether the claimants' bus was covered by the Policy of Insurance on the day of the accident. The reason why such an ostensibly simple matter has become an issue will become apparent in the narrative that follows.

The Claimants' Case

[6] Julian Gabriel testified that on 19th July, 2010 he attended at the offices of Dish Limited, the defendant's agent, and enquired about obtaining insurance coverage for the bus from the defendant. A customer service representative furnished him with a quotation which put the annual premium for comprehensive insurance coverage at EC$9018.98. He said the agent advised him that this premium could be met by the payment of an initial deposit of EC$1500.00 with the balance payable in monthly installments. Mr. Gabriel said he did not make any payment on that day nor did he sign any document on that day. In oral testimony, he explained that after he left Dish Limited, he went to another insurance company to make a similar enquiry.

[7] On 22nd July, he returned to Dish Ltd and paid the deposit of EC$1,500.00 in order to obtain insurance coverage for the bus. He was issued a Receipt and a Cover Note which stated that the period of coverage was 22nd July, 2010 to 22nd July,

2011. He stated that he was also given a premium financing agreement which showed that the period of insurance coverage was 22nd July, 2010 to 22nd July, 2011. On a subsequent date, he was issued with a Certificate of Insurance that showed that the period of insurance was 19th July, 2010 to 19th July, 2011.

[8] Mr. Gabriel further stated that during the life of the policy he made a few amendments. On 4th October, 2010 he removed S.L. Horsfords and Company as the assignee and substituted FND Enterprise Credit Union. He also added the 2nd claimant as a co-insured. On 10th May, 2011 he added Triscan Ramplin as an authorized driver of the bus. On each occasion when he amended the policy he was issued with a Certificate of Insurance reflecting the changes. He testified that he did not realize that the Certificate of Insurance stipulated a different risk period.

[9] Under cross-examination, Mr. Gabriel was shown a copy of the Proposal for Motor Vehicle Insurance Form which stated that the risk date was 19th July, 2010 to 19th July, 2011. Even though the document was dated 19th July, 2010 and bore his signature, Mr. Gabriel maintained that he did not sign anything on that day.

[10] His attention was further drawn to a declaration immediately above his signature which stated, *inter alia, "…I/we agree that this proposal shall be incorporated in and form the basis of the insurance contract between me/us and the Company and I/we agree to accept a Policy in the Company's usual form for this class of insurance."* He accepted that his signature signified his acceptance of this term and that there was no reference to the Receipt and Cover Note forming part of the agreement for insurance.

[11] His attention was also drawn to two documents referred to as Endorsements 1 & 2 for Transit Coverage and Special Windshield/Cabin Glass coverage. These both stated that the effective date of the policy was 19th July, 2010 and the effective date of endorsement was 22nd July, 2010. Mr. Gabriel said he appreciated the distinction between the two.

[12] His position when confronted with all of these documents is reflected in his response:

> "I see the effective date of the policy is July 19, 2010 and the effective expiry date is July, 19, 2011. I did not request any change to these dates but I accept that these two endorsements form part of my policy with Nagico. I accept that in both documents the effective date of the policy is July 19, 2010. I accept that the date on which the endorsement comes into effect is July 22, 2010. After receiving these two endorsements I never asked Nagico to change the date of coverage because I was following the cover note. I didn't realise the date was off. I do not accept that the cover note expired 15 days from its date of issue."

[13] He was then shown the Certificate of Insurance which contained the following endorsements:

> "Date of Commencement of Insurance July 19, 2010;
>
> Date of Expiry of Insurance: July, 2011"

[14] The 1st claimant was also shown the two Certificates of Insurance issued after he made the amendments to the policy on 4th October, 2010 and 10th May, 2011 respectively. These re-issued Certificates of Insurance both stated that the expiration date of the policy was 19th July, 2011. He denied knowledge of these documents claiming that the defendant never issued these to him and said he never received them.

[15] The 2nd claimant testified that he relied on the Cover Note to say that the policy expired on 22nd July, 2010. He, however, accepted that the provisional insurance under the cover note would have expired 15 days after issue. He said he never received any renewal notice dated 13th May, 2011 from the defendant advising that the policy was due for renewal on 19th July, 2011 and further advising that Nagico would no longer be offering comprehensive insurance coverage for buses. He stated that he did receive a telephone call from Ms. Glenda Jeffers of Dish Limited during the week of 10th July, 2011 but she only advised him of the change in policy regarding comprehensive insurance coverage for buses.

