

ST. CHRISTOPHER AND NEVIS

IN THE HIGH COURT OF JUSTICE

ST. CHRISTOPHER CIRCUIT

CLAIM NO. SKBHCV2001/0151

BETWEEN:

MARY LOU STIEBLING

Claimant

and

NATIONAL CARIBBEAN INSURANCE COMPANY LIMITED

Defendant

Ms Marguerite A. Foreman for the claimant.

Ms Marcella Liburd for the defendant.

2003: December 23

2004: April 2

JUDGMENT

- [1] **BAPTISTE J:-** This is a claim in damages for a breach of a contract of insurance.
- [2] Mary Lou Stiebling effected a contract of insurance with National Caribbean Insurance Company Limited (NCIC) in respect of a property known as Unit No. 8, Horizon Villas Development, Frigate Bay, of which she is the registered proprietor. Mary Lou was the sole insured person on the policy and any loss payable was to be paid to her. On or about September 1995, during the subsistence of the insurance coverage, the property sustained damage, consequent upon a visit to St. Kitts by Hurricane Luis. Adjusters assessed the damage, and the excess payable under the contract amounted to \$9,985.00. That amount was not paid to Mary Low but was instead paid by NCIC, on 13th October 1995, to "Trafalgar Developments for Mary Lou Stiebling". Mary Lou did not receive the amount of \$9,985.00 or any amount from NCIC. Mary Lou alleges that NCIC is in breach of contract by paying the money to Trafalgar Developments.

- [3] NCIC contends that Mary Lou had no insurable interest in the property, having given up her insurable interest to a company called Property Management Company Limited (Property Management). NCIC admits the policy of insurance but states that it has never dealt with Mary Lou in respect thereof. All arrangements, including the payment of premiums, were undertaken by Trafalgar Developments Limited (Trafalgar) on behalf of Property Management. It therefore properly dealt with Trafalgar as agent of Property Management on behalf of Mary Lou. NCIC argues that payment to "Trafalgar Development for Mary Lou Stiebling" was proper payment under the contract of insurance. Mary Lou is therefore estopped from denying the authority of Trafalgar. In the premises it is not in breach of the policy of insurance.
- [4] The crucial issues are: (i) whether Mary Lou assigned her insurable interest in the property and (ii) whether there was an agency by estoppel. How is an insurable interest assigned? An insurable interest can be assigned either by operation of law, example, by the death of the insured, or voluntarily. Where there is a voluntary assignment, the insured divests himself of his interest in the subject matter and the policy ceases to be effective unless it is specifically and validly assigned as a policy. (See Halbury's Laws of England, 4th edn., volume 25, paras 645, 646) To constitute an assignment of interest, the insured must have parted with all his interest in the subject matter. So long as he retains any interest in the subject matter, the assignment of his interest is not complete, and the policy remains effective. (See Halbury's Laws of England, 4th edn., volume 25, para 647) Is a change of interest equivalent to an assignment of interest? The creation of a mortgage or charge does not operate as an assignment of interest and the policy remains effective. (See Halbury's Law of England, 4th edn., volume 25, para 648) Does a policy of insurance run with the land? A policy of insurance is a contract personal to the insured; it is not annexed to his property, and even when it insures a building, it is not, apart from statute, a contract which runs with the land. Consequently, on the assignment of the subject matter, the policy does not pass to the assignee by virtue of the assignment; it must be specifically dealt with in accordance with certain precise rules. (See Halbury's Laws of England, 4th edn., volume 25, para 649)

- [5] Having set out the law on assignment I now refer to the matters relied upon by NCIC in support of its contention that Mary Lou assigned her insurable interest to Property Management. NCIC relies on the Agreement for Sale of the property made between Trafalgar and Mary Lou. NCIC also relies on the Standard Maintenance Agreement with respect to the property, made between Property Management and Mary Lou. Page 6 of the Agreement for Sale expressly states that the sale was subject to the restrictive covenants endorsed on the vendor's title. The registered proprietor was not to insure the building save in accordance with the Maintenance Agreement. Paragraph 5 (1) of the Maintenance Agreement provides that the Management Company (Property Management) shall maintain insurance cover on the property against the risks of fire, hurricane, earthquake, flood and malicious damage.
- [6] In essence the position of NCIC is that by virtue of the restrictive covenant as well as the provision for Property Management to maintain insurance cover on the property, Mary Lou had assigned her insurable interest in the property. If NCIC is correct it means that Mary Lou has divested herself of her interest in the subject matter. I do not construe the restrictive covenant or paragraph 5 of the Maintenance Agreement as effecting an assignment of her insurable interest by Mary Lou. Mary Lou remains the registered proprietor of the property and retained her interest in the subject matter. Paragraph 5 (ii) of the Maintenance Agreement contemplates insurance cover by Mary Lou for perils other than that covered in paragraph 5 (i). Paragraph 5 (ii) states, in part, that the Unit holder shall not obtain insurance cover on her Unit save in respect of a peril not covered by the policy. Although there is a restrictive covenant, such a covenant does not operate as an assignment of interest. Further, the policy of insurance, being a contract personal to Mary Lou, is not annexed to her property and did not run with the land. There is also the evidence of Arthur Sharpe that Mary Lou did not at any time assign her interest in Unit 8 to Trafalgar or the Property Management. For all of these reasons Mary Lou did not assign her insurable interest to Property Management. Even if the subject matter of the policy were assigned, the policy would not have passed to Property Management by virtue of the assignment but had to be dealt with in accordance with the terms of the policy. In that regard paragraph 1 of the conditions to the policy states in part:

"Further, the Company shall not be bound by any passing of the interest of the Insured otherwise than by death or operation of law unless and until the Company shall by endorsement hereon declare the insurable to be continued."

