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154 Conn. 660, 228 A.2d 803

Supreme Court of Connecticut.
Effye LEWIS
v.
MICHIGAN MILLERS MUTUAL INSURANCE COMPANY.
March 30, 1967.

Action by insured against liability insurer to recover for damages allegedly sustained as result of insurer's refusal to defend tort action on behalf of insured. The trial was to the court. The Court of Common Pleas in New Haven County, Tierney, J., rendered judgment for the liability insurer and the insured appealed. The Supreme Court, Thim, J., held that where brokerage firm did not have authority from insured to procure endorsement transferring liability coverage from property at insured's former address to property at insured's new address, endorsement did not deprive insured of insurance coverage on property at former address.

Error; judgment set aside and remanded with directions.

West Headnotes

[1] **Insurance 217 1604**
217k1604 Most Cited Cases
(Formerly 217k73)
An insurance agent is a person expressly or impliedly authorized to represent an insurance company in its dealings with third persons.

[2] **Insurance 217 1604**
217k1604 Most Cited Cases
(Formerly 217k73)
An “insurance broker” is one who acts as a middleman between the insured and insurer and who solicits insurance from the public under no employment from any special company and who either places an order for insurance with a company selected by the insured, or, in absence of such selection, with company the broker selects.

[3] **Insurance 217 1606**
217k1606 Most Cited Cases
(Formerly 217k76)
Evidence in action by insured against liability insurer to recover under policy of liability insurance established that insurance brokerage firm which placed policy on insured's property was “insurance broker” rather than agent of liability insurer.

[4] **Insurance 217 1656**
217k1656 Most Cited Cases
(Formerly 217k96)
When procuring insurance for a person who requests insurance, a broker becomes agent of that person for that purpose.

[5] **Insurance 217 1657**
217k1657 Most Cited Cases
(Formerly 217k102)
Once broker has procured insurance for one requesting it, agency relationship between insured and broker terminates and broker is without any authority to do anything which further affects the insured unless expressly or impliedly authorized by insured to do so.

[6] **Insurance 217 1657**
217k1657 Most Cited Cases
(Formerly 217k96, 217k102)
When insurance brokerage firm sought and retained renewal of liability policy for one year covering insured's property, firm acted as plaintiff's agent but that agency ceased when policy was issued.

[7] **Insurance 217 1634(1)**
217k1634(1) Most Cited Cases
(Formerly 217k129(1))
After insurance brokerage firm had obtained renewal of liability policy on insured's real property, broker's agency had terminated, and brokerage firm, in absence of new conferral of authority by insured, could not affect the existing contract of insurance between the insured and the liability insurer.

[8] **Insurance 217 1870**
217k1870 Most Cited Cases
(Formerly 217k144(2))
Insured's limited grant of authority to brokerage firm to notify liability insurer of insured's change of mailing address did not empower brokerage firm to procure binding transfer of liability coverage from property on which it was issued to property which insured listed as her new address.

[9] **Principal and Agent 308 99**
308k99 Most Cited Cases
“Apparent authority” is that semblance of authority which a principal, through his own acts or inadvertences, causes or allows third persons to believe his agent possesses.

[10] **Principal and Agent 308 131**
308k131 Most Cited Cases
To fix principal's liability for agent's act, it must be shown either that the principal, by his own acts, causes mistaken belief that agent had requisite authority or that principal knowingly permitted agent to engender that belief.

[11] **Principal and Agent 308 99**
308k99 Most Cited Cases
To establish apparent authority in agent, third party must have acted in good faith on false appearance created by principal.

[12] **Insurance 217 1870**
217k1870 Most Cited Cases
(Formerly 217k144(2))
Where insured did not hold brokerage firm out to liability insurer as possessing

authority to obtain endorsement transferring liability insurance from insured's prior address to property at her new address, insured did not knowingly permit broker to act as having that authority and insured did not learn of broker's actions until after endorsement transferring coverage was accomplished fact, whereupon insured expressly protested transfer, brokerage firm did not have apparent authority to effect the transfer.

[13] **Insurance 217 1665**
217k1665 Most Cited Cases
(Formerly 217k111)
In absence of actual knowledge to the contrary, liability insurer was bound to know that insurance brokerage firm's authority to represent insured had terminated when renewal policy was issued six months prior to brokerage firm's procuring a transfer of liability coverage from insured's property at prior address to property at her new address.

[14] **Insurance 217 1665**
217k1665 Most Cited Cases
(Formerly 217k111, 217k1)
Liability insurer was not justified in relying solely on insurance brokerage firm's request to transfer insured's liability coverage from property at insured's prior address to property at new address where insured neither did anything nor knowingly allowed anything to be done which would justify insurer's acquiescence to brokerage firm's request to issue endorsement transferring coverage.

[15] **Principal and Agent 308 99**
308k99 Most Cited Cases
Apparent power of an agent is to be determined not by his own acts, but by those of the principal.