[16] The final witness called for the claimants was Triscan Ramplin who had commenced driving the bus from 10th May, 2011 and who was the driver of the

bus on the day of the accident. According to his evidence, the arrangement with the claimants was that he would operate the bus on a daily basis and pay the claimants EC$1,200.00 per week. Under cross-examination, he was shown a copy of the Certificate of Insurance issued on 10th May, 2011. He confirmed that he had a physical copy of this Certificate of Insurance in his possession during the time he drove the bus.

The Defendant's Case

[17] The defendant called two witnesses. The first was Mashanda Nisbett, the defendant's Underwriting Supervisor. In her witness statement she describes the procedure for obtaining insurance coverage with the defendant. She stated that once a person attends NAGICO or one of its agents' offices and fills out the Proposal for Motor Vehicle Insurance Form, a 15 day provisional contract for insurance is issued by NAGICO or its agent in the form of a cover note to facilitate immediate protection to the insured pending the grant of a formal policy.

[18] NAGICO has combined the cover note with the receipt issued upon payment into one document called a "Receipt and Cover Note". The Receipt and Cover Note is only issued after the Proposal for Motor Vehicle Insurance is signed and comes into effect immediately and not on the date that the premium or part thereof is paid.

[19] She stated that if the proposal is accepted by the company, a formal policy of insurance is issued to the insured and its assignee in the form of a Certificate of Insurance, a document referred to as Schedule No.1, a policy booklet and any endorsements for additional coverage. The Receipt and Cover Note is automatically superseded by the formal policy.

[20] Ms. Nisbett testified that as underwriter she was required to review the claimants' file in December, 2010. She exhibited, among other documents, the Proposal for Motor Vehicle Insurance; the Receipt and Cover Note, attached to which was a document reflecting the premium calculation printed on 19th July, 2010 and a payment plan dated 22nd July, 2010 and two documents, Endorsement No.1 and

Endorsement No.2, which show that the 1st Claimant obtained additional types of coverage in the form of Transit coverage and Windshield/Cabin Glass Coverage which came into effect on 22nd July, 2010.

[21] On 30th July, 2010 NAGICO, through its agent, Dish Limited, issued a formal policy of insurance to the 1st claimant. This formal policy comprised the Certificate of Insurance No. 7468, with an attached Schedule 1, Endorsements No. 1 and No.2 and the policy booklet.

[22] Ms. Nisbett further stated that on 13th May, 2011 NAGICO, through Dish Ltd, sent the claimants a letter reminding them that their policy was due for renewal on 19th July, 2011.

[23] Under cross-examination she explained that the stated risk period in the Receipt and Cover Note (22nd July 2010 – 22nd July, 2011) was a clerical error which NAGICO corrected when it issued the Certificate of Insurance and subsequent documents which stated that the risk period was 19th July, 2010 to 19th July, 2011.

[24] The final witness for the defendant was Kenisher Dubison who is employed as a claims officer with NAGICO. In her witness statement, she detailed the procedure for determining liability when an insured makes a claim for indemnification from the defendant. She stated that the claims department would pull the insured's file and examine the operative policy which is the last policy document issued from NAGICO recording the agreement between the partiers before the loss occurred.

[25] She stated that the Proposal completed by the 1st claimant formed the basis of the Policy and is deemed to be incorporated into the Policy. She stated that the Policy superseded the Receipt and Cover note as at 6:43:54 p.m. on the 30th July, 2010 and therefore became the operative Policy governing any claim by the insured. Under this Policy, the period of risk expired on the 19th July, 2011.

Submissions

[26] Based on the foregoing, the claimants submit that there was no consensus *ad idem* on 19th July, 2010 between the claimants and the defendant on the formation

of a contract of insurance on that date. It is said that the claimants entered a contract of insurance for coverage for a period of one year from 22nd July 2010 to 22nd July, 2011. In support of this contention the claimants rely on the Receipt and Cover Note issued by the defendant on 22nd July, 2010. While the claimants accept that the Certificate of Insurance states that the period of coverage was 19th July, 2010 to 19th July, 2011, the claimants submit that a Certificate of Insurance cannot override the clear terms of an insurance contract nor can it purport to change those terms in a manner that is materially disadvantageous to the claimants.

