



4. An order that the cost of and incidental to this Fixed Date Claim be paid by the defendant to the claimant.

**[2]** The claimant in his affidavit alleged that on the 17 July 2007 he entered into a contract of insurance with the defendant through NPG Insurance Brokers Limited. He was advised by the broker that the premium was \$103,520.00 and paid \$50,000. He later paid the balance as follows:

October 12, 2007	- \$10,000.00
November 9, 2007	- \$8000.00
December 28, 2007	- \$10000.00
February 13, 2008	- \$20000.00
March 3, 2008	- \$9000.00.

**[3]** On April 2, 2008 he was advised that the premium he was quoted was incorrect and the correct amount was \$140,455. He then paid to the broker \$20000.00 on April 2 and the balance of \$18,736.85 two days later.

**[4]** On April 6, 2008 his motor car was stolen and he made a report to the broker and submitted his claim for his loss. About a month later he contacted the defendant's office in Ocho Rios and was told that they were waiting to hear from their head office in Kingston. Shortly thereafter he received a cancellation notice from the post office that the policy would be cancelled for non-payment of premium effective March 16, 2008. They have refused to indemnify him for the loss incurred.

**[5]** The defendant denied liability and maintained that the insurance policy had been cancelled before the motor vehicle was stolen and was never reinstated.

**[6]** The fulcrum of the claimant's case was that NPG Insurance Brokers Limited was the agent of the defendant and had quoted an incorrect premium thereby causing the policy to be cancelled. As a result of this misrepresentation he suffered a loss when his motor car was stolen. It was his contention that he was in possession of a valid cover note and was unaware that there were any premiums outstanding

or that the policy was cancelled. He was of the view that he was not given sufficient notice which would have allowed him to access the appeal process or a chance to regularize the situation.

**[7]** The issues in this case were:

1. Whether NPG Insurance Brokers Limited was the defendant's servant or agent
2. Whether the defendant was entitled to cancel the policy of insurance
3. Whether the payment of the outstanding premium to a broker reinstates a cancelled policy.

**[8]** A contract of insurance is one between an insurer and an assured whereby the insurer undertakes to provide against a risk apprehended by the assured. It is construed as a contract of indemnity. The premium is the consideration for which the insurer undertakes his liabilities.

Section 2(1) of the Insurance Act defines broker as "*any person who-*

- (a) In any manner solicits, negotiates or procures insurance or the renewal or continuance thereof on behalf of insurers or on behalf of agents; or*
- (b) Arranges insurance business with such insurers or agents on behalf of prospective policy holders;*

**[9]** It is settled law "that, in all matters relating to the placing of the insurance, the insurance broker is the agent of the insured and the insured only. I do not think that this proposition of law has ever been in doubt amongst lawyers. I hope it is not in doubt amongst insurance brokers or insurers." (per Megaw J., in *Anglo-African Merchants, Ltd v Bayley* (8) [1969] 2W.L.R. 694.

**[10]** However Section 82 of the said Act provides:-

1. An Agent, a broker or sales agent representative shall for the purpose of receiving any premium for a contract of insurance be deemed to be the Insurers agent and notwithstanding any conditions or stipulation to the contrary the registered Insurer's shall be deemed to have received any premium by the agent, broker or sales representative.

2. An Insurer on whose behalf a broker, agent or sales representative has received premiums or part thereof shall accept liability arising under the policy, notwithstanding that the insurer claimed not to have received the premium.

[11] In this instance case the claimant was referring to a contract of insurance that commenced on the 19<sup>th</sup> July, 2007 to end on July 18, 2008. Documentary evidence exhibited showed that the defendant made a proposal to the broker for a private motor car comprehensive policy with regards to a 2002 Mazda Premacy 4634 FB. The premium quoted was \$84,087.50 and G.C.T. \$13,874.44. He paid to the broker \$50,000.00 with an outstanding balance of \$53,520.00 and was issued with a cover note.

