ST VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO.392 OF 1996

BETWEEN:

ANDREW GIBSON

Plaintiff

and

ST VINCENT INSURANCES LIMITEDT

Defendant

Appearances:

Arthur F Williams for the Plaintiff
Samuel E Commissiong for the Defendant

2000: November 15, 28

JUDGMENT

[1] MITCHELL, J: This was a case between an insurer and its insured. It concerned a comprehensive policy of insurance, and whether the Defendant was obligated to indemnify the Plaintiff for the amount that the Plaintiff had been obliged by a judgement of the High Court to pay to a third party by way of damages for personal injuries sustained in a traffic accident while the Plaintiff was covered by a policy of comprehensive insurance issued by the Defendant.

[2] By a specially indorsed writ issued on 8 November 1996, the Plaintiff claimed that he had owned a passenger van; that it had been comprehensively insured with the Defendant company; that on 23 August 1993 while so insured it had been involved in a traffic accident; that the Plaintiff had reported the accident to the Defendant; that Delicina Michaels and Leonard Michaels (hereinafter "the Michaels"), who were passengers in the other vehicle, had received injuries as a result of the

collision; that the Michaels had brought civil proceedings against him and obtained judgement for damages and costs; that the Defendant had been notified of the amount of the judgement and costs; that the Defendant had failed to settle the claim; that the Defendant had previously paid to have the two vehicles repaired; that the Defendant had made an offer of compensation to the Michaels which they had not accepted; that the Plaintiff had had to settle the judgement debt; and, that as a result of the failure of the Defendant to honour its obligation under the policy of insurance the Plaintiff had suffered special damage of $9,800.00. The Plaintiff claimed damages and costs.

[3] By a Defence filed on 6 February 1997, the Defendant made no admissions as to the accident or as to the civil proceedings brought against the Plaintiff by the Michaels. The Defence pleaded that under his policy of insurance the Plaintiff had agreed to forward to the Defendant any claim writ summons or process received by him immediately upon receipt; further, that the insured had not been permitted by his policy to make any admission or offer without the written consent of the Defendant, which had been entitled to take over and conduct his defence; that in the claim form dealing with circumstances of the accident the Plaintiff had led the Defendant to believe that the Plaintiff had not been responsible for the accident; that when the Michaels had served the writ on the Plaintiff the Plaintiff had not informed the Defendant and the proceedings had never been brought to the Defendant's attention; that the Plaintiff, ignoring the provisions of his policy, had instructed one Emory Robertson Esq to act on his behalf in the suit; that neither the Plaintiff or his solicitor had taken any further part in the proceedings with the result that a default judgement had been entered in that suit against the defendant (the Plaintiff in this suit) on 17 November 1994 with damages to be assessed; that the case file at the Registry in suit 34/1994 indicated that a consent order in the amount of $7,800.00 damages and $1,500.00 costs had been made on the assessment of damages; that it was a breach of the policy of insurance for the Plaintiff to have agreed to pay damages and costs to the plaintiffs in that suit without the Defendant's knowledge or consent; that the Plaintiff must be deemed

to have assumed the liability for the collision; that the Defendant was entitled to refuse to honour the judgement; and that the Plaintiff was not entitled to the reliefs he sought.

[4] By his Reply filed on 3 June 1997 the Plaintiff contended that the Defendant had been aware of the civil proceedings brought against the Plaintiff by the Michaels; that the Plaintiff had been unaware of the conditions in the Policy of Insurance as they had never been pointed out to him; that the Defendant had unknown to the Plaintiff sent the Plaintiff's policy to the St Vincent Co-operative Bank; that when the vehicle had been insured the Plaintiff had been given only a receipt for his payment; that when the Plaintiff had been served with the Writ of Summons he had taken it to his solicitor; that the Plaintiff had later been informed that there was judgement against him and that he had informed the Defendant but the Defendant had refused to satisfy the judgement; and, that the Defendant had been aware that the Plaintiff's vehicle was responsible for the accident as it had repaired the vehicles involved in the accident and had offered money to the Michaels.

[5] At the trial into this matter the court heard from the Plaintiff himself and from Cecilia Michaels, the daughter of Delcina and Leonard Michaels, on his behalf. The Defendant gave no evidence on its own behalf but rested on the admissions made in the pleadings and on the evidence. The documents put in evidence included the policy of insurance, dated 19 February 1993; the claim form relating to the accident; various invoices and receipts relating to the accident; the Plaintiff's letter before action dated 11 January 1996; the Defendant's letter of reply of 15 January 1996; the Defendant's solicitor's letter of 9 January 1995 to the Plaintiff concerning Suit No. 34/1994; and the record of the pleadings and the file in Suit No. 34/1994. The facts as I find them are as follows.