[27] Accordingly, submit the claimants, the contract of insurance was still valid when the accident occurred on 20th July, 2011.

[28] The defendant submits that the Proposal for Insurance executed by the First Claimant requested coverage for the risk period 19th July, 2010 to 19th July, 2011. By affixing his signature to this document the 1st claimant confirmed his agreement for this proposal to form the basis for the insurance contract between the parties. Even when the claimants made amendments to the policy the expiry date remained 19th July, 2011. Consequently, submits the defendant at the time of the accident the claimants were not covered by a valid policy of insurance and the defendant is not liable to indemnify them for any loss arising therefrom.

Discussion

[29] The critical question is: what is the status of the Receipt and Cover note upon which the claimants rely to stake their claim that a valid policy of insurance was in effect on the date of the accident? The Receipt and Cover note is the only document that gives the risk period as 22nd July, 2010 to 22nd July, 2011.

[30] Because the Receipt and Cover Note is issued only after the Proposal for Motor Vehicle Insurance is signed, it would be convenient to first examine the Proposal for Motor Vehicle Insurance which is dated 19th July, 2010 and which bears the signature of the 1st claimant, before turning to consider the status of the Receipt and Cover note.

[31] The learned authors of **Halsbury's Laws of England, (5th Edition) Vol. 60,** treat with the nature of a proposal, the duties when completing a proposal and the rules applicable thereto. It is normal to require the proposer to fill in and sign a standard form of proposal or to submit such a proposal electronically. The learning is that the proposer will generally be bound by his signature even if he has not read the form, save where the proposer suffers from some form of incapacity.

[32] The significance of the declaration contained within the proposal is also addressed. At paragraph 74, the learned authors state:

> "The proposal form usually 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 doing, by which he warrants that the statements contained in the proposal are true, <u>or agrees that they are to be the basis of the contract between the parties</u>…" (Emphasis added)

[33] The learned authors further state at paragraph 88:

> "A contract of insurance, like any other contract, is created where there has been an unqualified acceptance by one party of an offer made by the other… the formal offer comes into existence when a proposal form is completed and submitted to the insurers by the proposer. In such cases there is little, if any, actual haggling as to the bargain; the proposer may wish to have specific additions to or deletions from the insurers' standard form of policy to suit his special needs or circumstances but, in general, the form sets out the only terms upon which the insurers are prepared to contract. <u>The proposer, by completing, signing and submitting the form, commits himself to those terms</u> and undertakes to pay whatever the insurers may charge by way of premium." **(Emphasis added)**

[34] In this case, the proposal states that the risk dates are 19th July, 2010 to 19th July, 2011. The 1st claimant signed a declaration which stated, *inter alia, "…I/we agree that this proposal shall be incorporated in and form the basis of the insurance contract between me/us and the Company and I/we agree to accept a Policy in the Company's usual form for this class of insurance."*

[35] The Certificate of Insurance was subsequently issued on 30th July, 2010. The effective date of the commencement of the insurance as endorsed on the certificate was 19th July, 2010 and the expiry date 19th July, 2011. The policy booklet issued with the Certificate of Insurance contains the following recital: *"Whereas 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 herein after contained and has paid or agreed to pay the Premium as consideration for such insurance…"* These factors constitute evidence that the proposal was incorporated into and formed the basis of the insurance contract.

The Status of the Receipt and Cover note

[36] The learned authors of **Halsbury's** (at paragraphs 92 and 93) provide instructive learning regarding the principles affecting cover notes. The following principles are extracted:

> Where a proposal is submitted through the insurer's agent, the agent is usually not authorised to accept the proposal himself, but must pass it on to the insurers for a decision to accept it or not. There then exists a lapse in time between the submission and acceptance and it has become well established commercial practice, particularly in motor vehicle insurance, to issue interim insurance cover pending either completion of a detailed proposal or consideration of a proposal which has been completed and submitted; alternatively a form of acceptance may be in use which itself defines the scope of interim insurance pending the issue of a formal policy…
>
> The usual method in which interim insurance is granted is by a cover note which is, in practice, printed in common form. Normally a cover note incorporates the terms and conditions of the insurer's standard form of policy, either by express reference or by reference to a signed proposal which incorporates the standard form; if the proposer is to be bound by the standard terms and conditions, it must be shown that in some other way he has agreed to accept them. Subject to such an incorporation of the standard terms and conditions, a cover note is a contract of insurance distinct from the contract comprised in the policy, even where a policy is issued. The cover note is superseded by the subsequent issue of a policy, but the parties' rights and liabilities in respect of any loss which happens during the currency of the cover note normally fall to be determined by reference to the terms of the cover note, not to the terms of the

