

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2005 HCV 2193

BETWEEN	UNITED GENERAL INSURANCE COMPANY LIMITED	CLAIMANT
AND	FRANKLYN GREEN	DEFENDANT

Mr. Manley Nicholson instructed by Nicholson Phillips for claimant.

Mr. Andrew Irving for Defendant

Heard: 18th December 2006 and 2nd November 2007

Campbell J.

(1) On the 15th January 2003, Mr. Franklyn Green completed a motor proposal form with United General Insurance Co. Ltd (UGI) who carries on the business of providing motor vehicle insurance coverage. The proposal concerned a Toyota Hiace motor vehicle registered PB1142. It was represented as a commercial vehicle to be used for public passenger transport and private use. It was proposed that the vehicle would be driven by the insured Franklyn Green and “any approved driver”. The coverage would be from 9:20am, on the date of signing for a period of twelve months and any subsequent extension or renewal.

(2) The defendant alleges that in February 2005 he attended Spectrum Insurance Brokers Limited, in Mandeville, with his brother Laurel Green, and advised the broker that his brother would from time to time drive the said vehicle for his personal use. A motor policy renewal schedule - public passenger, for a period from 25th February 2005 to 24th February 2006 was agreed between the parties.

(3) The following day, the 26th February 2005, the insured made a claim on UGI, that the insured motor vehicle was involved in an accident whilst being driven by Laurel Green. The

driver says he was returning from an event at the National Stadium, with nine (9) students, and lists the purpose of the trip as “taking home a friend”. He states that none of his passengers, five of whom were injured, was fare-paying. The other vehicle was ‘written off’. He further states that his general driver’s licence had been issued on the 23rd September 2004.

(4) On the 4th May 2005 UGI refused to offer indemnity to any party arising out of the loss, occasioned by the accident, contending in a letter to Mr. Franklyn Green, that the driver “acted contrary to the terms and conditions of the policy”, which provides, “Any person driving on the insured orders or with the insured’s permission, provided the person driving is not less than twenty-five years old and the holder of a valid drivers licence, appropriate for the use and classification of the vehicle being operated, for not less than three years”, would be entitled to drive.

(5) On the 24th October 2006, the claimant filed an Amended Fixed Date Claim Form seeking a declaration; “that it is under no duty to indemnify the defendant, Franklyn Green, or to satisfy any judgment obtained against the said defendant in relation to the motor vehicle accident involving motor vehicle licensed PB1142 and/or under Section 18(2)(b) of the Motor Vehicle Insurance (Third Party Risk) Act.

(6) In the Particulars of Claim, it was alleged that the proposal offered by UGI was to be the basis of the contract of insurance between the parties. It was also alleged that Franklyn Green warranted the truth of the statement made in the proposals that he had disclosed all material and relevant facts.

(7) UGI further particularized that the policy exempted its liability in a number of circumstances, inter alia,

(a) If the vehicle was being used otherwise than within the limitations of use as set out in the Certificate of Insurance.

- (b) And that in accordance with section 18 (5) of the Motor Vehicle (Third Party Risks) Act that is important because the defendant represented the vehicle would be driven by a person above the age of twenty five years. Had the claimant known that it was the intention of the defendant to allow a person who was not the holder of a driver's licence which allowed him to operate a public passenger vehicle; the claimant would not have accepted the risk at all.
- (c) That section 10 (10) of the policy provided that the truth of the statements and answers in the proposal form shall be conditions precedent to any liability of the (Claimant) to make payment under the policy.

(8) The defendant, in his Skeleton Argument, submitted;

1. The claimant has not disputed in its Particulars of Claim or affidavit that;

(a) The Defendant and his brother, Laurel Green, visited Spectrum Insurance Brokers Limited at its Mandeville Branch in February 2005 to insure a Toyota Hiace vehicle licensed PB1142 and

(b) The defendant advised the Brokers that his said brother and agent, Laurel Green, would be in charge of the vehicle and would from time to time drive the said vehicle for his personal, social, domestic or pleasure purposes.

2 The claimant's agent, Spectrum Insurance Brokers Limited, was therefore very much aware that Mr. Laurel Green would drive the said vehicle. They had a copy of his driver's licence which showed that he was thirty-three years of age and had a General Licence.

3 It is also undisputed that at the time of the accident, Mr. Laurel Green was driving the said vehicle for his personal, social, domestic or pleasure purposes. Accordingly, the defendant made full disclosures of all material facts and there were no misrepresentations.

Analysis

(9) The main issue for determination therefore is whether the contract of insurance requires the driver to be the holder of a PPV driver's licence, when the vehicle is being used for social, domestic and pleasure purposes.

(10) **The Motor Policy Renewal Schedule – Public Passenger**, provides that an **Authorised Driver(s)**, for the purposes of the policy, is Mr. Franklyn Green or any person driving on the insured order or with the insured permission provided the person driving is not less than twenty-five (25) years old and the holder of a valid driver's licence, appropriate for the use and classification of the vehicle being operated, for not less than three (3) years.