[6] The Plaintiff was the owner of the mini-van H5878 at the relevant time. He applied to the Defendant company for a comprehensive policy of insurance. At the time of his application he indicated to the Defendant that his bank, the St Vincent Co-

operative Bank, had advanced him money to purchase the mini-van. The Certificate of Insurance required under the Motor Vehicles Insurance (Third Party Risks) Act, Cap. 356 of the 1991 Revised Edition of the Laws of St Vincent and the Grenadines was issued by the Defendant and handed to the Plaintiff. This was used by the Plaintiff to register and licence the vehicle. The policy M 353/93 was issued on 19 February 1993. The policy consisted of a standard printed form with a number of "endorsements" either glued onto it or typed onto the back of it. The relevant clauses of the insurance policy read as follows:

> SECTION 11 –
>
> LIABILITY TO THIRD PARTIES
>
> . . .
>
> 6. The company may at its own option
>
> i. . . .
>
> ii. Undertake the defence of proceedings in any court of law in respect of any act or alleged offence causing or relating to any event which may be the subject of indemnity under this section.
>
> . . .
>
> CONDITIONS
>
> . .
>
> 4 In the event of any occurrence which may give rise to a claim under this policy the insured shall as soon as possible give notice thereof to the company with full particulars. Every letter claim writ summons and process shall be noticed or forwarded to the company immediately on receipt. . . .
>
> 5 No admission offer promise or payment shall be made by or on behalf of the insured without the written consent of the company who shall be entitled if they so desire to take over and conduct in his name the defence or settlement of any claim . . . and shall have full discretion in the conduct of any proceedings and in the settlement of any claim and

the insured shall give all such information and assistance as the company may require.

. . .

[7] On 21 August 1993, the Plaintiff's mini van was involved in a traffic accident which damaged the two vehicles concerned in the accident and caused injuries to two persons who were in the other vehicle, Leonard and Dulcina Michaels. On 23 August, the Plaintiff made the required report to the Defendant of the accident on the Claim Form provided by the Defendant. This report included information that the Michaels had suffered personal injuries. Over the following weeks, the Defendant proceeded to settle the claims relating to the damage to the other vehicle and to the Plaintiff's vehicle. The Defendant did not manage to arrive at a settlement with the Michaels over their claim to compensation for the personal injuries. The evidence is that the Defendant and the Michaels were wide apart. The natural next step to be expected was for the Michaels to issue a writ for their damages against the Plaintiff in this case, and for the Plaintiff to take the writ to his insurance company for them to deal with it. On 26 January 1994 the Michaels issued a writ numbered Suit No 34/1994 against the Plaintiff for damages for their injuries. It is clear that the Plaintiff did not take the writ to the Defendant. He took it instead to his solicitor Emery W Robertson. Mr Robertson was authorised, according to a form of authorisation filed in some cases in proceedings in St Vincent, and filed in Suit No. 34/1994, to act for the Plaintiff in the suit and to take all necessary steps therein until its final issue. Mr Robertson entered an appearance, but took no further step. On 17 November 1994, the Michaels entered an interlocutory judgment against the Plaintiff in this case for damages to be assessed and costs to be taxed. On 7 December 1994, the Michaels issued against the Plaintiff a summons for assessment of damages. The Registrar's note on the back of the file indicates that on 19 December 1994 it was ordered by consent that the Defendant in that case, the Plaintiff in this case, pay the Michaels $7,800.00 and costs of $1,500.00. Eventually, as a result of a Judgment Summons, the Plaintiff in this case was on 22 March 1996 ordered to pay to the

Michaels $500.00 per month. I accept that he has now paid off his entire obligation to the Michaels.

[8] The earliest piece of correspondence between the parties in evidence is a letter of 9 January 1995 from the solicitors for the Defendant to the Plaintiff. That letter was written in the matter of Suit No. 34/1994. It complains that the Plaintiff had never informed the Defendant of the writ which had been served on him. That letter indicates that the Defendant had learned of the writ in Suit No. 34/1994 some 2 months after the Michaels had entered judgment against the Plaintiff. The letter goes on to advise the Plaintiff that he cannot ignore his contractual obligations to the Defendant and at the same time expect the Defendant to meet its obligation to the Plaintiff.

[9] After the Plaintiff was put under pressure to pay the Michaels personally he sought further legal advice. By a letter from the firm of Williams and Williams written on his behalf on 11 January 1996 to the Defendant, the Plaintiff complained that he had taken the writ from the Michaels to his solicitor and that judgment had been entered against him for $9,300.00; that the policy of insurance had not been given to the Plaintiff; and that he had never been told that he was not free to have a solicitor of his own choice to defend him in the action brought by the Michaels.

[10] The response to the letter from the Plaintiff's solicitor came directly from the manager of the Defendant by a letter of 15 January 1996. It reads in part:

> It is very strange that your client, after involving our company, his insurer, in every aspect of this accident decided to unilaterally defend the action.
>
> We arranged and paid for the repairs to Mr Gibson's damaged vehicle. We settled the third party's claim for damage to motor car registration No P-9441. Mr Gibson was aware of the legal goings-on and was advised at all times that it is the company's duty to settle the bodily injury claims. We

> also find it unusual that the third party's solicitor did not serve our company with the usual statutory notice.
>
> Mr Gibson is in breach of his contract with us and we do not intend to pay the judgment against him.

The result of this response was the writ brought by the Plaintiff against the Defendant in this action.