> subsequent policy. No formal document is necessary; a verbal agreement for cover is sufficient…
>
> The acceptance of the proposal brings the cover note to an end… The cover note expires automatically on the expiration of the stipulated period of its life, and no notice of its expiration or of a subsequent declining of the proposal is necessary."

[37] In the instant case, the Receipt and Cover note's stipulated expiry date is 15 days from 22nd July, 2010. On this basis alone the claimants' invocation of it in support of its assertion that the risk dates were 22nd July, 2010 to 22nd July, 2011 is misconceived. More fundamentally, however, for the reasons already adverted to, the Receipt and Cover note was superseded by the Certificate of Insurance issued on 30th July, 2010 and as amended on 4th October, 2010 and 10th May, 2011 wherein the risk dates are consistently stated to be 19th July, 2010 to 19th July, 2011.

Findings and Conclusion

[38] Having reviewed all of the evidence, the court finds the following facts cogently proved.

[39] On 19th July, 2010 the 1st claimant filled out and signed a proposal for Motor Vehicle Insurance with the defendant in which he requested comprehensive coverage for a Nissan Urvan bus, Registration No. HA 299 for the risk period 19th July 2010 to 19th July, 2011 through the defendant's agent Dish Ltd.

[40] By Receipt and Cover note dated 19th July, 2010, but which was signed by the 1st claimant on 22nd July, 2010, the defendant issued provisional coverage to the 1st claimant which was valid for 15 days from the 22nd July, 2010. That provisional coverage expired on 5th August, 2010.

[41] By Endorsement No.1 dated 22nd July, 2010 the 1st claimant extended coverage to include indemnity in respect of the windshield/cabin glass. By Endorsement No.2 the 1st claimant extended coverage to include transit coverage. The effective date of both endorsements was 22nd July, 2010 while the effective date of the policy was 19th July, 2010.

[42] On 30th July, 2010 NAGICO issued a policy of insurance to the claimants which comprised Certificate of Insurance No.7468, Schedule No.1 and a policy booklet.

[43] On the 4th October, 2010 at 1:52 p.m. the 1st claimant completed a Motor Vehicle Insurance Change Form to amend the Policy by replacing S. L. Horsfords with FND Enterprise Credit Union as the assignee and adding the 2nd claimant as a coinsurer. Consequently, as at 2:14:24 p.m. a new Policy of even date was issued and evidenced by a Certificate of Insurance and Schedule No. 1. The coverage period for the updated policy was from the 4th October, 2010 to 19th July, 2011. I further find that this document was issued to the claimants.

[44] On the 10th May, 2011 the claimants completed another Motor Vehicle Insurance Change Form in which they added Triscan R. Ramplin as an authorized driver under the policy. Consequently, a new Schedule No. 1 was issued on the 10th May, 2011 at 2:49:56 p.m. Insurance coverage under this new Schedule came into effect and superseded all previous coverage agreement on the 10th May, 2011. The expiry date under the new coverage remained 19th July, 2011. I am also satisfied that this document was issued to the claimants since Triscan Ramplin testified that there was a copy of this policy in the bus during the time that he operated it.

[45] On the 13th May, 2011 NAGICO through its agent Dish Ltd, sent a letter to the claimants reminding them that their policy was due for renewal on the 19th July, 2011 at 4:00 p.m. The Claimants did not renew the policy.

[46] Accordingly, the court holds that, under the operative Policy governing any claim by the claimants, the period of risk expired on the 19th July, 2011. The defendant is therefore not liable to indemnify the claimants for any loss suffered on account of the accident that occurred on 20th July 2011 as this was outside of the risk period.

[47] I would therefore dismiss the claim and award costs to the defendant to be assessed if not agreed.

Trevor M. Ward, QC
Resident Judge

By the Court

Registrar