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IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. CL 1999/R 122

BETWEEN	HAROLD ROBINSON	CLAIMANT
AND	COVENANT INSURANCE BROKERS LTD	DEFENDANT

Ms. Tavia Dunn instructed by Mr. K. Arthurs of Rattray Patterson and Rattray for Claimant

Mr. Maurice Manning instructed by Ms. Catherine Minto of Nunes Schoefield & Company for the Defendant

Heard: 14th, 15th, 17th and 24th June, 2004

Straw, J (Ag.)

The claimant, Mr. Harold Robinson is suing the defendant, Covenant Insurance Brokers Limited for breach of contract in failing to ensure that a valid insurance policy was in existence in relation to his motor vehicle. In the alternative, he is alleging that they were negligent, in that, among other things, the defendant failed to take any or any proper or effective measures to notify the claimant of the cancellation of the policy.

A cover note was effected on the vehicle by Mr. John Bailey, agent for the claimant, on December 29, 1995 through the agent for the defendant, Ms. Jacqueline Walker, with General Accident Insurance Company. The note was issued for 30 days to expire on January 28, 1996. A portion of the premiums totalling $14,000.00 was paid.

The claimant who resides in United States of America was visiting the country between December 1995 and January 1996 and wished to clear the vehicle from the wharf and to drive it while he remained in Jamaica.

Apparently, he left the island sometime in January 1996.

On January 30, 1996, Ms. Walker sent notification to General Accident by written memorandum dated January 30, 1996 to have the policy suspended. She stated that this was on instructions of Mr. John Bailey who attended her office on the date. He paid the balance of the premium, a further $13,010.00 and told her that Mr. Robinson had left or was about to leave the island and that the vehicle would not be operated until his return. As a result, she did not write up or issue a further cover note, nor did she make arrangements to have the Certificate of Insurance issued.

Apparently suspension has certain benefits. Whenever Mr. Robinson returned to the island, he could have the policy reinstated without having to make a new application and the premium (although paid up) would begin to run from the date of reinstatement.

On the other hand, Mr. John Bailey has indicated that he visited Ms. Walker's office on or around the January 31, 1996, and paid the balance of the premium for which he was issued a receipt dated January 31, 1996. He stated he never requested that the policy be cancelled or suspended.

The court, however, accepts Ms. Walker as a credible witness in relation to the date of his visit to the office and her explanation of the next day's date being used if the transaction is done after lodgement hours.

What is remarkable is that there is nothing in writing signed by Mr. Bailey authorizing the suspension. Ms. Walker has explained to the court that verbal instructions are standard in these circumstances.

But the question arises as to how the company would protect itself against such an allegation as exists in the present case.

It is clear that some discussions took place on the 30th between Mr. Bailey and Ms. Walker.

Mr. Bailey explained himself to the court in the following words:

"I could not renew the cover note as the vehicle was in storage. The vehicle was not going to be driven for a certain time so I was waiting for the official certificate, so I did not ask for an extension of the cover note."

The possibility exists that, at the least, there was some miscommunication between both parties. Certainly, something transpired on the 30th to cause Ms. Walker to have the policy suspended unless she deliberately disobeyed Mr. Bailey's instructions or acted negligently. It would certainly be prudent to have clients sign to any such instructions for suspension or cancellation as each particular day in the insurance industry is of utmost importance.

No Certificate of Insurance was issued between January 30, 1996 and April 27, 1996 when the said car was destroyed by fire while in storage at the claimant's home. However, it was not until April 11, 1996 that a letter notifying the claimant of the suspension was dispatched. Mr. Bailey said he did not receive this until May 1996. This was after the car was destroyed.

In the meantime, a notice dated February 19, 1996 was issued by General Accident confirming holding the vehicle covered from December 29, 1995 to December 29, 1996. Mr. Bailey stated that he received this letter sometime in February 1996. It was not until March 1, 1996, that General Accident sent a letter confirming the suspension as of January 30, 1996.

The claimant's attorney has submitted that, effectively, the claimant was never informed of the suspension prior to the claim being made, neither was the claimant advised that the letter dated February 19, 1996 was not indeed correct and that the policy suspension was effective as at January 30, 1996. This letter, it is argued, would place the claimant under the impression that his insurance cover was effective.

The main issue for the court to decide is whether Mr. Bailey told Ms. Walker to suspend the policy on January 30, 1996. Secondarily, what was the purpose of his visit to Ms. Walker's house on Sunday, April 28, 1996? He said it was to find out from her whether he needed a fire and or police report so he could be prepared to visit her offices on the Monday to make the claim in relation to the loss of the vehicle.

Ms. Walker stated that he came there and asked her if the policy had been suspended as yet as the vehicle had been destroyed by fire.

If I accept Ms. Walker's evidence on this point, the inference to be drawn is that Mr. Bailey had indeed requested the suspension previously. The fact that there was nothing in writing to support this would not be crucial in these particular circumstances. At this stage, he would merely be inquiring to see if his instructions had yet been put into effect. If it had, the claimant would have to bear the burden of his loss.

The delay in written communication would not avail him, as it could not be argued that there was a breach of contract or negligence on the part of Ms. Walker .

Having listened to Mr. Robinson, Ms. Bailey and Ms. Walker, I cannot say that I am satisfied on a balance of probabilities that Mr. Bailey did not issue these instructions for the policy to be suspended. On a balance of probabilities, I am also not satisfied that he went to her house on the Sunday for the reason he stated.

I therefore grant judgment for the defendant.