THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

Claim No. SLUHCV 2011/0590

BETWEEN:

Peter Barnard

Claimant

and

New India Assurance Co. (Trinidad &Tobago) Ltd

Defendants

Appearances

Carol Gedeon of Counsel for the Claimant

Dexter Theodore of Counsel for the Defendant

2013: November 1st

DECISION

[1] Taylor-Alexander M: The parties in these proceedings were directed to provide full submissions on the interpretation of Clause 9 of a policy of insurance that governed their contractual relationship for the provision of vehicular insurance. The defendant relies on the clause in its defence to permanently stay the proceedings on the basis that its effect offers a complete defence to the claim which it alleges was filed in violation of the agreement to arbitrate.

[2] Mr Peter Barnard commenced this action in June 2011 against the defendant alleging that under a contract of motor insurance incepted on the 4th March 2009, the defendant agreed to indemnify the claimant against loss resulting from fire to and theft of his motor vehicle. Despite this the defendant failed to reimburse the claimant when he reported that his vehicle a land rover freelander jeep had been stolen from his garage.

[3] The defendant contends that the claim is bound to fail, the effect of clause 9 being (1) an obligation to refer a dispute between the parties first to arbitration which it is a condition precedent to any right of action against the company and (2) an inflexible obligation to refer any dispute to arbitration within a twelve month period from the date of the disclaimer of the 30th October 2008. The defendant alleges that the failure to do so renders the claim abandoned and incapable of recovery.

[4] Clause 9 of the policy of insurance reads as follows:—

"*All differences arising out of this policy shall be referred to a decision of an Arbitrator to be appointed by each of the parties within one calendar moth after having been required in writing to do so, by either of the parties, or in case the arbitrators do not agree of an umpire appointed in writing by the Arbitrators before entering upon the reference. The umpire shall sit with the Arbitrators and preside at their meetings and the making of an award shall be a condition precedent to any right of action against the company. If the company shall disclaim liability to the insured for any claim hereunder and such claim shall not within twelve calendar months from the date of the disclaimer have been referred to arbitration under the provisions herein contained , then the claim shall for all purposes be deemed to have been abandoned and shall not thereafter be recoverable hereunder*"

[5] The claimant relies on a number of contentions in response to the defendant's challenge (1) that it had never had sight of the insurance contract as it had only been issued with a Certificate of Insurance by the defendant company; (2) In any event clause 9 cannot operate to oust the jurisdiction of the court; (3) The agreement of the parties not withstanding every policy of insurance issued in St. Lucia shall be governed by the Laws of Saint Lucia and shall be subject to the jurisdiction of the courts of Saint Lucia;(4) the terms of the contract are unfair and ought to be struck down.

Ignorance of the terms of the contract and unfair contractual terms

[6] The impact of the peremptory challenge of the defendant if successful is to extinguish the claim in its entirety and as such the claimant has responded with an equally vigorous response. But the submissions of the claimant that he had not known nor had he had prior knowledge of or been forewarned of the terms under which he was contracting are difficult to countenance in the face of the claimant's own pleadings. Although the terms and conditions that the defendant relies on are a specimen of the terms under which the defendant alleges the parties contracted, that those terms were incorporated into the contract of the claimant was never denied by the claimant. In fact, it is the claimant who introduced the specimen terms to the court and incorporated it as part of its claim and he further relied on it as supporting his contention that there existed a contractual agreement between the parties. At no time prior to the filing of the defence was there an allegation of unfairness of the contractual terms. The defendant was entitled to rely on the very terms introduced by the claimant to defeat the allegations of breach and of a case to answer.

[7] The defendant has relied on the decision of Motor Union Co Ltd v Linzey (1959) 1 WIR 534 a decision on Appeal from the Supreme Court of Windward and Leeward Islands, where the interpretation and effect of an almost identical clause came on for litigation before the Appellate Court. The court reasoned that referral to arbitration was a condition precedent to the bringing of an action and the failure of the respondent to have referred it to arbitration was fatal resulting in the failure of the claim. The court also found obiter that the defendant pleading the failure to refer to arbitration, had offered it a complete defence to the claim. In the face of this convincing authority I am obligated to uphold the submission of the claimant.

[8] I must also express difficulty with the claimant's submissions when he states that despite the contractual effect of clause 9 the policy of insurance is governed by the Laws of Saint Lucia and is subject the overall jurisdiction of the courts of Saint Lucia. This to my mind was never an issue in dispute and the defendant has submitted itself to the jurisdiction of the court. The defendant has merely alleged that the jurisdiction of the court was prematurely engaged in the face of the mandatory arbitration clause. In advancing this submission I am satisfied that the claimant misunderstood the import of the Insurance Act Cap 12.08 on which he relied.

[9] I therefore grant the peremptory challenge of the defendant and dismiss the claimant brought by the claimant as having been abandoned. I further award costs at 55% of the prescribed costs regime of the CPR 2000.

V. Georgis Taylor-Alexander
High Court Master