[JOSEPHIDES, P.D.C.]

KYRIACOS IACOVOU

Plaintiff

and

THE UNITED BRITISH INSURANCE CO. LTD.

Defendants.

(District Court of Nicosia—Action No. 3677/57)

1958
Dec. 31

KYRIACOS IACOVOU
v.
THE UNITED BRITISH INSURANCE CO. LTD.

Insurance—Policy—Proposal Form—Basis of the contract—Proposal form—Filled in by insurers' agent on information by insured—The former becomes the agent of the latter—How far the Company may rely on misstatements in the proposal—Proposal Form printed in English—Proposer not conversant with English language—Should be deemed "illiterate"—Implied request that proposal form be read over to him—Failure by the insurers' agent to read over—Insurers precluded from relying on misstatements—Non-disclosure of material facts—Avoidance of policy by insurers.

The plaintiff claimed, under a policy of insurance, to be indemnified in respect of damage to his car. The defendant Company repudiated liability on the grounds: (a) that the written proposal upon which the policy was issued contained untrue and incorrect statements, and/or (b) that the plaintiff was guilty of non-disclosure of material facts. The Company counterclaimed accordingly. It was common ground that the declaration in the proposal form formed the basis of the contract. The alleged misstatements were to the effect that the insured (plaintiff) had never been previously insured in respect of his motor-vehicle, that his policy had never been cancelled and that he had never had any previous accident during the preceding three years. The proposal form was printed in English, a language with which the proposer - plaintiff was not conversant. It was filled in by the agent of the insurers on information given by the plaintiff with the exception of certain answers, the ones which constituted the alleged misstatements relied on by the defendant Company. On the other hand, the learned President found as a fact that the proposer - plaintiff failed to disclose material facts *i.e.* that he had been previously insured with another Company, that he had an accident or loss to his car and that, thereupon, that Company cancelled his previous insurance policy. The President found, also, as a fact that the insurers' agent did not read over to the plaintiff - proposer the proposal form as completed.

Held: (1) There is ample authority for the proposition that where

an applicant gives an agent the necessary information and at the agent's request signs the proposal form in blank and leaves it to the agent to complete it, the agent is exceeding his authority as an agent of the company, and if he fills in the proposal form in this irregular way he will be deemed to be acting as the agent of the applicant, so as to render the applicant responsible for the proposal as completed; but if the applicant on reading over the completed form afterwards finds an error in it and tells the agent, it is the agent's duty to transmit the correction to the company and the company will be treated as having constructive knowledge of the true facts: See MacGillivray, On Insurance Law, 4th Edition, paragraph 932; and the very instructive judgment of Scrutton, L.J. in *Newsholme Brothers* v. *Road Transport and General Insurance Co.* (1929) 2 K.B. 356. On this authority, if the proposal form was printed and filled in in a language with which the plaintiff was conversant I would have no hesitation in finding for the defendants on the issue of misstatements;

(2) But my mind is exercised by the statement of a proposition in MacGillivray (*post*) with regard to blind and illiterate proposers. This is contained in paragraph 930, which reads as follows :—

> "930. *Proposer blind or illiterate :* If a proposer is blind or illiterate to the knowledge of the agent of the insurers who fills in the proposal form from information given orally to him by the proposer there is an implied request by the proposer that the agent will read it over to him and if the agent does not do so or reads it incorrectly the insurers cannot rely on any misstatement contained therein; but if the agent is unaware of the proposer's inability to read and the proposer does not expressly request him to read it over to him the proposer having signed the proposal is bound by his warranty that the statements made are true, and if untrue the insurers can repudiate liability.
>
> Where an applicant was to the agent's knowledge illiterate and the agent inserted in the proposal form an answer which was not justified by the statements made to him by the proposer, and the proposer put his mark to the declaration without having the answer or the terms of the declaration read to him, the Industrial Assurance Commissioner for Northern Ireland held that the false statement so made could not be relied on by the insurers as a breach of the warranty in the declaration that the answers to the questions in the proposal form were true". (This proposition is based on the authorities quoted in footnotes (u) and (a) to paragraph 930).

