EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL

SAINT LUCIA

SLUHCVAP2017/0034

BETWEEN:

PRUDENCE ROBINSON

Appellant

and

SAGICOR GENERAL INSURANCE INC.

Respondent

Before:

The Hon. Mde. Louise Esther Blenman	Justice of Appeal
The Hon. Mde. Gertel Thom	Justice of Appeal
The Hon. Mr. John Carrington, QC	Justice of Appeal [Ag.]

Appearances:

Mrs. Lydia Faisal for the Appellant
Mr. Mark Maragh for the Respondent

2019: April 8;
September 18.

Civil appeal – Insurance – Non-compliance with Form C of Motor Vehicles (Third Party Risks) Regulations – Effect of non-compliance –Different versions of cover note – Whether valid cover note existed at time of accident

The appellant was standing near a bus stop when a collision between a motor truck driven by Cyril Jn Baptiste and a motor vehicle occurred. As a result of the collision, the driver of the motor vehicle lost control of the vehicle and collided with the appellant causing him to be severely injured and eventually losing his right leg.

The appellant brought a claim against the driver and the owners of the motor truck, whom he claimed were insured by Barbados Fire & Commercial Insurance Company Limited, the predecessor to the respondent, Sagicor General Insurance Inc ("Sagicor"), giving notice of the claim to the insurer. Subsequently, default judgment was entered against the defendants to the claim and damages were assessed (the "judgment debt"). The defendants, however failed to satisfy the judgment debt and sought to enforce it by

bringing a claim against Sagicor pursuant to section 9 of the Motor Vehicles Insurance (Third Party Risks) Act (the "Act").

Sagicor denied that the driver and the owners of the motor truck were its insureds at the material date as it had never issued or agree to issue a contract of insurance in favour of these persons. It had merely issued on a "cover note" giving comprehensive coverage in relation to the motor truck for the period of 30 days in consideration of the insureds having agreed to pay the requisite premium, which they never paid. Sagicor pleaded that the 30-day period of the cover note had expired before the date of the injury to the appellant with the result that Sagicor was not on risk as at the date of the injury.

In the court below, there were different versions of the cover note. The appellant produced a copy of the cover note which he claimed originated from the records of National Commercial Bank of St Lucia Ltd. which held a mortgage over the motor truck and which stated a four month period of cover while Sagicor produced a copy of a cover note which stated cover to be for 30 days.

The learned judge found that the cover note produced by Sagicor did not comply with the Form C of the regulations under the Act which deals with the proper form in which a cover note is to be issued. The judge noted that the best scenario would be that there was a stated intention by the defendants to pay the premium for a policy which would within 4 months. However, the premium was never paid. Consequently, the cover note expired in 30 days.

The learned judge also found that the cover note produced by the appellant was not supported by evidence of any officer of the bank and was thereby "double hearsay". The learned judge therefore dismissed the claim on the ground that the appellant had failed to prove that Sagicor had held a valid policy of insurance for the vehicle that caused his injuries.

Both the appellant and Sagicor, being dissatisfied with the judgment of the learned judge, appealed. At the hearing of the appeal, Sagicor withdrew its counternotice.

Held: Allowing the appeal, setting aside the order of the learned judge dismissing the claim of the appellant, remitting the matter to the High Court and awarding costs to the appellant to be assessed by a master of the court if not agreed within 21 days, that:

1. Regulation 3 of the Motor Vehicles (Third Party Risks) Regulations requires that every covering note issued by an insurer shall have printed in front or at the back of it a certificate of insurance in the form set out in Form C. The Act does not state the effect of non-compliance with the specified form. However, section 24 of the **Interpretation Act** of Saint Lucia provides that, where a form is prescribed or specified by any enactment, deviations therefrom not materially affecting the substance nor calculated to mislead shall not invalidate the form used. In the present case, there is a certificate of insurance in front of the cover note as required by regulation 3. There was no finding in any event by the judge that the form of the cover note in question was materially different in substance from Form

C or was calculated to mislead. In the absence of such a finding, the effect of section 24 of the **Interpretation Act** is that, contrary to the conclusion of the learned judge, the cover note relied on by Sagicor was not invalidated.