[16] **Insurance 217 1665**
217k1665 Most Cited Cases
(Formerly 217k111, 217k1)
Where brokerage firm did not have authority from insured to procure endorsement transferring liability coverage from property at insured's former address to property at insured's new address, endorsement did not deprive insured of insurance coverage on property at former address.

[17] **Insurance 217 2933**
217k2933 Most Cited Cases
(Formerly 217k514.13(1), 217k514.13)
Where liability insurer wrongfully failed to defend tort action instituted against insured, insurer must respond in damages for its breach of its contract to do so.

[18] **Appeal and Error 30 1176(4)**
30k1176(4) Most Cited Cases
(Formerly 30k176(4))
Where trial court's finding, although in favor of liability insurer, established that amount of damages sustained by insured as result of insurer's refusal to defend tort action against insured was $2,500, reversal of judgment because of error would not require new trial and judgment would be remanded with instructions to render judgment for insured in amount of $2,500.

***661 **804** Sherman Drutman, New Haven, for appellant (plaintiff).
****805** Charles G. Albom, New Haven, with whom, on the brief, was George L. Eastman, New Haven, for appellee (defendant).

Before KING, C.J., and ALCORN, HOUSE, THIM and RYAN, JJ.

THIM, Associate Justice.
On November 2, 1959, the defendant, at the request of Bretzfelder and Cahn, Inc., an insurance brokerage firm, hereinafter referred to as Cahn, issued to the plaintiff a one-year renewal of a policy of liability insurance covering premises which the plaintiff owned and which were located on Dixwell Avenue in New Haven. In the autumn of 1961, the plaintiff was sued by a woman who claimed to have been injured on September 24, 1960, while she was on the plaintiff's Dixwell Avenue property as an invitee of one of the plaintiff's ***662** tenants. Thereupon the plaintiff notified the defendant and requested it to defend the action as it had agreed to do in policy. The defendant refused, asserting that prior to the date on which the injury was alleged to have occurred, it, at the request of Cahn, the plaintiff's agent, had transferred the policy coverage from the Dixwell Avenue property to other property owned by the plaintiff on Read Street in New Haven.

After the defendant's refusal to defend, the plaintiff engaged private counel. The suit against the plaintiff eventually ended in a settlement. In the present action, the planitiff seeks to recover the amount of the settlement, together with the reasonable cost of her attorney's fee.

The trial court concluded that Cahn, while acting as the agent of the plaintiff, misconstrued certain instructions from the plaintiff and, on the basis of that misapprehension, sought and obtained from the defendant a valid endorsement transferring the plaintiff's insurance coverage from the Dixwell Avenue property to the Read Street property, effective May 9, 1960. The court concluded that on September 24, 1960, the date of the alleged accident, the Dixwell Avenue property was not covered by the policy in question, and the defendant owed no obligation to the plaintiff concerning the claim. From a judgment rendered for the defendant, the plaintiff has appealed, claiming that the court erred in concluding that Cahn had the authority to procure a binding transfer of insurance coverage on her behalf.

The pertinent facts are not in dispute. Acting as an insurance broker, Cahn first procured a liability policy from the defendant on the Dixwell Avenue property in 1954. Thereafter, renewals of the policy ***663** were also procured by Cahn. On or about October 7, 1959, the plaintiff purchased the Read Street property. She obtained the liability insurance on this property from another insurer. On or about November 10, 1959, she moved from her Dixwell Avenue property to her Read Street property. In April, 1960, the plaintiff mailed to Cahn a premium payment on the policy covering the Dixwell Avenue property. With the payment she enclosed a note requesting that her mail be referred to her Read Street property. Cahn interpreted the note to mean not only that the plaintiff had moved but also that she desired to have her liability insurance coverage transferred to the Read Street property. With this in mind, Cahn requested of the defendant and received from it an endorsement dated May 9, 1960, which transferred the insurance coverage to the Read Street property.

Cahn then sent the endorsement to the plaintiff. Having never requested or consented to the transfer, the plaintiff immediately notified Cahn that she objected to the transfer and that she already had insurance on the Read Street property. To correct the mistake it had made, Cahn requested the defendant to retransfer the coverage to the Dixwell Avenue property. Unpon receipt of this request, he defendant caused the Dixwell Avenue property to be inspected. After learning the results of the inspection, the defendant refused to retransfer the coverage. As we have noted, it subsequently****806** refused to defend the plaintiff in the action brought against her.

The decisive issue in this case is whether Cahn had the authority to seek and obtain a binding endorsement transferring the plaintiff's liability coverage and thereby relieve the defendant of any ***664** responsibility concerning subsequent events at the Dixwell Avenue property.

[1] [2] [3] An insurance agent is a person expressly or impliedly authorized to represent an insurance company in its dealings with third persons. Travelers Indemnity Co. v. National Indemnity Co., 292 F.2d 214, 219 (8th Cir.) ; 29 Am.Jur. 537, Insurance, s 135. An insurance broker is 'one who acts as a middleman between the insured and insurer and who solicits insurance from the public under no employment from any special company and who either places an order for insurance with a company selected by the insured, or, in the absence of such selection, with a company the broker selects.' Travelers Indemnity Co. v. National Indemnity Co., supra; 16 Appleman, Insurance Law and Practice s 8726; 44 C.J.S. Insurance, s 137, p. 797. It is clear from the record that Cahn was an insurance broker rather than an agent of the defendant.