It will be seen from the above extract that blind and illiterate people in the United Kingdom are placed on a different footing from literate people, that is, if a proposer is blind or illiterate to the knowledge of the agent of the insurers who fills in the proposal form from information given orally to him by the proposer there is an implied request by the proposer that the agent will read it over to him and if the agent does not do so or reads it incorrectly the insurers cannot rely on any misstatements contained therein. Now, if a proposer signs

a proposal form written in a language which he does not know, can it be said that he should be considered "illiterate", and that the propostion enunciated above is applicable? Having regard to the serious consequences which misstatements in a proposal form entail, I am inclined to think that a proposer in Cyprus who does not know the language in which the proposal form is written should be considered an illiterate person, and that in those circumstances there is an implied request by the proposer that the agent will read it over to him and if the agent does not do so or reads it incorrectly the insurers cannot rely on any misstatement.

(3) In the present case I am not satisfied from the evidence of P. (the insurers' agent) that he read over to the plaintiff the proposal form, and if I had to decide this case on the question of misstatements in the proposal form alone, relying on the above proposition, I would decide it against the defendant insurance company. But the repudiation of the company's liability is also based on the ground of non-disclosure of material information by the plaintiff.

(4) Where the insurers seek to rely upon non-disclosure as a ground for repudiating the policy they must show—

(i) that an alleged circumstance did exist at the time when the negotiations between the insured and the insurers had not been completed;

(ii) that the insured knew or should have known of the existence of that circumstance;

(iii) that the circumstance in question was material; and

(iv) that the circumstance was not disclosed to the insurers.

Non-disclosure will entitle the insurers to avoid a policy when the above four conditions are present, even if such non-disclosure consists in fact in a representation, false because it knowingly suppresses something which should be disclosed or because, by suppressing something, it suggests that something is true which is in fact false.

On the evidence before me I find—

(a) that the plaintiff had been previously insured with another company; that he had in October, 1956, an accident or loss to his car and that his previous insurance was thereupon cancelled by the insurance company;

(b) that the plaintiff knew of the existence of all these circumstances;

(c) that the aforesaid circumstances were material; and

(d) that the said circumstances were not disclosed to the insurers.

For all these reasons the defendant company is entitled to avoid the policy.

Action dismissed and judgment entered for the defendant Company on the Counterclaim. Plaintiff to pay to the Company one-half of the costs.

Cases referred to :

Newsholme Brothers v. *Road Transport and General Insurance Co.* (1929) 2 K.B. 356.

Cfr: Principles stated in *MacGillivray*, On Insurance Law, 4th Edit. paras. 930 and 932.

G. Constantinides for the plaintiff.

Mich. Triantaphyllides for the defendant.

The facts sufficiently appear in the judgment of the Court which was delivered by :

JOSEPHIDES, P.D.C. : The plaintiff is an employee in the Water Supply Department, and the defendant Company is an insurance company represented in Cyprus by Messrs. D. Severis & Sons, Ltd. By a comprehensive policy of insurance, dated the 1st April, 1957, the defendant company insured the plaintiff's car, a Morris saloon, 1949 model, Registration No. 9127, for the sum of £300 for a period of one year. The said car was on the 26th August, 1957, destroyed by fire at Kaliana while it was in the plaintiff's garage. The plaintiff claimed to be indemnified in respect of the damage to his car amounting to £300, but the defendant company repudiated liability on the ground that the written proposal upon which the policy was issued contained untrue and incorrect statements and failed to disclose the true facts, and that the plaintiff was guilty of non-disclosure of material facts.

The proposal form contained the following clause :

"I/We warrant that the above statements and particulars are true, and I/we hereby agree that this declaration shall be held to be promissory and shall form the basis of the Contract between me/us and the above-named Company, and I/we undertake that the car or cars to be insured shall not be driven by any person who to my/our knowledge has been refused any motor vehicle insurance or continuance thereof, and I/we hereby apply for and agree to accept a Policy as designated above subject to the terms, exceptions and conditions prescribed by the Company therein".

It is common ground that the plaintiff went to the office of the agents of the defendant company in Nicosia on

the 1st April, 1957, and that he asked the clerk in-charge of the insurance section of that firm, *i.e.* Mr. Aleccos Poulcherios, to have his car insured. In fact Messrs. D. Severis & Sons, Ltd., are the agents in Cyprus for two English insurance companies: the defendant Company, *i.e.* The United British Insurance Company, Ltd., and the Motor Union Insurance Co. Ltd. The plaintiff was not aware of this fact and he simply asked for his car to be insured against accidental collision, fire etc. Poulcherios produced a proposal form of the *Motor Union Insurance Company*, which was eventually signed by the plaintiff in Greek on the same day, *i.e.* on the 1st April, 1957. That form and the questions contained therein are printed in English and the proposer is required to answer each of the 18 questions, in addition to supplying his full name, address, business or profession, age and full description of car. The proposal form has been produced in evidence and is Exhibit 9 in this case. The words "*Motor Union*" at the top have been crossed out.