2. The contract of insurance contained in a temporary covering note should be enforceable against the insurer. In this case, any failure of the insured to pay the premium could not have caused the cover note to change from providing cover for 4 months to providing cover for 30 days. An implied or express promise to pay the premium would therefore have been sufficient consideration to render the contract enforceable once there had been offer and acceptance of the cover. In the absence of such an implied promise, the failure to pay the premium may have entitled the insurer to cancel the coverage under the terms of the contract between the insurer and the insured but unless it did so, the coverage would have continued for the periods stated on the face of the note. Sagicor could not raise non-payment of the premium as a defence to the claim made by the appellant under the Act as the Act does not permit the insurer to raise contractual defences under the policy against the claim of a third party judgment creditor. Further, the learned judge erred in his implicit finding that the premium had not been paid as Sagicor led no evidence at the trial of such non-payment and the conclusion therefrom that the cover note never took effect and the coverage never came into existence.

   Taylor v Allon [1965] 1 All ER 557 applied.

3. The motor truck was being used on the road and was subject to a bill of sale from the bank. The presumption must be that it was insured at some point in time at the minimum in accordance with the terms of the cover note produced by the insurer. However, by virtue of section 6 of the Act the policy would have remained valid unless and until the insurer notified the Licensing Authority of its expiration. There was no evidence that Sagicor (or its predecessor) had notified the Saint Lucia Licensing Authority of the expiration of the cover note after the 30-day period. There was no evidence that the cover note had been avoided or a claim had been made within the statutory period under section 9 of the Act to avoid the cover note for non-payment of premium. The result is that the cover note had to be treated as having been valid originally and as having expired under its terms before the date of the injury to the appellant but by virtue of section 6 of the Act, the absence of evidence of notification to the Licensing Authority meant the only finding available to the judge was that it remained valid as at the date of the appellant's injury.

JUDGMENT

[1] **CARRINGTON JA [AG.]:** On 28th October 2000, the appellant, a police officer, was standing near a bus stop in Mon Repos at the junction of Lumbard Road and

the Castries/Vieux Fort Highway in Saint Lucia when there was a collision between a motor truck driven by Cyril Jn Baptiste and a motor vehicle. As a result of the collision, the driver of the motor vehicle lost control of the vehicle and that vehicle collided with the appellant. The appellant was severely injured and eventually lost his right leg. He brought a claim on 17th October 2003 against the driver and the owners of the motor truck, Francis Charlery and Nelson Smith, whom he claimed were insured by Barbados Fire & Commercial Insurance Company Limited, the predecessor to the respondent, Sagicor General Insurance Inc ("Sagicor"), giving notice of the claim to the insurer on 2nd November 2003. On 21st March 2005, default judgment was entered against the defendants to that claim. Damages were assessed on 29th July 2005 in the sums of $60,962.54 for special damages; $190,000.00 for general damages; interest on the special damages at the rate of 3% per annum from 17th October 2000 to 29th July 2005; interest at the rate of 6% of the global sum of $250,962.54 from 29th July 2005 until payment and costs in the sum of $28,000.00 (collectively the "judgment debt").

[2] The judgment debtors did not satisfy the judgment debt and the appellant sought to enforce it against Sagicor pursuant to section 9 of the Motor Vehicles Insurance (Third Party Risks) Act[1] (the "Act") and brought the claim giving rise to this appeal against Sagicor on 25th July 2008. The material parts of section 9 of the Act are as follows:

> "9. Duty of insurers to satisfy judgment against persons insured against third-party risks
>
> (1) If, after a certificate of insurance has been duly delivered under this Act to the person by whom a policy has been effected, judgment in respect of any such liability as is required to be covered by a policy of insurance under section 4(1)(b) (being a liability covered by the terms of the policy to which the certificate relates) is obtained against any person who is insured by the policy then, although the insurer may be entitled to avoid or cancel, or may have avoided or cancelled, the policy, he or she shall, subject to the provisions of this section, pay to the persons entitled to the benefit of the judgment any sum payable thereunder in respect of the

