PULAU PINANG CLINIC SDN BHD v. KENCHAN ASSOCIATES SDN BHD & ANOR
MAHKAMAH TINGGI,
DATO' ABDUL HAMID BIN HAJI MOHAMAD
GUAMAN SIVIL NO. 22(231-260-88)
26 August 1996
[1996] 1 LNS 27

INSURANCE *- Insurance of Hospital by 'broker'with Insurance Company - delays in payment for claim -question as to which party is liable to pay claim*

Counsel:

PEGUAMBELA & PEGUAMCARA

1. Cik Teoh Soo Bee (Tetuan K. Ahmad Yong &Co.) bagi pihak Plaintif

2. En. A. Kanesalingam (Tetuan Kanasalingam &Co.) bagi pihak Defendan 2

ALASAN PENGHAKIMAN

In order to give a clearer picture of the nature of the claim I shall first summarise the Statement of Claim as has been further amended. The Plaintiff is a private hospital. The Second Defendant is an Insurance Company. I cannot easily describe the First Defendant. So I shall only say that it is a Company. By an oral agreement made between the three of them on or before let September 1986, the Plaintiff agreed at the let Defendant's request to participate in a group insurance scheme known as the Medicity Health Insurance Plan, pursuant to which the let Defendant would arrange to cover certain individuals to be registered with the let Defendant as members for group medical insurance cover with the 2nd Defendant. It was agreed that the Plaintiff's fees incurred by the members are to be paid by the 2nd Defendant. Claims would be submitted by the Plaintiff to the 2nd Defendant. The 1st Defendant would assist with regard to settlement of such claims by liaising between the Plaintiff and the 2nd Defendant. However, in practice, the Plaintiff's claims were submitted to the 1st Defendant who submitted them to the 2nd Defendant. Payments were made by the 2nd Defendant through the let Defendant.

In the alternative, the Plaintiff averred that on 23rd February 1988 the 2nd Defendant, as the Insurer, executed an agreement with the let Defendant to pay to the let Defendant as the insured all sums under the group medical insurance cover which was to have effect from let September 1986 which would be held by the let Defendant for the benefit of the Plaintiff and thereby creating a trust in favour of the Plaintiff for the sums payable under the scheme.

Further and in the alternative the Plaintiff said that at the request of the let and 2nd Plaintiffs contained and to be inferred in the tripartite oral agreement, the Plaintiff rendered medical

services and other facilities to 122 of the let Defendant's members under the Scheme and the Plaintiff claims reasonable remuneration for such services.

Further and in the alternative, the let Defendant represented to the Plaintiff in writing vide its letter dated 15th June 1987 that the let Defendant would guarantee payments of all claims under the said plan. Therefore the Plaintiff also claimed against the 1st Defendant as Guarantor.

There were delays in payments. Meetings were held by representatives of the three parties. Promises and proposals were made. However, the 1st and 2nd Defendants have failed to pay the Plaintiff a sum of RM120,288.40. Notices of demand were given by the Plaintiff to the Defendants. However the sum remained unpaid.

So the Plaintiff claimed for the said sum with interest and costs. On an application of the 2nd Defendant, on 29th February 1996, I ordered that the following question be tried firsts:

> "Whether the second defendant insurer is generally liable as an insurer per se to the Plaintiff in respect of the claims made herein before going into each claim one by one."

So a trial was held solely to decide this issue. 1st July 1996, I gave my decision confirming that the 2nd Defendant was as an insurance company liable to pay the Plaintiff in respect of the Plaintiff's claims under the Plan. The 2nd Defendant appealed. These are my grounds.

From the evidence, the following facts are clear, and I so find. The Plan was designed, promoted and marketed by Defendant 1. The person behind it is PW3, the Managing Director of Defendant 1. Defendant 1 approached the Plaintiff in late 1985 to get the Plaintiff interested in the plan, by its letter dated 21.12.85 enclosing a brochure pertaining to the scheme which was ongoing at that time with Pantai Medical Centre in Kuala Lumpur. Defendant 1 also forwarded to the Plaintiff the proposal from Defendant 1 for medical insurance scheme at four selected medical treatment centres, the gazetted schedule of operations, a policy cover and a letter dated 7.11.85 from Universal Life and General Insurance Sdn. Bhd. to Defendant 1.

To avoid confusion, it should be noted that Universal Life is not Defendant 2, the scheme mentioned in the letter is the Pantai Medical Insurance Scheme and the company involved is Pantai-Kenchan Sdn. Bhd, another company of PW3. It should also be noted that the brochure shows that Universal Life was the insurer and Pantai Kenchan the "Medical Scheme Coordinator".

