IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. B059 OF 1985

BETWEEN	CASSIUS BAJOO	PLAINTIFF
AND	MOTOR OWNERS MUTUAL ASSOCIATION	DEFENDANT

Clinton Hines for Plaintiff

David Henry for Defendant

HEARD: April 23, 25, 27, 30, 1990, May 2 and 4 1990.

EDWARDS J.

In this action Cassius Bajoo the Plaintiff has brought an action against Motor Owners Mutual Insurance Association Limited claiming damages for breach of a contract of insurance. The endorsement on the Writ states that on the 18th July 1984 the Defendant agreed to insure the Plaintiff's motor vehicle registered No. FR7284 against theft in the sum of Twenty Eight Thousand Dollars ($28,000). The car was stolen less than two months later, on the 10th September, 1984 and the Defendant has refused to pay the sum of $28,000 to the Plaintiff.

The Defendant states that the Policy was avoided on the grounds that it was obtained by the non-disclosure of a material fact, and/or was obtained by the representation of a fact which was false in some material particular and/or there was a breach of warranty by the Plaintiff.

The evidence shows that a motor vehicle Insurance Policy was issued by Motor and General Insurance Company to the Plaintiff in respect of a 1979 Peugeot Motor Car bearing Registration No. FR7284. The Plaintiff sought and obtained a new policy of Insurance for the Peugeot from the Defendant and it is that policy which is the subject matter of this action. At the time of issue of the new policy the Plaintiff was also the owner of a 1976 Toyota Corolla Motor Car which was also insured with Motor and General Insurance Company and which had been involved in an accident and in respect of which he was experiencing difficulty in getting compensation from Motor and General Insurance Company. The ownership of this car and the fact that it was in an accident was not mentioned in the proposal form.

The new policy for the 1979 Peugeot was effected with the Defendant, but this was not done directly with the Defendant but through a company known as Trophy Insurance Company which acted as the Defendant's agent for this purpose.

The proposal form was filled in by a Miss Hunter a clerk in Trophy Insurance Company's Office, in the presence of the Plaintiff. The form contained a number of questions the answers to which should be furnished by the applicant - in this case the Plaintiff.

The Plaintiff states that Miss Hunter asked him some questions and recorded his answers thereto. Other questions she filled in of her own accord without eliciting the answers from him, and having completed the proposal form she gave it to him to sign and he did so. He said she did not tell him to look at the document to see if everything was correct and then sign it. Miss Hunter denies this.

The proposal form in fact contained certain wrong answers which the Defendant contends are sufficiently material, to cause it to avoid the policy ab initio. These include in particular, the answer to question 17. Question 17 requires the proposer to state whether or not he had been in any accidents in recent years.

The answer to question 17 which is inserted in the form is "N/A" meaning "not applicable". The Plaintiff said he did not give that answer. He admitted that the answer to question 17 was not accurate and that between 1982 - 1984 his other car the Toyota Corolla Motor could have been in at least two accidents. Also the answers to question 13 and question 14(ii) were not accurate but he was not asked those questions.

He said he told Miss Hunter of the accident with the Toyota Car. Miss Hunter denies this. Miss Hunter gave evidence that she is a clerk with Trophy Insurance Company which acts as an agent for the Defendant. She was not authorised by the Defendant to fill in proposal forms but did so from time to time at the request of a client. She said the Plaintiff came to see her and requested a quotation saying he had a car valued at $28,000 which he wished to insure and he had a 40% no claim bonus on it and he had never had an accident. She said she did ask him about previous accidents. In the

light of his answer that he had no accidents she quoted him a premium. He went away and on the 3rd July 1984 he returned with a "no claim" letter confirming that he was entitled to a 40% no claim bonus. She then filled out the proposal form in his presence after asking him each question on the form and recording his answer thereto.

As regards question 17 his answer was "no accident". She did not request a valuation report of the Peugeot car as in 1984 a $28,000 valuation was an acceptable one for a 1979 Peugeot. After filling out the form she handed it back to the Plaintiff, asked him to look at it, read it through and sign it if he agreed to it. He looked at it and signed it.

She said she asked Mr. Bajoo all the questions as she was not authorised to waive any of them.

After he signed the proposal form she issued a cover note to him. By writing "not applicable" in the answers to question 17 she meant that based on the answers he gave her, the appropriate notation to the questions concerning particulars of accidents or losses would be "not applicable" as he had said he had no accidents.