[1] Cap 8:02, Revised Laws of Saint Lucia 2013.

liability, including any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

(2) No sum shall be payable by an insurer under subsection (1)-

(a) in respect of any judgment, unless before or within 7 days after the commencement of the proceedings in which the judgment was given (or within such other period as the court may in its absolute discretion consider equitable) the insurer had notice of the bringing of the proceedings;

(b) …

(c) …

(3) No sum shall be payable by an insurer under subsection (1), if, in an action commenced before, or within 3 months after, the commencement of the proceedings in which the judgment was given, the insurer has obtained a declaration that, apart from any provision contained in the policy, the insurer is entitled to avoid the policy on the ground that it was obtained by the non-disclosure of a material fact, or by a representation of fact which was false in some material particular, or, if the insurer has avoided the policy on that ground, that the insurer was entitled to do so apart from any provisions contained in the policy.

(4) An insurer who has obtained a declaration referred to in subsection (3) shall not thereby become entitled to the benefit of that subsection with respect to any judgment obtained in proceedings initiated before the commencement of that action, unless before or within 7 days after the commencement of that action the insurer has given notice thereof to the person who is the plaintiff in the said proceedings specifying the non-disclosure or false representation on which the insurer proposes to rely and any person to whom notice of such an action is so given shall be entitled, if he or she thinks fit, to be made a party thereto."

[3] Sagicor filed a defence to the claim in which they denied that the Francis Charlery and Nelson Smith were its insureds at the material date. Sagicor's case was that it had never issued or agree to issue a contract of insurance in favour of these persons but had merely issued on 6th September 2000 a "cover note" giving comprehensive coverage in relation to the motor truck for the period of 30 days in consideration of the insureds having agreed to pay the requisite premium, which

they never paid. Sagicor pleaded that the 30-day period of the cover note had expired on 6th October 2000, i.e. before the date of the injury to the appellant with the result that Sagicor was not on risk as at the date of the injury.

[4] Sagicor pleaded further that while it had become aware of the appellant's claim against the insureds, it was not served the claim form etc relating to that claim in accordance with the requirements of section 9(2) of the Act.

[5] Sagicor also pleaded that (i) the default judgment was unenforceable as the cause of action in negligence was prescribed because the claim had been served on the defendants, Charlery and Jn Baptiste, beyond the time prescribed by law and had never been served on Nelson Smith; and (ii) the claim against Sagicor for breach of statutory duty was also prescribed as the claim had been served on it outside the applicable prescriptive period, i.e. on 5th August 2008 by registered post slip dated 25th July 2008.

[6] The appellant's reply averred that the cover note was in fact for a period of 4 months from 6th September 2000 to 5th January 2001, which included the date of the injury. The appellant claimed that the version of the cover note relied on by Sagicor had been altered to change the dates of cover and to remove the chassis and engine numbers; that section 9 of the Act required the appellant to give notice of the claim to Sagicor, but did not require him to comply with the technical rules as to service under the **Civil Procedure Rules 2000** (the "CPR"); that Sagicor was not entitled to look behind the default judgment which had not been set aside by any competent court by raising the issue of prescription and that in any event section 9 of the Act set out comprehensively the matters on which an insurer could rely to avoid its obligation to satisfy a judgment against an insured; that Nelson Smith was served with the claim; that Sagicor was in continuing breach of its obligation to satisfy the judgment against the insured so that the relevant prescriptive period under article 2103 of the Civil Code would be 30 years.

[7] There were several interlocutory skirmishes between the parties during the course of the proceedings in the court below, some of which came up to this Court on appeal. I need only to refer to two of these applications. First, Sagicor applied for summary judgment based on its allegations that the claim against it was prescribed. This application was dismissed by the High Court in a written ruling dated 13th April 2013 on the basis that the obligation of Sagicor to pay was not based on statute but on the judgment and so fell outside of the ambit of Article 2122 of the Civil Code. Sagicor did not appeal this ruling.

