
MADAM LOH SAI NYAH v. BOO TENG CHUAN & ANOR.
HIGH COURT MALAYA, PULAU PINANG
DATO' ABDUL HAMID J
CIVIL APPEAL NO. 12-7-86
22 DECEMBER 1995
[1996] 1 BLJ 495

***CONTRACT:** Proposal form and payment of premium made to agent - Proposer died before proposal accepted by Company - Whether there is a valid Contract - [Section 4 Contracts Act 1950](#) - Whether agent can accept proposal on behalf of the Company.*

***ESTOPPEL:** Judgment in default entered against agent - Whether estoppel applies to prevent the Insurance Company from denying liability.*

The plaintiff claimed to be the lawful nominee of the deceased under an insurance policy. Hence, she claimed for the sum of RM20,000.00, interest and costs.

It was found that the deceased, on 24 June 1977, had filled in a proposal form and paid the respective premium (in the form of a cheque) to the first defendant, an agent of the second defendant. This proposal form was received by the second defendants on 30 June 1977 whilst the cheque was received earlier on 27 June 1977. The deceased died on 26 June 1977. Although the underwriter initialled the proposal forms, it was accepted that a policy document was never issued as none was produced before the Court.

The ultimate issue was whether there was in fact a valid contract of insurance in existence between the plaintiff and the second defendant. This in turn led to the further question of whether the first defendant, as the agent, was in a position to accept the proposal on behalf of the second defendant hence giving rise to a valid contract of insurance.

Another minor issue arose out of the point raised by the plaintiff that since judgment in default had been entered against the first defendant, the second defendant is estopped from denying liability.

Held:

[1] Although many English authorities were cited by both Counsels, our own law should be looked at first. [Section 4 of the Contracts Act 1950](#) sets out the manner in which a contract is created. The fact clearly shows that the second defendant, being the acceptor, only received the proposal after the death of the proposer. That is to say [s. 4\(1\) of the Act](#) has not been observed as the proposal had not come to the knowledge of the second defendant. In any case, no acceptance was ever made nor was it communicated and hence the acceptance never came to the knowledge of the proposer thus not satisfying [s. 4\(2\)](#).

[2] Except in the case where the company clearly authorises the agent to accept a proposal,

the duty of an ordinary agent is only to receive the proposal form and premium and transmit it to the company. This view is fortified by the last column in the proposal form. The receipt of the cheque as payment of premium does not amount to a contract. There could only have been a contract if the company accepted the proposal.

[3] With regards the issue pertaining to estoppel, the fact that judgment in default had been entered against the first defendant does not preclude the second defendant from defending the action. The fact that the judgment was one in default (ie.no trial nor any findings of fact nor any rulings) coupled with the finding in the present case that the first defendant had no authority to contract on behalf of the second defendant together point irresistibly to the conclusion that the second defendant is not estopped from denying the claim.

[Appeal dismissed with costs]

Case(s) referred to:

Borharnuddin bin Haji Jantara & Anor. v. American International Assurance Company Limited [1987] 1 MLJ 22 (dist)

Limford v. the Provincial Horse and Cattle Insurance Co. ISC 10 Jur (N.S) 1066; 11 L.T. 330 0 (foll)

Mufti v. Royal Insurance Co. Ltd. [1923] 38 TLR 334 (cit)

Legislation referred to:

[Contracts Act 1950, s. 4](#)

Counsel:

For the appellant - Darshan Singh; M/s. Darshan Singh & Co.

For the respondent - Dato' Puthucheary; M/s. Skrine & Co.

JUDGMENT

Abdul Hamid Mohamed J:

This is an appeal from the Sessions Court. The plaintiff (appellant) is the widow of the deceased (Chye Kee Jin). She claimed a sum of RM20,000 interest and costs as the lawful nominee of the deceased under a Personal Accident Policy allegedly issued by the defendant. The first defendant (Boo Teng Chuan) was an agent of the second defendant. The second defendant (second respondent), an insurance company, in its re-amended statement of defence, raised a number of defences. I do not intend to reproduce them as I shall only be

dealing with the issues raised before me in the appeal. The learned Sessions Court Judge dismissed the claim. The appellant (plaintiff) appealed. I too dismissed the appeal. The appellant now appeals to the Court of Appeal.

The learned Sessions Court Judge made certain findings of facts with which I have no reason to disagree. I shall summarize them so that the arguments of learned Counsel on both sides can be more easily appreciated. Those facts are that on 24 June 1977 the deceased and four of his co-workers filled in proposal forms and paid the respective premiums to 1st defendant, an agent of the second defendant. Payment of the premiums was made by a cheque issued by their employer. The proposal was received by the 2nd defendant's office in Kuala Lumpur on 30 June 1977 although the cheque was received on 27 June 1977. I must add here that the proposal form states "No liability is undertaken until the proposal has been accepted and the premium paid in full." The deceased died on 26 June 1977. The proposal form was sent to the underwriter for assessment of risk and the underwriter initialled the form on 30 June 1977. The policy document was not produced in Court and the learned Sessions Court Judge accepted that it was never issued, although a policy number was given.