[12] On the 31<sup>st</sup> day of August, 2007 he cancelled this policy and made a second proposal to the broker for PPV (contract carriage) Comprehensive insurance with the said motor car and was then issued a cover note. As a result the new premium to be paid inclusive of GCT was stated to be \$140,196.10 for the policy period 31<sup>st</sup> August, 2007 ending 30<sup>th</sup> August, 2008. This was the policy that the insurer sought to cancel by letter dated 6<sup>th</sup> March, 2008. This letter reads:

*Dear Insured,*

*Re: Policy Number JUT0001529*

*Under the terms and conditions of the caption policy, we hereby give you 10 days Notice of Cancellation effective March 16, 2008 due to the following reason marked below:-*

*Cancellation of cover due to outstanding premium of \$140,455.00.*

*Consequently, you are required to return to the Company or your broker/agent, any expired Certificate of Insurance or Cover Note in your possession before the end of the expiry date of said notice period, failing which we will be forced to solicit the help of the relevant authorities to recover same. Additionally, we are*

*obliged to inform any mortgagee, Lien Holder or other interested parties under the policy of this action.*

*Finally, if you wish to appeal the decision or have the matter regularized before the date of implementation kindly contact your broker or the undersigned.*

*Yours truly*

*A Cameron*

*Credit Department*

*c.c. Broker-NPG INSURANCE BROKERS LTD.*

*Mortgage Company-RBTT BANK JAMAICA LIMITED*

**[13]** The Insurance Regulations, 2001 allows the insured and the insurer to terminate the contract of insurance.

**[14]** Section 130 of the said Regulations reads:

*The insured may terminate the contract at any time by giving written notice of termination to the insurer by registered post to its principal office, or by delivery thereof to an authorised agent of the insurer, and the insurer shall upon surrender of this policy refund the amount of premium paid in excess of the short rate premium calculated to the date of receipt of such notice according to the table in use by the insurer at the time of termination.*

*The documentary evidence confirmed that the claimant had in fact terminated the contract entered into with the defendant on the 19<sup>th</sup> July, 2007 and therefore was not entitled to be indemnified for the loss of his motorcar that was reported stolen under that policy. However the claimant in his affidavit made no mention that he had cancelled this policy or that he had submitted a second proposal to insure the same motor car as a public passenger vehicle. As a result of this he was charged a higher*

*premium and not \$103,520 as set out in his affidavit. His new premium was \$140,196.10 a difference of \$36,676.10. Thus, the payments he made after August 31, 2007 should be credited to the contract that commenced on that day. The defendant on the other hand was entitled to be paid premium for the period 19<sup>th</sup> July 2017 to 31<sup>ST</sup> August, 2007 and also on the new contract.*

**[15]** The defendant cancelled the policy of insurance dated 31<sup>st</sup> August, 2007 pursuant to Section 131 of the said Regulations. It reads:

*(1).- The insurer may terminate the contract at any time by giving written notice of termination to the insured and by refunding concurrently with the giving of notice the amount of premium paid in excess of the pro rata premium for the expired time.*

*(2) The notice of termination may be delivered to the insured, or it may be sent by registered post to the latest address of the insured on the records of the insurer.*

*(3) Where the notice of termination is-*

*(a) delivered to the insured, 5 day's notice of termination shall be given;*

*(b) Posted to the insured, 10 day's notice of termination shall be given, beginning on the day following the date of mailing of the notice.*

**[16]** This section allows either party to terminate without the other party having done anything wrong. However, where the insurer terminates the contract must refund to the insured the excess premium calculated on a pro rata basis concurrently with the notice. The notice and the refund should be done at the same time.

**[17]** In this case the defendant did not remit any excess premium along with the cancellation letter as they had not received any payment from NPG or the claimant. It was alleged that the claimant owed the defendant for the sum of \$9,906.20 plus GCT for the period Jul19, 2007 – August 31, 2007 and had received no premium for that period. The claimant on the other hand exhibited a receipt from NPG in the sum of \$50,000.00 for that period. Having cancelled that

policy he was due a refund of approximately \$39,000.00 after deducting the premium. Between October 12, 2007 and March 3, 2008 paid the broker a further \$57,000.00 towards his second policy and therefore had an outstanding balance on the 6<sup>th</sup> March, 2008 of approximately \$44,000.00.