However it is my finding that all those documents formed the basis of the discussion between Plaintiff and Defendant 1 and that the plan proposed to the Plaintiff was similar to the one with Pantai Medical Centre.

The Scheme involved four parties, namely the Insurance Company (Defendant 2), the Hospital (Plaintiff), Kenchan (Defendant 1) and the Insured (members). Defendant 1 would get members of the policy to join the Plan. They paid the premiums to Defendant 1, who, after deducting his commission would pay it to Defendant 2. If these members go for treatment at the hospital (Plaintiff), these members do not have to pay the deposit or settle their bills with the hospital. Instead the hospital would submit the bills to Defendant 1 who

would submit them to Defendant 2. Payments were to be made by Defendant 2, through Defendant l, to the Plaintiff.

The scheme was implemented from 1.9.86. Claims were made by the Plaintiff and payments were made by Defendant 2 according to the procedure described about. However, not long after it was implemented, the Plaintiffs were unhappy with the speed of payments: payments were slow. So when the Plaintiff complained, the 1st Defendant by its letter dated 15.6.87, replied confirming all payments of approved claims under the plan. Defendant 1 also guaranteed "all claims, settlement that are payable under the Medicity Plan."

As conditions did not improve and the Plaintiff continued to complain, two meetings were held with the representatives of the 1st Defendant and the 2nd Defendant on 20.1.1988 and 10.2.1988.

According to the minutes of the meeting held on 20.1.1988, many things were discussed. I will highlight some of the more important ones.

First, Dr. Goh (PW1) representing the Plaintiff referred to an outstanding claim of RM110,904.25. Mr. Aaron, representing the 2nd Defendant explained that the claims had been held back for further queries and investigations. Dr. Goh also requested that Mr. Aaron expedite payments for claims already approved and advise the Plaintiff in writing "of claims which are doubtful".

Secondly, even at that point of time even though the Master Policy had been signed by the parties (which did not include the Plaintiff), it had not been stamped. The minutes said that upon stamping a copy would be sent to Dr. Goh through the Coordinator (Defendant 1), possibly in a week's time.

At the request by Dr. Goh, it was agreed that a supplementary agreement binding the three parties (the Plaintiff as the participating hospital, Defendant 1 as the Coordinator and Defendant 2 as the Insurer) would be drawn up by Defendant 2's solicitors and forwarded to Dr. Goh within a week.

It was also resolved that payment of claims would be made in favour of the Plaintiff but through the 1st Defendant.

Regarding the meeting on 10.2.1988, there was a lot of discussion on the rate and the claims which do not concern us now. Regarding the Master Policy the minutes said that Defendant 1 agreed to courier a photocopy to Dr. Goh. Regarding the tripatriate agreement Dr. Goh said that he would refer it to the Plaintiff's solicitors.

In other words, even on 10.2.1988 the Plaintiff had not received the Master Policy signed by the Defendant 1 and Defendant 2. The supplementary or tripartite agreement requested by the Plaintiff had still not been finalised, indeed it was never executed.

Regarding "Claims and Payments" the minutes read:

"16.1	Mr. Chan agreed to forward the claim form to Mr. Aaron within a week from receipt from	MR. CHAN

	Mrs. Kong.	
16.2	Mr. Aaron agreed to process the claim within 5 weeks from the he receives the claim forms from Mr. Chan.	MR. AARON
16.3	Mr. Aaron could not provide a definite date for payments as it was handled by a different department. However, he will inform us on this matter after a meeting with the relevant department."	MR. AARON

We now come to the Master Policy executed by Defendant 2 (described as the Insurers) and Defendant 1 (described as the Insured) on 23.2.1988. The Plaintiff was not a party to this Agreement. However Defendant 1 was described as the Insured "in respect of liabilities incurred by its members pursuant to this plan." Effective date of cover was 1st September 1986.

On 17th March 1988, Defendant l wrote to the Plaintiff regarding outstanding claims of 185 cases (Bundle C page 34-38). From the remarks we can see that many of the claims were either rejected, payable at a lesser amount or pending.

So, another meeting was held on 22nd April 1988 (Bundle C page 42-43). Mr. Chan (PW3) informed PW1 that out of the 43 outstanding claims amounting to RM36,010.25, RM28,649.15 had been approved for payment by Defendant 2.