- [7] I now consider the questions of agency and estoppel. Did Trafalgar act as agent of Property Management? Did NCIC deal with Trafalgar as agent of Mary Lou? If so, is Mary Lou estopped from denying the authority of Trafalgar to so act? NCIC contends that Trafalgar represented to it that it was the agent of Property Management and that it had the authority to insure Mary Lou's property and in reliance upon such representation it (NCIC) agreed to issue the policy of insurance.
- [8] "Conduct may give rise to an estoppel by representation where one person has held out another as his agent to do a certain class of acts, either by allowing him to appear as his agent when he was not, or by having a greater authority than he in fact has. In such a case, an agency by estoppel arises." An agency by estoppel arises where one person has so acted as to lead another to believe that he has authorized a third person to act on his behalf, and that other in such belief enters into transactions with the third person within the scope of such ostensible authority. In this case the first-mentioned person is estopped from denying the fact of the third person's agency under the general law of estoppel, and it is immaterial whether the ostensible agent had no authority whatever in fact, or merely acted in excess of his actual authority. (Halsbury's Laws of England, 4th edn., volume 1, para 725).
- [9] I shall review the evidence relied upon by NCIC in support of agency and estoppel. In cross-examination Mary Lou stated that she did not personally negotiate a policy of insurance with NCIC and did not personally pay any premium to NCIC. She did not personally make a claim on the insurance company, nor did she provide any estimate of damage to the insurance company.
- [10] Arthur Sharpe was called as a witness for NCIC. At all material times he was the Managing Director of Trafalgar and Property Management. Arthur Sharpe deposed that Property Management appointed Trafalgar to negotiate insurance coverage for all Units in

Horizon Villas Development, to carry out repairs to the Units and to disburse the proceeds of any such insurance towards carrying out the repairs. In November 1994 Trafalgar took out insurance coverage in the names of all Unit holders in Horizon Villas Development and paid the premiums for the insurance coverage. During the passage of Hurricane Luis, Unit No. 8 was damaged and Trafalgar filed a claim and an estimate in respect of the damage. Arthur Sharpe also stated that as Managing Director of Trafalgar he held discussions with Mary Lou about the claim, the estimate and the repairs to be done to Unit 8 as a result of the hurricane damage. On or about 13th October 1999 a cheque in the amount of \$9,985.00 representing the excess payable under the policy of insurance taken out in the name of Mary Lou was paid to "Trafalgar Development for Mary Lou Stiebling."

[11] The court also heard from Austin Julius. He was at all material times Claims Assistant of NCIC. He stated that in late November 1994, Trafalgar sent to NCIC a copy of an Agreement for Sale dated 24 February 1994 and a Standard Maintenance Agreement dated 18 November 1994 both signed by Mary Lou and Arthur Sharpe. Mr Sharpe came to NCIC and represented to it that on the basis of the said Agreement, Trafalgar was authorized by Property Management to negotiate and effect insurance coverage for the Unit owners in Horizon Villas including Unit No. 8 owned by Mary Lou. NCIC in reliance on the representation made by Mr Sharpe effected the various policies of insurance including one in respect of Unit No. 8. All Unit owners were noted on the policies as the insured but at no time did any Unit owner come into NCIC to effect any insurance policy. All policies were negotiated and effected by Trafalgar through Mr Sharpe and all premiums were paid by Trafalgar through Mr Sharpe. Unit No. 8 was one of the Units damaged during the passage of Hurricane Luis. Trafalgar, through Mr Sharpe, submitted a claim and an estimate with respect to the damage. The excess sum of \$9,985.00 was paid to Trafalgar on behalf of Mary Lou.

[12] It is clear that Trafalgar acted as agent of Property Management. Trafalgar arranged and organized the contract of insurance in respect of Mary Lou's property. At all material times NCIC dealt with Trafalgar. The premiums were paid by Trafalgar. Mary Lou did not personally pay the premiums. She did not personally make a claim on the NCIC. She did

not provide any estimate of damage to the insurance company. Trafalgar sent a copy of the Agreement for Sale and the Maintenance Agreement to NCIC. Both agreements were signed by Mary Lou. In my judgment, Trafalgar represented that it had authority to arrange and organize the contract of insurance in respect of the property of Mary Lou. NCIC relied upon and acted on that representation. In the circumstances payment of the sum of \$9985.00 to Trafalgar on behalf of Mary Lou, was a proper payment.

[13] Mary Lou led NCIC to believe that she had authorized Trafalgar to act on her behalf. Armed with that belief NCIC transacted with Trafalgar within the scope of such ostensible authority. In the circumstances an agency by estoppel was created. Mary Lou is accordingly estopped from denying the fact of the authority of Trafalgar to receive the payment. NCIC is not in breach of the policy of insurance and is not liable in damages to Mary Lou.

[14] It is ordered that the claim is dismissed with costs to be paid by Mary Lou Stiebling.

Davidson Kelvin Baptiste
High Court Judge