[8] Second, during the course of the proceedings in the court below it became clear that there were different versions of the cover note. The appellant produced a copy of the cover note which he claimed originated from the records of National Commercial Bank of St Lucia Ltd. which held a mortgage over the motor truck and which stated that the period of cover was from 6th September 2000 to 5th January 2001 as alleged by the appellant. Sagicor, on the other hand, produced a copy of a cover note dated 6th September 2000 which stated cover to be for 30 days without stating the commencement date for such cover. The appellant made an application for specific disclosure of the original cover note and in response Sagicor gave evidence that it did not hold the original cover note.

[9] At pre-trial review on 18th November 2015, the trial judge ordered that the trial would address the following issues:

(1) whether the defendant must satisfy the judgment awarded to the claimant since 29th July 2005;

(2) whether the defendant was on risk at the material time;

(3) whether the claimant has strictly complied with the triggering requirements of section 9 of the Act; and

(4) whether or not the judgment obtained against Charlery and Smith is enforceable against either them or the defendant in the context of article 2129 of the **Civil Code** of Saint Lucia

[10] The trial took place on 14th April 2016. The appellant was the only witness who gave evidence. Sagicor's evidence was not allowed as it had been filed outside the time allowed by the Court's Order on case management. In his written judgment following the trial, the learned judge noted that the appellant had relied on both section 9 and section 6 of the Act. Section 6 states:

> 6. INSURER TO NOTIFY LICENSING AUTHORITY
> (1) Where a policy of insurance issued by an insurer under this Act is cancelled or has not been renewed on the expiration of the policy, the insurer shall, within 7 days of the expiration or the cancellation of the policy, notify the Licensing Authority that the policy has been cancelled or has expired and until the insurer has so notified the Licensing Authority, the policy shall remain valid.

[11] Having considered, correctly in my view, that section 6 could only apply if there had been a policy of insurance that had been cancelled or had expired, the court below went on to consider the effect of the cover note. The court found that the cover note produced by Sagicor did not comply with the Form C of the regulations under the Act which dealt with the proper form in which a cover note is to be issued. The learned judge also found that the cover note produced by the appellant was not supported by evidence of any officer of the bank and was thereby "double hearsay". He also queried why the maker of the note produced by the appellant did not erase the reference to 30 days which contradicted the handwritten reference to the dates of validity of the cover note. He found that he was not able to accept that the document received from the Bank was any more authentic than that received from the insurance company. The learned judge therefore dismissed the claim on the ground that the appellant had failed to prove that Sagicor had held a valid policy of insurance for the vehicle that caused his injuries with no order as to costs to the successful party. The learned judge concluded that he therefore did not need to deal with the issues of the validity of the judgment against the owners of the truck or of service of the claim on Sagicor in light of his conclusion on the issue whether Sagicor was on risk at the material time.

[12] Both the appellant and Sagicor appealed from the judgment of the court below. The appellant filed 22 grounds of appeal challenging many of the findings made by the learned judge. Sagicor's counternotice was on three grounds, namely: that the learned judge was wrong to consider section 6 of the Act; he was wrong to consider the form of the cover note as this was not an issue to be determined at trial; and that he was wrong in failing to award costs of the trial to Sagicor. At the commencement of hearing of the appeal, Sagicor withdrew its counternotice.

[13] The Act has been enacted in much the same form throughout the Eastern Caribbean and is based on the early **English Road Traffic Act** 1934. The purpose of this legislation is to recognise the potential for injury and damage from moving vehicles and to provide protection to third parties by making it compulsory for vehicles to be insured at the minimum against liability for injury to persons and damage to property and to create a duty on insurers to satisfy judgments against their insured in relation to claims for loss or injury covered by the policy, with the correspondent right on the part of the judgment creditor to enforce such judgments against the insurer, provided that the requirements inter alia as to notice under the Act had been met. In furtherance of this purpose, the regulations under the Act require that all persons applying for registration or licensing of a motor vehicle must produce a certificate of insurance indicating that on the day when the licence or registration comes into operation there will be in force a policy of insurance in relation to the user of the vehicle and that motor vehicles are display the insurance sticker. The expression "policy of insurance" is defined in the Act as including a covering note.

