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IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. E-17 OF 1980

BETWEEN THE ADMINISTRATOR GENERAL FOR JAMAICA PLAINTIFF
(Administrator of the Estate of
STANLEY ROBINSON)

A N D LIFE OF JAMAICA LIMITED DEFENDANT

R. Codlin instructed by R. Codlin and Company for the Plaintiff

O. Harding in association with Allan Deans for the Defendant.

On the 6th day of October, 1982, I delivered Judgment in the above-mentioned matter and gave Judgment for the Defendant. As promised I now put my reasons in writing.

JUDGMENT

Alexander J: (Ag.)

This is an Originating Summons on the application of the plaintiff:-

1. For a declaration that Policy of Insurance No. 35643 was in force at the date of death of the deceased, Stanley Robinson;
2. For a declaration that the plaintiff herein is entitled to be paid the contractual proceeds of that policy;
3. For an Order that the said sum should be paid over to the plaintiff;
4. Such further or other relief as to the Honourable Court seems just.

Stanley Robinson, Haulage Contractor, of 19 Hampton Crescent, Washington Gardens, St. Andrew died intestate on January 15, 1978.

He left a widow, Janice Robinson and five children namely:-

Colin born on February 2, 1964

Claudette born on October 8, 1965

Michelle born on November 21, 1966

Courtney born on January 8, 1968

Nadine born on February 21, 1970.

Letters of Administration in his estate, were granted to the Administrator General on January 12, 1979.

Stanley Robinson took out a policy of insurance with Life of Jamaica Limited, the defendants.

This was a Whole Life Plan for a face amount of \$48,104.

The policy number was 35643, and his age at his nearest birthday was twenty-nine (29) years.

The payments in relation to this policy were quarterly, totalling \$225.53 each quarter.

It is of course common knowledge that the proceeds from a policy of insurance which is in force become payable to the beneficiaries of the policy holder, upon the death of the policy holder.

In this matter, the Administrator General in his capacity as Administrator of the estate of Stanley Robinson would be the beneficiary of the proceeds of the policy, if in fact the policy was in force at the time of the death of Stanley Robinson.

This is the issue to be decided and which therefore forms the basis for this Originating Summons.

A copy of the contract of insurance issued by Life of Jamaica to Stanley Robinson referred to as "B" was exhibited.

This sets out all the details of the agreement and - seems to be the standard form of an insurance policy agreement.

It was submitted on behalf of the plaintiff that at the time of Robinson's death, the policy was still in force, because the commencement date of the policy was and had to be April 11, 1975, the date of the payment of the first premium and not on March 12, 1975, the date that appears on the policy.

The submission was made that since the defendant company was not and could not be liable to the beneficiaries to this policy until the first premium was paid, then no contract was in existence until then. To fortify this view reliance was placed on the words contained under "f" of the General Provisions which formed part of the contract of insurance. It states:

" This policy shall not be in force until the actual payment of the first premium hereon to an authorised agent of the company, and its acceptance by him, and, unless otherwise provided, until delivery of the policy, while the Life Insured is in good health and otherwise insurable".

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In further support of his contention, the learned attorney for the plaintiff referred the Court to the affidavit of Ivan Burnett which was dated September 10, 1982.

In this affidavit Mr. Burnett described himself as having "considerable experience in Life Insurance practice being involved therein for upwards of fifteen years....."

To divert a bit, so as to fully appreciate Mr. Burnett's contention, Mr. Robinson's premium history marked "A" and attached to the affidavit of Beverley James, dated March 20, 1980, must be looked at.

This shows that the policy lapsed for **late** payment of the premium for September, 1976. This was due to a cheque which was paid by Robinson on 12th September, 1976, for \$225.53 for the quarter ending 12th September, 1976, which was dishonoured and returned to him on October 6, 1976.

He sent another cheque dated 2nd December, 1976, for the purposes of covering that said period, and that cheque was also dishonoured and returned to him, on December 14, 1976. This means that up to the end of the next quarter which would have been 12th December, 1976, he had not yet paid for the quarter ending 12th September, 1976.