(11) In construing a contract of insurance, it must be remembered that it is no different from any other contract and accordingly the ordinary rules of interpretation is to be applied. The court strives to ascertain the intentions of the parties. See the South African High Court case of **Fedgen Insurance Ltd. v Leys 1995(3) Sa33 at 38 A-E** (per Smallberger Ja.);

The ordinary rules relating to the interpretation of contracts must be applied in construing a "policy of insurance". A court must therefore endeavour to ascertain the intention of the parties. Such intention is, in the first instance, to be gathered from the language used, which, if clear, must be given effect to. This involves giving the words used their plain, ordinary meaning unless the context indicates otherwise.

(12) Applying those cannons of construction to provisions of this policy, which is unambiguous, it is clear that the authorised driver should be a person over 25 years of age and the holder of a valid driver's licence. The next stage of the requirement concerns the licence that the authorised driver holds, which is described in two clauses. The first of which states that it should be 'appropriate for the use and classification of the vehicle'.

(13) To satisfy this description demands that the licence is suitable or appropriate for both; firstly, the use and secondly, the classification of the motor bus. It is a conjunctive requirement. The authorised driver's licence must permit him to operate the vehicle in both its capacities as a private vehicle and as a public passenger vehicle. Finally, that licence must have been held for at least three (3) years. If that is correct, whatever the use to which the vehicle is employed, the

driver must have met the statutory requirement for the operation of a public passenger vehicle of that classification for a period of not less than three years.

(14) The policy restricts the use of the vehicle as follows:-

Limitations as to use

- (a) Use as a stage carriage in connection with the insured business and for social, domestic and pleasure purposes **by the insured**. (Emphasis mine)
- (b) Use for the carriage of passengers for hire or reward and goods in connection with the insured's business as a transport operator.

The use of the vehicle is defined in the above, which separates its usage into two Categories (a) as a stage carriage specifically for the business carried on by the insured and (b) for social, domestic and pleasure purpose, which is *specifically* restricted to use by the insured.

Therefore, for the uses other than for "social, domestic and pleasure, the insured may order or give permission to *any agent or servant* to operate the vehicle in carrying on the business of transport operator, providing that the relevant statutory provisions are followed. It is impermissible on a true construction of paragraph (a), for anyone other than the insured to operate the vehicle for social purposes etc. The insured brother is therefore not permitted to drive the vehicle for social/domestic purposes.

(15) Although the reasons provided in this analysis provide sufficient basis for the grant of the declarations sought, the insured contends that the terms of the policy are to be read in conjunction with certain oral statements made. Where specific questions are asked by the insurer, it is deemed that the parties are agreed that the facts entailed in the answering of those questions are material, see **Dawson v Bonnin (1922) 2 AC 413**. The proposer contends that he indicated to the insurers that his brother, who was present, was to drive the vehicle for social purposes. However, the expressed declarations of the proposer are to the effect that,

(a) the above answers are true.

(b) all material particulars affecting the assessment of the risk have been disclosed.

To my mind, in light of the insured's failure to complete Questions 14 to 18, as required by question 13, he cannot allege that he has provided true answers to the questions at 14(1) and 14(2), contrary to his declaration.

(16) A contract of insurance demands the outmost good faith, uberrima fides. This contract is substantially based on facts which are in the exclusive knowledge of the insured. Full disclosure is therefore necessary. Full disclosure of all material facts is therefore essential since it has an influence on the insurer in fixing the premium or determining whether or not to take the risk. **Berger v Pollock (1973) 2 Lloyds Rep. 442**. See also **Greenhill v Federal Insurance (1927) 1 K.B 65**.

(17) Having so found, that would be sufficient to order the declarations sought by UGI. However, I was reluctant to grant the orders sought in light of what appeared at first blush to be questions of facts raised on the defendant's case, which would not be suitable for determination on affidavits. However, the defendant's argument proceeds on the erroneous premises that the Spectrum Insurance Brokers is the agent of the claimant.

Paragraph 2 of the defendant's skeleton argument provides:

"The claimant's agent, Spectrum Insurance Brokers Ltd. was therefore very much aware that Mr. Laurel Green would drive the said vehicle. They had a copy of the driver's licence which showed that he was thirty-three years of age and had a General licence."

(18) Spectrum Insurance Brokers Ltd. is not the claimant's agent as alleged, but the agent of the insured. The effect of this is that the representations made to them were instructions to be conveyed to the insurer on behalf of Mr. Franklyn Green.

(19) This is demonstrated in the unreported decision of the Court of Appeal, in **United General Insurance Company Ltd. v Sebert Hutchinson**, where the Court approved Parnell, J's ruling in **Chez Franchot Ltd. v Halifax Insurance Company Ltd. et al** [1978] 15 JLR 282.

Smith, JA at page13 said:

“A broker who assisted the proposed in filling up the proposal term for the purposes of submission to an insurer was the agent of the proposer and of no other person.”

and at page 30, Harris, J.A. (Ag.)

“It is settled law that consequent on the completion of proposal for insurance coverage by a broker, the broker becomes the agent of the insured.”

I reject the defendant's contention that Spectrum is the agent of the insurers.

(20) The declaration sought in the Amended Fixed Date Claim 17th October 2006 is granted. Cost to the claimant to be agreed or taxed.