[14] The learned judge found that the cover note (actually the legislation uses the term "covering note" but I will adopt the terminology used by the parties and court below) issued by the insurer was not precisely in keeping with Form C under regulation 3 of the Act. Regulation 3 of the Motor Vehicles (Third Party Risks) Regulations requires that every covering note issued by an insurer shall have printed in front or at the back of it a certificate of insurance in the form set out in

Form C. The Act does not state the effect of non-compliance with the specified form but the learned judge found that this rendered the cover note unauthentic. The learned judge, however, did not refer to section 24 of the Interpretation Act[2] of Saint Lucia which states that, '[w]here a form is prescribed or specified by any enactment, deviations therefrom not materially affecting the substance nor calculated to mislead shall not invalidate the form used'. Nor did the learned judge specify what was the extent of the non-compliance with Form C as there is a certificate of insurance in front of the cover note as required by regulation 3. There was no finding in any event by the court below nor was there any submission to this Court that the form of the cover note in question was materially different in substance from Form C or was calculated to mislead. In the absence of such a finding, the effect of section 24 of the **Interpretation Act** is that, contrary to the conclusion of the learned judge, the cover note relied on by Sagicor was not invalid.

[15] There still remains the question: which of the two versions of the cover note was the correct version? The learned judge concluded that "the best case scenario seems to be that there was a stated intention by the defendants in claim No. SLUHCV2003/794 to pay the premium for a policy which would expire on 5th January 2001. But the premium was never paid. Consequently the Cover Note expired in 30 days."

[16] This conclusion appears to be based on two premises. The first premise must have been that the version produced by the claimant, which he stated he obtained from the bank that held security over the vehicle, and which provided for cover to 5th January 2001, was the correct version of the cover note. The second premise must be that there was a pleaded case and evidence that the premium had not been paid. The defendant's pleaded case was that it had issued a cover note for 30 days but that the premium was not paid by the owners. The appellant's pleading was that the cover note had been issued for cover until 5th

[2] Cap 1:06, Revised Laws of Saint Lucia 2013.

January 2001. There was no pleading from the appellant that the premium had not been paid. In the court below, Sagicor was not allowed to lead evidence at the trial as its application for relief from sanctions due to late filing of its evidence was refused on appeal to this court on 29th September 2014. The only witness before the court below at the trial was therefore the appellant. Under cross examination, he admitted that he was not able to provide proof of payment of the premium. However, there was no evidence at the trial that the premium had not been paid.

[17] In my view, any failure of the insured to pay the premium could not have caused the cover note to change from providing cover for 4 months to providing cover for 30 days. In **Taylor v Allon**,[3] Lord Parker felt that the contract of insurance contained in a temporary covering note should be enforceable against the insurer and added:

> "It may well be, as it seems to me, that if a man took his motor car out on the road in reliance on this temporary cover, albeit there had been no communication of that fact to the insurance company, there would be an acceptance, and that the contracts so created would contain an implied promise by the insured to pay either in the renewal premium when that was paid, or if it was not paid for the period for which the temporary cover note had as it were been accepted."

An implied or express promise to pay the premium would therefore have been sufficient consideration to render the contract enforceable once there had been offer and acceptance of the cover.