On examination of the policy ("B") already referred to and in particular "g" of the General Provisions, it states:

" Each annual premium is payable in advance on or before the due date which is the beginning of each policy year. Premiums are payable at the Head Office in Kingston but payment may be made, when not overdue, to an authorised agent. If the first or any renewal premium or any part thereof be not paid when due, this policy except where benefits after default are provided herein, will thereupon, without any notice or act on the part of the company, cease to be in force and shall not be in force unless and until reinstated as hereinafter provided".

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Paragraph "h" states:

" One month, not less than thirty days, will be allowed for the payment of any premium on this policy other than the first. Notwithstanding default in payment of the premium when due, the policy shall continue in force during the period of grace".

It is therefore quite clear on the basis of the premium history that the policy would have lapsed and the reason therefor, on the assumption that the information contained therein is true and accurate.

A further study of the premium history, shows that the policy was reinstated on June 22, 1977, and that payments were received up to the period ending 12th March, 1977.

On 3rd August, 1977, a sum of \$225.53 was paid, which was for the period ending June 12, 1977.

It appears to me that that ought to have made the policy lapse once again, bearing in mind the terms and conditions of the policy already referred to. It did not however and the premium history tells why; It stated:

" Policy reinstated because Enhance Reserve Fund was sufficient to support balance of premium required. Balance paid by Enhanced Reserve Fund on account".

This is presumably in compliance with the provisions contained in the policy under the heading "Dividends and Guaranteed Values", which permits the company to apply dividends earned by the policy holder towards payment of a premium or loan interest if any.

On 12th September, 1977, a sum of \$225.53 was paid. This payment was designed to keep the policy up to date, but the cheque containing this payment was dishonoured and returned on September 28, 1977, thereby making the payment due on September 12, 1977, still outstanding. The next payment of any relevance was made on November 9, 1977, by which time the payment for the period ending September 12, 1977, being almost two months overdue, the policy would again have lapsed.

At this point it would be convenient to look at Mr. Burnett's affidavit. In paragraph (3) he lists some payments which do not seem to accurately reflect the state of affairs between Mr. Robinson and the company, and my view on this is strongly supported by the affidavit of Herbert Andrew Hall Executive Vice President at Life of Jamaica Limited dated September 29, 1982.

It appears that Mr. Burnett did not credit Mr. Robinson with certain premium he had paid, which the company admits to. On this basis alone, I would be hard put to accept any view he may have with regard to the standing of the policy at the time of Mr. Robinson death.

Apart from that, he stated inter alia:

" at no time were the payments made in accordance with the terms of the contract, thus the first premium although it was due on the 12th March, was not paid until 11th April, 1975 - Para. 10

That it is my view therefore that notwithstanding the statement in the policy as regards commencement the policy did not in fact commence until the 11th April 1975. My reasons for saying so is that (a) seeing that the first premium had not been paid in accordance with the contract the company was not at risk until it was paid and no claim could validly have been made on the company until after the first premium had been paid -

Para. 11

That I have therefore come to the conclusion that the policy year began on the 11th April, when the first premium was paid and not on the 12th March as stated in the policy....."

Para. 12

Mr. Burnett, by placing the commencement period about one month later comes to the conclusion that the due date would have had to be one month later, so that the September 1977 payment would not have been due until 12th October, 1977, and therefore utilising the "Grace Period", Mr. Robinson had until the 12th November, 1977, to make this payment. This payment was made on 9th November, 1977, which would have kept the policy alive until 12th January, 1978, and applying the provisions of the "Grace Period" once again, he would have had until the 12th February, 1978, to make the next payment.

Mr. Robinson having died on 15th January, 1978, then his policy would still have been in force.

I am unable to agree with Mr. Burnett. It is my view that when the company speaks of the policy coming into force, that is precisely what they mean.

What is the "policy"? It must mean all the terms and conditions agreed to and contained in the document referred to as the "policy", which was exhibited including the commencement date which was stated to be 12th March, 1975.

Provisions have been made in this document under the heading "General Provisions", for waiver. It states:

" No provision of this contract can be changed, waived or modified except by the written agreement signed by the President, General Manager, Secretary or Actuary and waiver of breach of any provision hereof or course of conduct by the company shall not constitute a waiver of any subsequent breach or constitute a release by the company of strict performance of this contract".

In the absence of any compliance with the above, there can be no proper basis for saying that the commencement date had changed.