On 6th May 1988 the Plaintiff wrote to the 1st Defendant, carbon copied to the 2nd Defendant, requesting for payment of the sum of RM28,133.41 already approved by the 2nd Defendant.

On 10th June 1988, the 2nd Defendant wrote to the 1st Defendant agreeing to allow an extra 50% of medical expenses incurred for the list the 1st Defendant had supplied them from the Plaintiff and requesting the 1st Defendant to put their proposal to the Plaintiff. The 2nd Defendant's proposals were turned down by the Plaintiff by a letter dated 14th June 1988.

As the dispute could not be resolved, the Plaintiff terminated the Plan.

Learned Counsel for the Plaintiff had submitted lengthy arguments on law regarding the 2nd Defendant's liability. The Plaintiffs relied on the doctrine of apparent or ostensible authority of the 1st Defendant and the agency of the 1st Defendant. Learned Counsel for the 2nd Defendant on the other hand relied solely on the Master Policy executed between the 1st and the 2nd Defendants. Its argument is that since there was a written agreement, no oral agreement was admissible. Further, as the Plaintiff was not a party to the Master Policy, the 2nd Defendant was not liable to pay the Plaintiff under the Scheme.

I do not think it is necessary for me to discuss the law of agency at length. The real question is whether the three parties (the Plaintiff, the 1st Defendant and the 2nd Defendant) had concluded a.contract as per the terms of the Plan.

On the facts adduced in court and accepted by me, I have no doubt there was such a contract.

It is true that the Plan was initiated by the 1st Defendant. But from the evidence, both documentary and oral, it is clear that Mr. Chan of the 1st Defendant was not acting on his own all along. Defendant 2 was part and parcel of the Plan. Without Defendant 2 there would be no Insurance Company, no insurer, and no Plan. I find that there is sufficient evidence to hold that Mr. Chan was not only acting on behalf of the 1st Defendant but also as an agent of the 2nd Defendant. I find that he had the authority to bind the 2nd Defendant. I further find that the 2nd Defendant,, through Mr. Chan and through its own direct and active participation in meetings and so on with representatives of the Plaintiff and the 1st Defendant had clearly agreed to participate in the Plan.

What is more important, the Scheme was implemented about one and a half years before the Master Policy was executed, claims were made by the Plaintiff, payments made by the 2nd Defendant though not in full. I just cannot see how, if there was no concluded contract as between all the three parties, the Plan could have been implemented and claims by the Plaintiff paid by the 2nd Defendant. Indeed, in his own evidence, DW1, the Assistant Manager of the 2nd Defendant said:

> • • "Hospital would claim through Kenchan. We agreed to pay the Hospital through Kenchan for whatever is due."

On the facts, I am clearly of the view, that long before the Master Plan was executed by the Defendants, the three parties had already agreed to the Plan and implemented it. The dispute that arose later was really regarding the amount that the Plaintiff should claim and the 2nd Defendant should pay, not as to liability of the 2nd Defendant to pay the Plaintiff under the Plan.

I am of the view that the Plaintiff does not have to rely on the Master Policy to prove the 2nd Defendant's liability. Neither can the 2nd Defendant rely on it to avoid liability. The three parties had agreed to the Plan and had implemented it one and a half years prior to the execution of the Master Policy by the Defendants. The Master Policy appears to be nothing more than an attempt to try to formalise it. The Master Policy was executed by the two defendants and the Plaintiff was not given a copy until March 1988. Yet it was about the services to be provided (indeed already provided) by the Plaintiff. It is clear from the minutes of the various meetings that the Plaintiff was not happy with the Master Policy and insisted that a tripartite agreement be executed, which never materialised.

In the circumstances, I am clearly of the view that the three parties had about the 1st September 1986 when the Plan was implemented agreed as to the nature of the Plan, and implemented it. The Plaintiff had according to this Plan, provided services to the "members" but did not charge them for the services and according to the Plan made claims against the 2nd Defendant, through the 1st Defendant. The 2nd Defendant had honoured part of the claims but disputed the rest or part of them. And as I have said, the dispute was as to the amount, nothing else. The 2nd Defendant cannot now turn round and say that it is not liable to the Plaintiff as the Plaintiff is not a party to the Master Plan.

I hold therefore that the 2nd Defendant is liable to the Plaintiff under the Plan as agreed and implemented by them.

t. t.

(Dato' Abdul Hamid bin Hj. Mohamad)

Hakim, Mahkamah Tinggi

Pulau Pinang