[18] In the absence of such an implied promise, the failure to pay the premium may have entitled the insurer to cancel the coverage under the terms of the contract between the insurer and the insured but unless it did so, the coverage would have continued for the periods stated on the face of the note and, where applicable, section 6 of the Act. Section 9(3) of the Act speaks of the insurer being able to avoid liability if inter alia he avoided the policy on the ground that

[3] [1965] 1 All ER 557, 559G

there has been non-disclosure or misrepresentation "apart from any provision contained in the policy". In **Maisie Harris and others v Guyana and Trinidad Mutual Insurance Co Ltd**,[4] the Court of Appeal considered the Guyanese equivalent to this section where the insurer sought to have the policy avoided on ground of the misrepresentation of who was the owner of the vehicle involved the accident creating the liability. Crane JA stated:

> " … when an action is brought by a third party against an authorised insurer to recover a judgment the third party has obtained from an assured person, or any person driving on the latter's order or with his permission, the insurer is not permitted to rely on any conditions contained in the policy as a means of defeating a third party's right to the fruits of his judgment. Such conditions can avail him only in an action on the policy brought by the assured. The insurer is not permitted to raise in his defence in a third party's action against him to recover the judgment any ground of which the insurer could avail himself in an action by the assured against him on the policy."

I therefore agree with the submission by the appellant that Sagicor could not raise any non-payment of the premium as a defence to the claim made by the appellant under the Act as the Act does not permit the insurer to raise contractual defences under the policy against the claim of a third party judgment creditor. Further, as the appellant has submitted, it was not in any event open to the learned judge to make a finding that the premium had not been paid as Sagicor led no evidence at the trial of such non-payment. This is clearly a matter on which Sagicor, the predecessor of which had issued the cover note, had the evidential burden which it was unable to discharge by merely asking the appellant if he was able to provide proof of payment of the premium. In the absence of evidence that the policy premium had not been paid or that such payment was a condition precedent to liability of the insurer, it was not open to the learned judge to reach the conclusion he did on the effect of non-payment of the premium.

[19] The learned judge, however, rejected the appellant's version of cover note on the ground that it was double hearsay as it was not supported by evidence of any

[4] (1972) 19 WIR 203 at p.229.

officer of the bank. Division 4 of the **Evidence Act**[5] of Saint Lucia contains several statutory exceptions to the hearsay rule but by virtue of section 49 these appear to be limited only to first hand hearsay and do not include double hearsay as found by the learned judge. The matter became double hearsay because the appellant was giving evidence in relation to the expiration date of the motor insurance policy (which is defined in the Act as including a cover note) which was a matter that was personally perceived only by a third party, i.e. an officer of the bank. Sections 55 and 56 of the **Evidence Act** deal with the use of documents in trial under an exception to the hearsay rule but in the instant case the appellant did not follow the statutory procedure that would have allowed him to lead and rely on such evidence. The appellant argued that the letter was not hearsay as it was relevant, its authenticity was not disputed by the defendant and the court below did not give the appellant the opportunity to be heard on the issue of hearsay. Relevance is not an answer under the **Evidence Act** to hearsay as section 48(2) would only allow in the document if it is relevant otherwise than to prove the fact intended to be proven by the previous representation. Secondly, hearsay and authenticity are independent of each other. The former goes to admissibility and the latter to credibility of the evidence. The fact that Sagicor did not challenge the credibility of the document from the bank did not relieve the appellant of the need to satisfy the procedure needed to have that document admitted at the trial. Whereas it may be correct that the learned judge did not allow the appellant to address him on the issue of hearsay, it is difficult to see what complete answer the appellant could have provided to overcome that issue once the trial had come to an end where he had not complied with the statutory procedure to have the document admitted. In my judgment, the learned judge was correct to exclude the evidence in relation to the cover note on which the appellant sought to rely. However, this was not necessarily fatal to the case for the appellant.

[20] Sagicor's version of the cover note was among the documents disclosed by the appellant in the proceedings below. The court below did not rule that this

[5] Cap. 4:15, Revised Laws of Saint Lucia, 2013.

document infringed the rule against hearsay and this point was not taken on appeal before us. The judge found that this document was not authentic as it did not comply with Form C of the Regulations but as stated above, this conclusion was incorrect. There was therefore no proper basis on which this version of the cover note could not be accepted by the court below. The motor truck was being used on the road and was subject to a bill of sale from the bank. The presumption must be that it was insured at some point in time at the minimum in accordance with the terms of the cover note produced by the insurer. This cover is stated to have expired on 6th October 2000. However, section 6 of the Act then would have come into play and the policy would have remained valid unless and until the insurer notified the Licensing Authority of its expiration. There was no evidence that Sagicor (or its predecessor) had notified the Saint Lucia licensing authority of the expiration of the cover note on 6th October 2000.