Poulcherios stated in evidence that the two companies, *i.e.* the "Motor Union" and the defendant company, are associated companies, that they have common management, and that their proposal forms are identical. He said that he was short of proposal forms of the defendant company and he made use of the proposal form of the Motor Union. Be that as it may, the fact remains that the plaintiff signed that form and eventually an insurance policy was issued by the defendant company. In these circumstances I do not think that anything material turns on the use of a form of another company. I shall refer later to the circumstances under which the proposal form (Exhibit 9) was signed.

Some two months after the 1st April, 1957, the plaintiff submitted a claim to the company for damage to the right front mudguard of his car and the company indemnified him by having the damage repaired at a cost of £60.

The premium paid by the plaintiff was £16.921 mils as shown in the following receipts which are exhibits in this case:

Receipt dated	2nd April, 1957:	£8.000 mils—(Exh. 2).
"	"	6th May, 1957:	£4.000 mils—(Exh. 3).
"	"	1st June, 1957:	£2.921 mils—(Exh. 4).
"	"	8th June, 1957:	£2.000 mils—(Exh. 5).

When the plaintiff's car was burnt on the 26th August, 1957, the defendants' agents were informed on the same day, and the plaintiff visited their office in Nicosia some eight days later when he asked to be indemnified, but Poulcherios informed him that his employers were not prepared to indemnify the plaintiff The plaintiff then instructed his advocate who on the 13th September, 1957, wrote to the agents of the defendant company asking for the necessary form for submitting a claim for compensation The defendants' agents by letter dated 21st September, 1957, supplied the plaintiff's advocate with the necessary form which was filled in and signed by the plaintiff and submitted to the defendants' agents under cover of a letter of plaintiff's advocate dated 3rd October, 1957. On the 14th October, 1957, the defendants' agents replied repudiating liability on the ground that the plaintiff had replied incorrectly and untruthfully to questions No 8, 10, and 11 in the proposal form, and that as the proposal formed the basis of the insured's (plaintiff's) policy and as untrue particulars had been given by him, the policy was null and void. The plaintiff's advocate replied on the 28th October, 1957, denying the defendants' allegations, and eventually these proceedings were instituted on the 5th November, 1957

It was admitted by the plaintiff in evidence that, prior to the insuring of his car with the defendant company, he had insured the same car in August, 1956, with an insurance company represented in Cyprus by Messrs. Cleanthis Christofides Ltd, that he submitted a claim to that company for damages to his car (the damage being that unknown persons had poured "carborundum" in the engine), and that he was indemnified in the sum of £79 by the said insurance company. The plaintiff further admitted that after he was indemnified by that company he was notified by them on the 11th October, 1956, that his insurance policy had been cancelled, and that he could submit a fresh proposal for insurance which would be considered by that company. But in fact at no time did the plaintiff ask the insurance company represented by Cleanthis Christofides Ltd, to have his car insured again; and, eventually, he made a proposal to the defendant insurance company on the 1st April, 1957, for the insurance of his car. The

plaintiff further admitted that he did not disclose to the defendant company the fact that he was previously insured with another company, that he had met with an accident, that he had been indemnified and that his insurance policy had been cancelled by that company.

The plaintiff, who is a Greek Cypriot and whose mother tongue is Greek, does not know English, and this fact was within the knowledge of the clerk of the defendants' agents in Cyprus, Poulcherios, who procured the insurance under consideration. This fact is of some importance considering that the proposal form which was signed by the plaintiff was printed in English and that the answers in handwriting on that form are in English. There is a sharp conflict between the version of the plaintiff and that of Poulcherios as to the circumstances under which the proposal form was signed.