[11] The clauses set out above at paragraph [6] are fundamental terms of a policy of insurance. The insurance company wishes to protect itself against insurance fraud and collusion. It wishes to be certain that only its attorneys, who it is confident will take their instructions, represent their insured in the claim being brought by a third party against him. It is the insurance company that will pay in the end. It has confidence in its own lawyers. It insists in every contract of insurance that its own lawyers must handle the matter. It insists on being involved both at the level of the issue of liability and at the level of the issue of quantum. For these reasons an insurance company places the above clauses in every contract of insurance. They are fundamental conditions of the contract.

[12] It is clear that the Plaintiff's insurance policy contained the terms set out above at paragraph [6]. It is clear that the Plaintiff did not comply with the terms. Generally, all the consequences that arise from this failure of the Plaintiff to comply with the conditions of his insurance policy are covered by settled law, and are not in dispute and I do not propose to repeat them.

[13] The issue to be determined in this case in the final analysis is a very narrow one. It is whether the fact that the Plaintiff did not receive the policy of insurance in his hand, but that it was sent to his bank that had lent him the money to purchase the insured vehicle, relieves him of the obligations set out in the policy. The Plaintiff's position is that the Defendant had no business sending the policy of insurance to

the bank. There was no evidence on the point, but I take it as notorious that when an insured borrows money from a bank to purchase a vehicle and informs the insurer to that effect, it is expected that the bank will secure its loan or part of it with a Bill of Sale over the vehicle. The duty of the insurer in these circumstances is to endorse on the insurance policy that the bank is a loss-payee to the extent of its lending, and to send the policy to the bank, while issuing the certificate of insurance to the borrower so that he can go to the Traffic Department and obtain the necessary registration and licensing of the vehicle. That is the normal course of insurance, banking and car registration business that is so notorious that I find that it must be known to vehicle owners throughout the State. The Plaintiff informed the Defendant that his bank had lent him the money to purchase the vehicle. The Defendant duly placed an endorsement on the Plaintiff's insurance policy to the effect that the Plaintiff's bank was a co-insured, and sent the policy to the bank. The bank was the Plaintiff's bank and had a duty to assist the Plaintiff and to comply with his reasonable requests. The Plaintiff applied to the Defendant company for his insurance policy. The Defendant informed the Plaintiff that the policy was at the bank. The Plaintiff took the position that he had not given the policy to the bank so that he should not be the one to retrieve the policy from the bank. The Plaintiff attempted to give evidence to the effect that there was no Bill of Sale on his vehicle, and that the bank had no interest in his insurance policy, but as he had not pleaded that, and as that statement caught the Defendant by surprise, he was not permitted to give that testimony. The Defendant company, I infer, was reasonably entitled to believe that the Plaintiff and his bank were the only ones who could properly agree where the insurance policy should be located. It was quite proper for the Defendant to expect that it was for the Plaintiff to go to his bank and, if he was entitled to possession of the policy, to retrieve the policy from his bank. If there was a Bill of Sale, as the Defendant was reasonably entitled to believe there was from information given to it by the Plaintiff, then it would not have been proper for the Defendant to seek to retrieve the policy from the Bank and to turn it over to the Plaintiff. The Plaintiff was unreasonable in his demand that the Defendant take that action. The Plaintiff went on to give

evidence that, as a result of his not having been given the policy, he was unaware of the condition in the policy that required him to take the writ to the insurance company rather than to seek to defend the suit himself. What motivated the Plaintiff to take the writ to his own attorney, and to incur whatever costs this involved personally, when he must have been aware that the insurance company had its own attorneys and were willing to relieve him of this cost, is not in evidence before the court and I draw no conclusion about it. I am satisfied that the Plaintiff was aware of the terms in question for one or both of two reasons. First, he had actual knowledge as he admitted in cross-examination that he had had several comprehensive policies before and had read them and was aware of this standard term. Second, he had constructive knowledge for two reasons. His Certificate of Insurance, which he did receive, informed him that his policy would be issued. It was incumbent upon him to ensure that he collected his policy, and he is deemed, therefore, to be aware of all the terms and conditions of his policy. Further, an insurance policy being what it is, a policy of utmost good faith, even if he had not received his policy but had left it at the insurance company he would still be deemed to be aware of all the terms and conditions in it.

[14] In the circumstances set out above, I find that the Plaintiff was in breach of the two fundamental conditions numbered 4 and 5 of his policy of insurance issued by the Defendant and set out at paragraph [6] above. The Plaintiff in having failed to forward the writ from the Michaels to the Defendant and instead having taken it to his own attorney in breach of condition 4, the Defendant is not liable to him for the amount of damages awarded by the court in the claim brought by the Michaels in Suit No. 34/1994. In having allowed a default judgement to be entered against him and in having consented to pay the amount of the default judgement, the Plaintiff was in breach of condition 5. By depriving the Defendant of full discretion in the conduct of the proceedings and the settlement of the claim of the Michaels the Plaintiff was in further breach of condition 5. The Defendant was entitled to repudiate the contract of insurance with the Plaintiff as it did.

[15] The Plaintiff's suit is therefore dismissed. Costs to the Defendant to be taxed if not agreed.

I D MITCHELL, QC
High Court Judge