[21] There was no need, in my view, for section 6 to have been raised in the pleadings. Section 6 is a matter of statute and must be given effect to by the court. I agree with the statement of Hariprashad-Charles J in **Daphne Alves v Attorney General of the Virgin Islands**[6] that "It is trite law that apart from statutes, such as the PAPA and other limitation statutes, which are required by law to be pleaded, there is no such pleading requirement for other statutes, common law or equitable principles. They are applied, when relevant, to the facts and circumstances of the case without the necessity of being pleaded". Pleadings are meant to address facts rather than law. Sagicor pleaded the expiration of the policy and so it was for Sagicor to deal in its defence with the consequences of such expiration that arose under section 6. The onus of proof lay on Sagicor, which was alleging expiration of the policy, to show that the effect of section 6 did not contradict its position. By failing to plead (and subsequently lead evidence) as to the required notification, the only conclusion that was open to a trial court was to infer that there had not been any notification to the Licensing Authority once the cover note had expired after 30 days.

[6] BVIHCV2007/0306 (delivered 24th October 2011, unreported) at para. 34.

[22] The learned judge, correctly in my view, construed section 6 of the Act as becoming applicable if there was evidence that there was in existence a previous policy that had been cancelled or expired. He felt, however, that this was not satisfied because Sagicor's case was that they issued the cover note pending payment of a premium which had not been paid. Quite apart from the difficulty into which the judge put himself by referring to Sagicor's pleading when there was no evidence in support of that pleading, the learned judge also erred in his implicit finding (which was not based on evidence before him) that the premium was not paid and the conclusion therefrom that the cover note never took effect and the coverage never came into existence. This is inconsistent with section 9 of the Act and the dicta in **Maisie Harris**. There was no evidence that the cover note had been avoided or a claim had been made within the statutory period under section 9 of the Act to avoid the cover note for non-payment of premium. The result is that the cover note had to be treated as having been valid originally and as having expired under its terms before the date of the injury to the appellant but by virtue of section 6 of the Act, the absence of evidence of notification to the Licensing Authority meant the only finding available to the judge was that it remained valid as at the date of the appellant's injury.

[23] For the foregoing reasons, in my judgment, the learned judge erred in finding that the appellant had failed to prove on a balance of probabilities that there was a valid policy of insurance from the respondent in place in relation to the motor truck which caused his injury on the date of the injury. I would therefore uphold the appeal and set aside the order of the learned judge dismissing the claim of the appellant. Regrettably, the learned judge did not go on to deal with the other issues (stated as issues 1, 3 and 4 at paragraph 9 above) which he identified should be tried. I therefore do not propose to make the order sought by the appellant that Sagicor should be ordered to satisfy the judgment from the earlier proceedings. Instead, I order that the matter should be remitted to the High Court for the court to deal with these remaining issues, the resolution of which are necessary to determine the liability of Sagicor to satisfy the judgment. Due to the length of time that has elapsed in bringing this matter to trial, I would urge the court office to set down the matter at the earliest available date on the

High Court's calendar that is convenient to counsel with the expectation that any hearing would take place before the end of 2019.

[24] There remains the question of costs. The appellant has been successful in this Court and so is entitled to his costs on the appeal and on the counternotice. I propose that these costs should be assessed by a master of the court if they are not agreed within 21 days. I depart from the usual rule under CPR Part 65.13 as I believe that the costs of the High Court should be reserved to the determination of the other issues identified by the learned judge for trial as at this stage, the appellant has only been partially successful to date in his claim against Sagicor in the High Court.

I concur.
Louise Esther Blenman
Justice of Appeal

I concur.
Gertel Thom
Justice of appeal

By the Court

Chief Registrar