The plaintiff's version is that he went to the office of the defendant's agents in Nicosia where he saw Poulcherios, that he informed him that he wanted his car insured, that they agreed on the sum of £300, and that Poulcherios stated that the premium would be £16 odd, and informed him of the method of payment. Then the plaintiff contends that he paid £8 against the insurance premium and signed the proposal form, Exhibit 9, in blank. After the plaintiff signed the form Poulcherios told him to call for the policy some three days later, and the plaintiff thereupon left the office of the defendants' agents.

Poulcherios, on the other hand, stated that he filled in his own handwriting the answers to the questions in the proposal form, in the presence of the plaintiff; that he translated the English questions in Greek to the plaintiff and wrote down his (plaintiff's) replies in English; that he made reasonably certain that the plaintiff understood the questions; that he then filled in the date and said to the plaintiff: "This proposal is important because it forms part of the contract"; that he then repeated the questions to the plaintiff and checked his answers; and that it was thereupon that the plaintiff signed the proposal form. Poulcherios further stated that he came to know of the plaintiff's previous insurance from the Police at Lefka on

the day following the burning of plaintiff's car; that he did not know on the 1st April, 1957, of the plaintiff's previous insurance nor of its cancellation; and that this was not disclosed to him by the plaintiff. He further contended that had he been aware of this fact he would not have accepted the risk of this insurance, and that up to the time of the fire he did not come to know or suspect of the previous insurance and its cancellation.

I must confess that, having watched the plaintiff and Poulcherios in the witness-box, I find myself in some difficulty as to whose version to accept as the true one. For the purpose of testing the reliability of these two witnesses I have examined very carefully the proposal form, Exhibit 9. From a close scrutiny of this form it appears that it was filled in in three different colours or shades of ink, that is to say:

(A) The following figures and words were filled in with a blue ball-point pen:—

(1) The figure £300 under the heading "proposer's estimate of present value of car";

(2) The answer "No" to question 3 (b);

(3) The answer "(a)" to question 12;

(4) The answer "myself" (?) to question 13;

(5) The figure "£ 10" in answer to question 15;

(6) The plaintiff's signature in Greek "Kyriacos Iacovou";

(B) The following particulars were filled in in blue-black ink:—

(1) The proposer's name, address, business and age;

(2) The particulars of the make, type, horse power, etc. of the motor car, except the figure "£300";

(3) The date of the declaration "1st April, 1957";

(4) The date as from which the policy would commence "1/4/57".

(C) The following particulars appear to have been filled in in a darker shade of blue-black ink :—

(1) The answers to questions 1, 2, 4, possibly 5, 6, 7, 8, 9, 10 (a), (b) and (c).

Moreover, it appears that no answers have been recorded to question 3 (a) "Date of purchase of Car by you", and question 3 (c) "Price paid".

Having considered the evidence of these two witnesses carefully what I find took place on that day is the following: Poulcherios inserted the figure "£300" and the answers to questions 3 (b), 12, 13 and 15 only, and he then asked the plaintiff to sign the form who did so. In the course of the conversation which the plaintiff had with Poulcherios, the latter put certain questions to him and obtained information regarding his (plaintiff's) name, address, occupation, age, description of car and length of driving experience. But I am not satisfied that Poulcherios put to the plaintiff directly questions 8, 10 and 11, that is, whether he had been insured in respect of a motor vehicle, whether his policy had been cancelled, and whether he had had any previous accidents during the preceding three years.

Having made that finding I now have to consider what are its implications in law. There is ample authority for the proposition that where an applicant gives an agent the necessary information and at the agent's request signs the proposal form in blank and leaves it to the agent to complete it, the agent is exceeding his authority as an agent of the company, and if he fills in the proposal form in this irregular way he will be deemed to be acting as the agent of the applicant, so as to render the applicant responsible for the proposal as completed; but if the applicant on reading over the completed form afterwards finds an error in it and tells the agent, it is the agent's duty to transmit the correction to the company and the company will be treated as having constructive knowledge of the true facts: See MacGillivray on Insurance Law, 4th Edition, paragraph 932; and the very instructive judgment of Scrutton, L.J. in *Newsholme Brothers v. Road Transport and General Insurance Co.* (1929) 2 K.B. 356. On this authority, if the proposal form was printed and filled in in a language with which the plaintiff was conversant

I would have no hesitation in finding for the defendants on the issue of misstatements; but my mind is exercised by the statement of a proposition in MacGillivray with regard to blind and illiterate proposers. This is contained in paragraph 930, which reads as follows:—

"930. *Proposer blind or illiterate.* If a proposer is blind or illiterate to the knowledge of the agent of the insurers who fills in the proposal form from information given orally to him by the proposer there is an implied request by the proposer that the agent will read it over to him and if the agent does not do so or reads it incorrectly the insurers cannot rely on any misstatement contained therein: but if the agent is unaware of the proposer's inability to read and the proposer does not expressly request him to read it over to him the proposer having signed the proposal is bound by his warranty that the statements made are true, and if untrue the insurers can repudiate liability.

