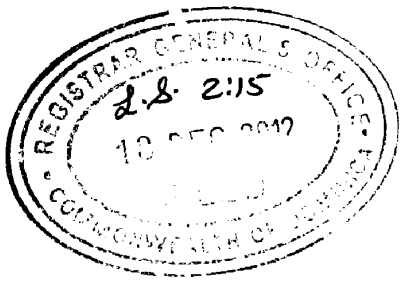

COMMONWEALTH OF DOMINICA

DOMHCV1998/0530

BETWEEN:

BARRINGTON POND **Claimant**

and

NETHERLAND ANTILLES GENERAL INSURANCE CORP. NV **Defendants**

Before: **The Hon. Justice Brian Cottle**

Appearances:

Mrs. Noelize Knight Didier for the Claimants
Mrs. Singoalla Blomvist Williams for the Defendants

[2012: May 24th]
[December 18th]

JUDGMENT

[1] **COTTLE J:** The claimant owned a truck. He insured it with the defendant company. The policy of insurance was for the period 31st October 1991 to 29th October 1992. The claimant did not pay the entire annual premium. On 13th April 1992 he agreed in writing to pay the outstanding balance of the annual premium by 31st May 1992. The agreement is quite short. I reproduce it in full.
"I, the undersigned hereby agree that I will pay the balance of EC 1, 326.00 on my policy by the 31st day of May, 1992 if not the policy will be automatically cancelled. I also agree that in the event of a claim during the time insured, the full yearly premium will be paid or deducted from my own damage settlement..."

[2] One month later he signed another agreement to pay the balance of the outstanding annual premium by 31st May 1992. It was in even more emphatic terms. It reads:
"I, ***the undersigned, and proposer for insurance on my truck hereby agree and promise to pay the balance of my premium of EC$1,326.00 to the company on or before the 31st day of May 1992. I clearly understand that, if I fail to keep my promise to pay the aforestated balance of my premium to the Company, then my insurance policy shall be deemed to be cancelled as from the date of breach of my promise and the Company shall not be liable for any loss or damage under the policy occurring thereafter. I also understand and agree that this promise shall be incorporated in and form part of my insurance policy."***

[3] The claimant did not pay the money to the defendant as agreed. The claimant says he informed one Merle Lawrence, a secretary at the defendant company that he would be unable to make the agreed payment on time and he was verbally assured that it "was alright" and that he would remain covered. The witness for the defendant, Merle Lawrence denied that such a conversation ever took place and says that as a secretary she had no authority to give such an assurance to the claimant.

[4] On 6th October 1992 the claimant suffered a total loss of his truck. Three days later he attended the offices of the defendant company. He paid the outstanding premium and was issued a receipt showing that the premium paid referred to the period 31st October 1991 to 29th October 1992. He was assisted to complete a claim form for his loss of the 6th October 1992. The defendant company has now declined to honour the policy of insurance. They rely on the agreement of May 13th, 1992.

[5] The claimant has now brought the present claim. He says that the defendant company has acted in such a way as to lead the claimant to reasonably believe that his policy remained in effect after 31st May 1992. The acts he says led him to this belief are listed here

i. The verbal assurance of Merle Lawrence
ii. The sending out of renewal notices which referred to the balance of the premium unpaid after 31sl May 1991
iii. The acceptance of a claim form and assisting the claimant to complete it
iv. Acceptance of the balance of the premium on 9th October 1992 and the issue of a receipt
v. Failure to refund the balance of the premium paid on 9th October 1992.

I will examine each in turn

Verbal assurance of Merle Lawrence

[6] Merle Lawrence vehemently denies any conversation with the claimant giving any assurances that the defendant company considered the policy to be still in force. Should the court countenance this suggestion of a variation of the terms of a written contract by word of mouth? The written undertaking by the claimant to pay the premium by 31st May 1992 was expressly incorporated into the insurance contract. Why would the parties vary such an important term and not do so in writing? On a balance of probability I prefer the evidence of Merle Lawrence that there was no oral amendment to the written contract.

The sending out of renewal notices

[7] Subsequent to 31st May 1992 the defendant company sent to the claimant notices reminding him of the expiry of the insurance policy and asking him to pay the remainder of the premium. The claimant did not heed these renewal notices. The question which arises is whether this sending out of notices amounts to behavior, which would have caused the claimant to conclude that his policy was still in force, despite his nonpayment of the premium and the fact of his written agreement that the policy would lapse after 31st May 1992, if the premium remained unpaid.

[8] The legal effect of the renewal of a non life insurance contract is to effect an entirely new contract. The renewal notice by itself cannot connote that an earlier contract already expressed to have ended, is somehow resurrected.

The acceptance of the claim form and the assistance to the claimant to complete it.

[9] Counsel for the claimant argues that the fact that Merle Lawrence helped the claimant complete the claim form, is evidence that the defendant company considered the policy to be still in force. This argument ignores the reality that it is common practice for insurance companies in this part of the world to assist persons in completing the claim forms. The assistance cannot be considered any indication by the defendant company that they accepted that the policy remained in force or, that they concede any liability to indemnify the claimant for losses covered under the policy.

The acceptance of the premium and the issue of a receipt.

[10] The claimant says that he notified the defendant company of the accident and loss of his vehicle on 6th October 1992, the date of the accident. The defendant company denies this. They say that when the claimant proffered payment on 9th October 1992 they were ignorant of the accident. It is only after the overdue premium was paid and accepted that the claimant told them of the accident and made a claim. This finding of fact is crucial to the outcome of this matter in my view. Is it more likely that the claimant would suffer an accident on 6th October 1992, report it to the defendant and only attend to make a claim on 9th October 1992? I think it more likely that the claimant waited until he had the funds to pay the balance of the premium before he made a claim.

[11] In effect it was only after the occurrence of the peril that the claimant sought to regularize his insurance policy. I believe the defendant company stood ready to reinstate the claimant's policy at any time after 31st May 1992 upon payment of the premium. Absent such payment the policy stood cancelled. The legal effect has been clear since the end of the 19th century.

[12] Canning v Farquhar (1886) 16 QBD 727 sets out the general rule that an insured is not covered while the premium remains unpaid. Even if one accepts the position adopted by the claimant that he was told that he had a grace period during which he could pay his premium late this cannot mean that he can, after his loss, seek to bind the insurer by tendering payment of the premium even within an agreed grace period.

[13] I therefore conclude that at the time of the accident on 6th October 1992 there was not in force a policy of insurance protecting the claimant. His subsequent tender of payment, despite its acceptance by the defendant company, does not operate to resurrect a defunct agreement. It is for this reason that I dismiss the claim and enter judgment for the defendant.

Costs

[14] For the purpose of this claim the value is fixed at $109, 300.00 being the amount claimed. The claimant will pay the defendant company prescribed costs on this amount.

EASTERN CARIBBEAN SUPREME COURT
FIAT JUSTITIA
HIGH COURT OF JUSTICE COMMERCIAL

Brian Cottle
High Court Judge