- [18]** It was the defendant's contention that the defendant had not received any premiums from the claimant and/or NPG in respect of this risk until sometime between March 12 and 17, 2008. It was then that NPG remitted funds in the amount of \$85,622.31 towards the premium in an attempt to remedy the claimant's indebtedness. This was insufficient to settle the total premium as a further sum of \$54,573.79 was due and the policy was cancelled for non-payment of premium with the effective date being March 16, 2008.
- [19]** The claimant in his affidavit stated that the NPG customer service agent on or about April 2, 2008 advised him that the premium quoted in July 2007 was incorrect and the correct premium was \$140,455.00. I found this statement contrary to the documentary evidence before the court as the initial policy commenced in July 19, 2007 for a private comprehensive motor car and the agreed premium was \$97,961.94. It was on August 31, 2007 when he made the second proposal as a JUTA member and a special rate that was applied that that premium was quoted. I therefore reject the claimant's assertion that NPG had given him an incorrect quotation.
- [20]** The claimant also asserted that he had received the notice of termination after the 10 days had passed and he immediately went to the broker who assured him everything was ok as he had already settled his account and had been issued with a cover note for the period April 4, 2008 to May 4, 2008. At all times the claimant paid the premiums to the broker and was issued with cover notes. Each cover note was for a period of 30 days and there was no evidence that a policy was ever delivered to him. By accepting premium payments on behalf of the defendant NPG Insurance Brokers were their agent and not the claimant.

- [21] However, an insurance company has been held not bound by the acceptance of a premium by its agent after the time for payment of the premium had passed. **(Bowstead and Reynolds on Agency 17 Ed. at 8-069 page 341)**. Therefore the payments made to the broker in April 2008 were not valid unless the policy was legally binding.
- [22] The defendant on the other hand contented that the payments remitted by NPG were made after the letter of cancellation was insufficient to settle his indebtedness and the policy was therefore cancelled. Additionally, at no time did the claimant upon receiving the cancellation notice seek to invoke the appeal process. However the defendant cannot ignore Section 80 (1) of the Insurance Act as they are deemed to have received the premium notwithstanding NPG's failure to remit the sum on a timely basis.
- [23] Counsel for the defendant also submitted that the policy of insurance was cancelled pursuant to condition 6 that state that the defendant may cancel the policy.....in the event of.....non-payment of premiums, ten (10) day's notice of cancellation will be sent to the insured by registered letter to the insured at his last address.
- [24] There can be no dispute that the defendant had the right to terminate the contract of insurance by sending the notice of cancellation to the insured last address by giving 10 days notice. However the company must comply with the requirement of Section 131 of the Regulation in particular *by refunding concurrently with the giving of notice the amount premium paid in excess of the pro rata premium for the expired time.*
- [25] The defendant claimed that up to the 6<sup>th</sup> March, 2008 the claimant had failed to pay the premiums and NPG only received a part thereof after the letter was posted to the claimant and copied to the latter. The claimant on the other hand exhibited his receipts as proof that he had paid NPG approximately \$97,000.00 towards this policy which they did not remit until March 12. He had an outstanding balance of \$44,000.00. NPG was receiving insurance premium on

behalf of the defendant and therefore it was incorrect to say that the claimant had not paid the premium to the broker. He was paying the premium by installment.

**[26]** It was the duty of the agent to act with due diligence in collecting the amounts payable to his principal, and to pay over to the principal such sums as he may have received in course of his employment. In this case the defendant did not make any enquiry from the broker whether they had collected any premium on their behalf from the claimant. It was the broker's negligence that caused the defendant to conclude that the claimant had not paid the agreed premium.

**[27]** I am satisfied from the evidence adduced by the claimant that the sum of approximately \$97,000.00 was paid to NPG towards the policy commencing the 31<sup>st</sup> August, 2007 and the defendant's assertion that the claimant was indebted to them for the whole premium was false. NPG was the defendant's agent in receiving the payments and therefore the defendant is estopped from denying the agent's authority to collect the payments. The defendant in my view was in breach of section 181 of the Regulations by not making a refund as stipulated concurrently with the notice. The burden was on the defendant to show that at the date of the notice the claimant was not entitled to a refund and have failed so to do.

**[28]** It is also my view that the defendant cannot rely on the letter dated March 6, 2008 terminating the policy. The insurer was in breach of the Regulations which imposed a mandatory duty on them and therefore cannot rely on the cancellation letter. *"A man cannot be permitted to take advantage of his own wrong"*. He cannot rely on his own breach to avoid performing his contractual obligation (Barrow v Attorney General [1991] 50 WIR 93).

**[29]** On the other hand the claimant was the innocent party and had not repudiated the contract. Instead, he paid over the outstanding balance to the broker who confirmed to him that the policy was in effect. He refused to accept the defendant's breach as a discharge and the contract continued in existence. As a

result when his motor car was stolen he entitled to be indemnified in accordance with terms of the policy of insurance.