It is my view that the first payment having been made on April 11, 1975, and not on 12th March, 1975, the company was in a position to treat the contract as having been discharged by virtue of the breach by Mr. Robinson of one of the agreed conditions, that is to say condition "h" of the "General Provisions" headed "Grace". It says .

" One month, not less than thirty days will be allowed for the payment of any premium on this policy other than the first"

By accepting the late payment it means one of two things:

- (1) That the company elected to treat the original agreement as still subsisting or
- (2) that there was a new agreement.

I cannot believe that a new agreement was intended as the provisions of paragraph "h" of the General Provisions were never complied with. Additionally a new commencement dated would have had far-reaching and fundamental repercussions in regard to the policy.

The commencement date is crucial especially to the policy holder in relation to benefits that may or will accrue to him. A perusal of the terms and conditions stipulated in the policy clearly shows this.

It is my view that a reasonable person would find it most imperative that this date be not only known, but agreed on. In addition to this, a look at the affidavit of Mr. Herbert Hall and in particular paragraph 7 clearly shows an immediate benefit to Mr. Robinson, that is to say the payment of a lower premium for the coverage he wanted if the commencement date were 12th March 1975 and not one later than that.

The affidavit goes on further to state that Mr. Robinson knew this and "deliberately requested that Life of Jamaica date the subject policy on March 12, 1975". It is clear from the premium history that Life of Jamaica Limited from the point of view of payments treated the policy as commencing on March 12, 1975. This was certainly known and acted upon by Mr. Robinson during the period December 1976 when he was told that the policy had lapsed, and he did all that was necessary to reinstate it and it was in fact reinstated in June 1977.

At this stage I make reference to the affidavit of Herbert A. Hall. It stated:

" Policy No.035643 lapsed at this point for late payment of premium due 12th September, 1976, Life Insured notified " Para.10

Mr. Hall then listed a number of payments commencing 8th December 1976 to the 28th April, 1977, which covered the period ending 12th March 1977.

Mr. Hall continued:

" At this point the late Stanley Robinson applied for reinstatement of his policy and completed a medical examination I attach hereto as exhibit 'B1' a copy of the said application for reinstatement signed by the said Stanley Robinson on the 27th April, 1977, as exhibit 'B2' a copy of the medical examiner's report signed and dated 5th April 1977 and as exhibit 'B3' copy application for insurance part two - medical signed by the said

" Stanley Robinson on the 5th day of April 1977.
Thus the policy was reinstated with the next
premium due 12th June 1977 " Para 10

It must mean therefore, that both parties knew and treated the policy as coming into force on March 12, 1975. This being so regardless of the circumstances under which the payment of 9th November 1977 were made would make no difference. It would be too late.

It was further submitted (a) that the receipt by the company of the payment of November 9, 1977 constituted a waiver by the company with the provision for reinstatement and or (b) that by accepting the payment the company was estopped from denying that the company treated the policy as still being in force.

I found no merit in this submission, simply because the procedure for reinstatement was already fully known and complied with by Mr. Robinson previously and I could find nothing in the evidence before me to suggest that Mr. Robinson thought or ought to have thought that there would have been any difference on this occasion.

Indeed, Mr. Robinson was significantly out of the picture, as it were, in relation to this payment as it was his wife Janice Robinson, as she then was, who purported to act on his behalf.

Further there is a grave conflict in the affidavit of Janice Robinson and Keith McFarlane, Unit Manager to Life of Jamaica Limited, as to how and in what circumstances this payment was made. Mrs. Robinson stated that she took the payment personally to the offices of Life of Jamaica Limited and spoke to someone there. She stated:

"that when I paid the amount of \$225.53 on 9th November 1977 I inquired if the policy would be reinstated and was told that in view of the fact that such a short time had passed and also that actual payment by a cheque was made in time there was no need to complete an application for reinstatement, the same cheque being dishonoured but cash that I paid was in substitution for the cheque and therefore my husband did not have to make an application to reinstate the policy, but payment of the premium in substitution for the

" Cheque would enable the company to make the reinstatement without my late husband being required to do anything