Where an applicant was to the agent's knowledge illiterate and the agent inserted in the proposal form an answer which was not justified by the statements made to him by the proposer, and the proposer put his mark to the declaration without having the answer or the terms of the declaration read to him, the Industrial Assurance Commissioner for Northern Ireland held that the false statement so made could not be relied on by the insurers as a breach of the warranty in the declaration that the answers to the questions in the proposal form were true". (This proposition is based on the authorities quoted in footnotes (u) and (a) to paragraph 930).

It will be seen from the above extract that blind and illiterate people in the United Kingdom are placed on a different footing from literate people, that is, if a proposer is blind or illiterate to the knowledge of the agent of the insurers who fills in the proposal form from information given orally to him by the proposer there is an implied request by the proposer that the agent will read it over to him and if the agent does not do so or reads it incorrectly the insurers cannot rely on any misstatements contained therein. Now, if a proposer signs a proposal form written in a language which he does not know, can it be said that

he should be considered "illiterate", and that the proposition enunciated above is applicable? Having regard to the serious consequences which misstatements in a proposal form entail, I am inclined to think that a proposer in Cyprus who does not know the language in which the proposal form is written should be considered an illiterate person, and that in those circumstances there is an implied request by the proposer that the agent will read it over to him and if the agent does not do so or reads it incorrectly the insurers cannot rely on any misstatements.

In the present case I am not satisfied from the evidence of Poulcherios that he read over to the plaintiff the proposal form, and if I had to decide this case on the question of misstatements in the proposal form alone, relying on the above proposition, I would decide it against the defendant insurance company. But the repudiation of the company's liability is also based on the ground of non-disclosure of material information by the plaintiff.

Where the insurers seek to rely upon non-disclosure as a ground for repudiating the policy they must show—

(i) that an alleged circumstance did exist at the time when the negotiations between the insured and the insurers had not been completed:

(ii) that the insured knew or should have known of the existence of that circumstance;

(iii) that the circumstance in question was material; and

(iv) that the circumstance was not disclosed to the insurers.

Non-disclosure will entitle the insurers to avoid a policy when the above four conditions are present, even if such non-disclosure consists in fact in a representation, false because it knowingly suppresses something which should be disclosed or because, by suppressing something, it suggests that something is true which is in fact false.

On the evidence before me I find—

(a) that the plaintiff had been previously insured with another company; that he had in October, 1956, an accident or loss to his car and that his previous insurance was thereupon cancelled by the insurance company;

(b) that the plaintiff knew of the existence of all these circumstances;

(c) that the aforesaid circumstances were material; and

(d) that the said circumstances were not disclosed to the insurers.

For all these reasons the defendant company is entitled to avoid the policy.

There is one final point, and that is the defence of waiver or estoppel raised by the plaintiff in his reply, but there is no evidence whatsoever on which to base a case of waiver or estoppel. Plaintiff's Counsel in his final address stated that he based his allegation of waiver on the fact that the defendant company continued receiving part of the premium after the plaintiff met with an accident, some two months after the issue of the policy, and that this was sufficient to found his case on waiver. First, it is very doubtful whether the last instalment of the premium was paid after the notification to the defendant company of the first accident to the plaintiff's car; but, apart from that, there is no evidence at all to show that at the time the defendant company met the plaintiff's claim some two months after the 1st April, 1957, they knew or they should be presumed to have known of the previous insurance of plaintiff's car or the cancellation of his policy.

For all these reasons the plaintiff's claim is dismissed and judgment entered for the Defendant Company on the counterclaim.

In the circumstances of this case I adjudge the plaintiff to pay to the defendant company one-half of the costs of these proceedings.

Judgment accordingly.

Plaintiff's claim dismissed and judgment entered for the defendant company on the counterclaim with one-half of the costs of these proceedings.