[4] [5] When procuring insurance for a person such as the plaintiff, a broker becomes the agent of that person for that purpose. Travelers Indemnity Co. v. National Indemnity Co., supra, 220; Ursini v. Goldman, 118 Conn. 554, 559, 173 A. 789; Mishiloff v. American Central Ins. Co., 102 Conn. 370, 379, 128 A. 33. Once that purpose is accomplished, however, and the insurance is procured, the agency relationship between the insured and the broker terminates, and the broker is without any authority to do anything which further affects the insured unless expressly or impliedly authorized by the insured to do so. Cheshire Brass Co. v. Wilson, 86 Conn. 551, 557, 558, 86 A. 26; 3 Couch, Insurance (2d Ed.) s 25:12; 44 C.J.S. Insurance, s 140, p. 802.

[6] [7] [8] [9] [10] [11] [12] [13] [14] [15] From an application of the above principles to this case, it is apparent that, when Cahn sought ***665** and obtained the renewal policy for one year covering the Dixwell Avenue property, it acted as the plaintiff's agent. It is equally apparent that once the policy was issued, Cahn ceased to be the plaintiff's agent. At this point, in the absence of a new conferral of authority on Cahn by the plaintiff, Cahn could not affect the existing contract of insurance between the plaintiff and the defendant covering the Dixwell Avenue property. Some six months after the renewal policy had been issued and the agency relationship had ceased, the plaintiff notified Cahn that her mail was to be referred to the Read Street address. The finding is unclear as to whether the plaintiff, by this notification, intended to have Cahn in turn notify the defendant of this change of mailing address. Even if we assume, however, that it was the plaintiff's intention to once again utilize Cahn as her agent, this time for the limited purpose of having Cahn inform the defendant of the change of mailing

address, this agency did not empower Cahn to procure a binding transfer of liability coverage from the Dixwell Avenue property to the Read Street property. Cahn was not expressly or impliedly authorized by the plaintiff to request such a transfer. Nor did it have the apparent authority to seek and obtain the transfer on the plaintiff's behalf. Apparent authority is that semblance of authority which a principal, through his own acts or inadvertences, causes or allows third persons to believe his agent possesses. Quint v. O'Connell, 89 Conn. 353, 357, 94 A. 288. To fix the principal's liability for the agent's act, it must be shown either that the principal, by his own acts, causes the mistaken belief that the agent had the requisite authority or that the principal knowingly permitted the agent to engender that belief. Ibid. Also, of course, ***666** the third party must have acted in good faith on the false appearance created by the principal. ****807** Ibid. In the present case, the plaintiff did not hold Cahn out to the defendant as possessing the authority to obtain the endorsement, nor did she knowingly permit Cahn to act as having such authority. Indeed, the plaintiff did not even learn of Cahn's actions until the endorsement transferring coverage was a fait accompli. At that point she expressly protested the transfer. There is no evidence that the defendant relied on anyone other than Cahn before it issued the endorsement. In the absence of actual knowledge to the contrary, it was bound to know that Cahn's authority to represent the plaintiff had terminated six months earlier when the renewal policy was issued. Smith v. Firemen's Ins. Co., 104 F.2d 546, 548 (7th Cir.). It was not justified in relying solely on Cahn's request to transfer the plaintiff's coverage. The '(a)pparent power of an agent is to be determined not by his own acts but by those of the principal.' Zazzaro v. Universal Motors, Inc., 124 Conn. 105, 111, 197 A. 884, 887. Here, the plaintiff neither did anything nor knowingly allowed anything to be done which would justify the defendant's acquiescence to Cahn's request to issue the endorsement transferring coverage.

[16] The facts found do not support the conclusion reached by the trial court that Cahn had the authority to procure the endorsement on behalf of the plaintiff. Thus, the endorsement did not deprive the plaintiff of insurance coverage on the Dixwell Avenue property. There is nothing in the finding to indicate that further facts could be developed on a new trial to bring about a contrary result. Plunkett v. Nationwide Mutual Ins. Co., 150 Conn. 203, 210, 187 A.2d 754.

***667** [17] [18] Having failed to defend the action instituted against the plaintiff, the defendant must respond in damages for the breach of its contract to do so. Since the finding discloses the exact amount of damages sustained by the plaintiff, we conclude that a new trial is not necessary. See Fitch v. State, 139 Conn. 456, 460, 95 A.2d 255; Coughlin v. McElroy, 72 Conn. 444, 446, 44 A. 743.

There is error, the judgment is set aside and the case is remanded with direction to render judgment for the plaintiff to recover $2500.

In this opinion the other judges concurred.
Conn. 1967.
Lewis v. Michigan Millers Mut. Ins. Co.
154 Conn. 660, 228 A.2d 803

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