Para. 5

That having been satisfied that the policy was in force or to be reinstated without my late husband being required to do anything, I left with the receipt telling the person whom I spoke to that if there was any form to be completed I would take it to my late husband for him to do so. I was assured that there was none". Para.6

Mr. McFarlane had this to say:

"that on the 6th day of November 1977 I received in cash from Mrs. Janice Robinson the sum of \$225.53 to be paid on the account of the late Stanley Robinson. Para. 4

That on the 9th day of November, 1977, I took the said sum to Life of Jamaica Limited and paid same to Angela Foote, who thus gave me a receipt in the name of the late Stanley Robinson without the address of the insured being written on the said receipt - Para. 5

That I did immediately write on the receipt the address of the insured and placed same in a 'window' envelope for posting". Para.6

Clearly in relation to this payment and anything said and or done in relation to it differs substantially as between these two deponents. Both cannot be speaking the truth.

Mr. McFarlane in paragraph 8 of his affidavit stated:

" That Mrs. Janice Robinson did not on the 9th of November, 1977, take the cash payment of Life of Jamaica Limited as same was personally paid by me on the said date".

Angela Foote in her affidavit stated at paragraph 2:

" That on the 9th day of November, 1977, Keith McFarlane then an Insurance Salesman for Life of Jamaica Limited who had sold the Insurance Policy to the late Stanley Robinson brought in a cash payment of \$225.53 to be paid on the account of the said policy.

Para. 3

That I received said payment, wrote a receipt for same in the name of Stanley Robinson and gave the said receipt to Keith McFarlane without filling in the address of the insured on the receipt.

Para. 4. " That Mrs. Janice Robinson did not on the 9th day of November, 1977, or at any other time pay to me the said sum of \$225.53 to reinstate the policy.

Para. 5. That I did not at any time have any conversation or discussion with the said Mrs. Janice Robinson about any matter concerning or in connection with the reinstatement of the late Mr. Robinson policy #035643."

A look at a photostat copy of a receipt bearing the date 9th November, 1977, and numbered 135032 shows the name Stanley Robinson being written there in what appears to be a different handwriting to what looks like an address written on the same document and which seems to support paragraphs 5 to 8 of the affidavit of Keith McFarlane.

Para. 5. " That on the 9th day of November, 1977, I took the said sum to Life of Jamaica Limited and paid same to Angela Foote, who then gave me a receipt in the name of the late Stanley Robinson without the address of the insured being written on the said receipt.

Para. 6. That I did immediately write on the receipt the address of the insured and placed same in a 'window' envelope for posting.

Para. 7. That I did on the 9th day of November 1977 post the said receipt to the late Stanley Robinson of 19 Hampton Crescent, Boulevard P.O.

Para. 8 That Mrs. Janice Robinson did not on the 9th of November, 1977, take the cash payment to Life of Jamaica Limited or same was personally paid by me on the said date".

If I believe this, then clearly Mrs. Robinson was not deponing to the truth in her affidavit and therefore could not have been told by anyone at the company that the policy would have been reinstated by the payment of 9th November, 1977. Separate and apart from this, however, is that Mrs. Robinson herself knew a payment fell due on September 12, 1977. This could only be so if the commencement date was as the policy stated.

This clearly cuts against any submission that the parties treated or ought to have treated the commencement date as any other than the one which appears on the policy, and Mrs. Robinson if she is to be believed clearly acted in a way that is consistent with her knowing that the policy had lapsed when she went to the company in

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November 1977, if in fact she did go.

I am therefore satisfied that the commencement date of the policy was March 12, 1975.

I am satisfied that on the basis of the premium history, which was never challenged, that the policy had lapsed when the payment for September 12, 1977, was made by a dishonoured cheque, and no further payment was made until November 1977.

I am satisfied that even if payment was made to Mr. Keith McFarlane it did not and could not reinstate the policy.

I am satisfied that even if Mrs. Robinson spoke the truth in relation to the payment by her in November 1977 and the statements made to her by a representative of the company that representative could not bind the company in relation to the status of the policy vis-a-vis the company and the policy holder.

In any event Mr. Robinson having already had his policy lapsed and reinstated would have known the proper procedure with regard to reinstatement.

The Originating Summons is therefore dismissed with costs to the defendants, to be agreed or taxed.

R. E. Alexander,
Judge (Ag.)