In his written submission learned Counsel submitted on a number of issues. However, learned Counsel for the respondent concentrated on one issue only and that is that there was no acceptance of the proposal on the part of the second respondent. Therefore there was no contract of insurance between the proposer and the second respondent. No policy was issued by the proposer. The appellant was not appointed as a beneficiary of the proposer and has no capacity to commence the action.

Many authorities, especially old English authorities with extracts from textbooks were referred to me by both learned Counsels. Whereas I accept those authorities, I prefer first to look at our own law. In this respect, [s. 4 of the Contracts Act 1950](#) is relevant.

- 4 (1) The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.
- (2) The communication of an acceptance is complete -
 - (a) as against the proposer, when it is put in a course of transmission to him, so as to be out of the power of the acceptor, and
 - (b) as against the acceptor when it comes to the knowledge of the proposer.

First, I shall discuss this provision on the basis that the acceptor in this case is the second defendant. Indeed, I am of the view that the acceptor is the second defendant.

From the facts of this case, it is clear that the proposal had not come to the knowledge of the second defendant, because the proposal was only received at the second defendant's office on 30 June 1977, whereas the deceased had died on 27 June 1977.

Furthermore, even if the proposal had come to the knowledge of the second defendant (which in my judgement it had not) there would still be no contract as against the second defendant until the acceptance had come to the knowledge of the deceased. Here, on the facts, the proposal did not reach the second defendant until after the deceased had died, no acceptance was ever made, nor was it communicated and it could never have come to the knowledge of the deceased because the deceased had died earlier.

So, according to the provisions of [s. 4\(1\) and \(2\) of the Contracts Act 1950](#) no contract was

formed as between the deceased and the 2nd defendant.

The Federal Court case of *Borharnuddin bin Haji Jantara & Anor. v. American International Assurance Company Limited* [1987] 1 MLJ 22 was relied on by learned Counsel for the plaintiff. However, I am of the view that that case turned on the provision of paragraph (c) of the proposal form, the conditions of payment stated on the receipt and the facts therein which are distinguishable from those in the present case. In the present case the proposal clearly states that "No liability is undertaken until the proposal has been accepted and the premium paid in full." The premium was only received by the second defendant one day after the deceased had died and the proposal was never accepted by the second defendant.

Now let us consider the position of the 1st defendant. Was he in a position to accept the proposal on behalf of the second defendant?

The learned Sessions Court Judge had made a finding of fact that the first defendant was an "ordinary agent" of the second defendant and had no special authority to bind the 2nd defendant to grant a policy. In particular she relied on the case of *Limford v. the Provincial Horse and Cattle Insurance Co.* ISC 10 Jur (N.S) 1066; 11 L.T. 330

I agree with her view. As pointed out by her in the instant case there was no proof of any special authority for the first defendant to accept the proposal on behalf of the second defendant. This is strengthened by the clear words of the last column in the proposal form, which I now reproduce:

I hereby warrant the above particulars are true and I agree that this proposal shall be the basis of the contract between myself and the company.

Date 24.6.1977

Agent or broker (Sgd) Proposer's Signature (Sgd)

Note : No liability is undertaken until the proposal has been accepted and premiums paid in full.

In my view the duty and authority of the "agent or broker" is only to receive the proposal form and the premium and forward it to the company. The company is the authority to accept (in the legal sense) the proposal or not.

Unless the company clearly appoints the "agent or broker" and gives authority to him to accept (in the legal sense) the proposal I do not think he has such authority. To say otherwise would be to encourage abuse of such authority and in fact fraud.

Similarly, I do not think that the receipt of the cheque for payment of premium by the "agent or broker" by itself creates a contract. This is because until the proposal is accepted (in the legal sense) by the company, there is no contract. So, the question of premium does not arise yet.

In the circumstances, I agree with the learned Sessions Court Judge that there was no contract of insurance between the deceased and the second respondent.

Another point raised by learned Counsel for the appellant is that a judgment in default has been entered against the second defendant and therefore the first defendant is estopped from

denying liability. Learned Counsel for the appellant cited the case of *Mufti v. Royal Insurance Co. Ltd.* [1923] 38 TLR 334. I read the copy of the report which learned Counsel submitted to me. I do not find anything said in that case to that effect.

Anyway, I do not think that the fact that a default judgment has been entered against the first defendant acts on estoppel against the second defendant. For reasons best known to him, the first defendant chose not to defend the action against him. Most probably he knew that he had nothing to lose even if the judgment is entered against him. Why should second defendant be deprived of his right to defend the action?

Further, the judgment is a judgment in default. There was no trial. The facts and the issues have not been adjudicated. There was no findings of fact or any ruling on any issue. What is there to estop the second defendant?

Furthermore, the first defendant in this case has been found to have no authority to contract on behalf of the second defendant. Therefore, whatever judgment against him cannot bind the second defendant.

On these grounds I dismiss the appeal with costs and confirm the decision of the learned Sessions Court Judge.