She said that some months later in November 1984 she issued a cover note for the Toyota Corolla and submitted it to head office but they cancelled it. The Plaintiff filled out that proposal form.

Miss Carmen Singh of the Insurance Company of the West Indies (I.C.W.I.) testified that I.C.W.I. bought out the portfolio of the Defendant in 1988. In 1984 she was employed to the Defendant and Trophy Insurance Agency Limited was an agent of the Defendant authorised to give quotation and write cover notes. Employees of Trophy were not authorised to fill out proposal forms. She understood the answer N/A to question 17 to mean the proposer did not have any accident to any motor vehicle owned, used or hired by him within the last 3 years.

The answer to this question was material to the consideration of whether or not to issue a policy of Insurance. Trophy was not authorised to waive any questions in the proposal form. She said question 17 was not answered truthfully and the company denied liability and returned the premium to the Plaintiff when this was discovered. She referred to a copy letter dated 12th October, 1984 from Motor and General Insurance Company stating that the Plaintiff had been insured

with that company from 1979 - 1984 and had insured several vehicles with them and had reported two accidents between 1982 and 1984 the first was on the 1st February 1982 when they paid out $43,556.00 and the second was on the 31st March, 1984 when they paid out $44,69.90. She also said the Plaintiff had been a policy holder in the Defendant Company 4 years earlier but did not disclose that fact in the anser to question 15. Question 15 was necessary for purpose of cross checking with other Insurance Company.

The proposal form contained a clause which made it clear that the proposal form would be the basis of the contract between the Plaintiff and Defendant and the Plaintiff signed it in the following words: "I agree that this proposal shall be the basis of the contract between me and M.O.M. Insurance Assurance Limited."

In Dawson Limited v Bonnin and Others 1922 A.E.R. Viscount Haldane said.

> "Both on principle and in the light of authorities..... it appears to me that, when answers, including that in question, are declared to be the basis of the contract, this can only mean that their truth is made a condition exact fulfillment of which is rendered by stipulation foundational to its enforceability."

In the instant case, the Insurance Policy incorporates the proposal form as the basis of the contract of insurance.

In Bigger v Rock Life Assurance Company 1902 1 K.B. it was held,

> "First that it was the duty of the applicant to read the answers in the proposal before signing it, and that he must be taken to have read and adopted them; and secondly, that in filling in the false answers in the proposal the agent was acting, not as agent of the Insurance Company but as the agent of the applicant; and that therefore the policy was void."

In that case Wright J at p. 524 adopted the views of the Supreme Court of the United States in New York Life Insurance Company v Fletcher (decided in 1885) that:

> "If a person in the position of the claimant chooses to sign without reading it a proposal form which somebody else filled in, and if he acquiesces in that being sent in as signed by him without taking the trouble to read it, he must be treated as having adopted it."

He went on to say:

> "I cannot imagine that the agent of the Insurance Company can be treated as their agent to invent the answers to the questions in the proposal form..... if he is allowed by the proposer to invent the answers and to send them in as answers of the proposer, that the agent is the agent not of the Insurance Company but of the proposer."

He then concluded by saying that:

> "The very basis of the policy is the statements in the proposal. These statements are false for several material respects. How, then, can the policy be binding on the company?"

In Newsholme Bros. v Road Transport and General Insurance Company 1929 A.E.R. at p. 450/1 Scrutton L.J. said he had:

> "Great difficulty in understanding how a man who has signed, without reading it, a document which he knows to be a proposal for insurance, and which contains statements in fact untrue, and a promise that they are true and the basis of the contract, can escape from the consequences of his negligence by saying that the person he asked to fill it up for him is the agent of the person to whom the proposal is addressed".

In the matter before me I find that Miss Hunter was not authorised to fill in proposal form and in doing so she was the agent and the amanuensis of the Plaintiff whose answers they were to be.

The proposal form was inaccurately filled out in several material respects. A contract of insurance requires the utmost good faith. Furnishing the Defendant with wrong information, so that it was not in a position to properly assess and evaluate the risk it was undertaking must in my view render the contract void and entitle the Defendant to repudiate the Policy.

The Plaintiff was much experienced in these matters and must be taken to have known the importance of ensuring that correct answers were given to the questions asked in the proposal form.

Judgment for the Defendant with costs to be agreed or taxed.

Stay of execution granted for six weeks.