

In the High Court of Fiji  
At Suva  
Civil Jurisdiction

Civil Action No. HBC 274 of 2020

Taiyab Hussein  
Plaintiff

v.

Sun Insurance Company PTE Limited  
Defendant

Counsel: Mr S. Nand for the plaintiff  
Mr A. Vulano for the defendant  
Date of Hearing: 9<sup>th</sup> November, 2022  
Date of Judgment: 17<sup>th</sup> April, 2023

**Judgment**

1. The plaintiff's excavator was completely burnt by fire. The excavator was covered by a fire insurance policy issued by the defendant. The defendant declined the plaintiff's claim on the grounds that the fire was caused by arson and the plaintiff breached a condition of the policy by parking the excavator at his jobsite in Tabia, Labasa, without any security or surrounding fence to secure the machine. The statement of claim states that the fire was not caused by arson and was parked in the plaintiff's yard, which was safe and under his control.

2. The plaintiff states that the defendant did not explain or read out the clause relied on by the defendant prior to issuing the policy. The warranty clause contained in the schedule of the policy is vague and ambiguous. The plaintiff seeks a declaration that the defendant is liable to indemnify him in a sum of \$130,000.00,(the sum insured) less 10% excess, judgment in that sum and general damages.
3. The statement of defence states that the plaintiff breached the express condition and warranty of the insurance policy and endorsement that the excavator has to be either moved to the plaintiff's residence or to a fully secured location after hours. At the time of the incident, the excavator was not at the plaintiff's residence with full security nor at a fully secured location.
4. The plaintiff in his reply to statement of defence states that the defendant declined his claim based on the warranty clause.

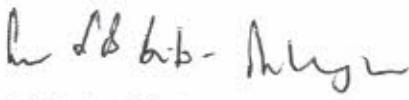
***The determination***

5. It is an agreed fact that the excavator sustained damages on 1<sup>st</sup> February, 2020, as a result of a fire while it was parked at the plaintiff's worksite during the period of insurance.
6. At the commencement of the hearing, Mr Nand, counsel for the plaintiff stated that the issue for determination is whether the warranty clause relied on by the defendant was explained to the plaintiff prior to the issue of the policy and whether the clause is valid.
7. The warranty clause contained in the insurance policy endorsement reads as follows:  

*After Hours, The Machinery Has to be Either Moved to The Insured' S Residence, Provide Full Time Security Guard Or To a Fully Secured Location.*
8. The plaintiff, (PW1) in evidence in chief said that the excavator was parked in his quarry site at Yalava, Tabia, a secured location.

9. In cross-examination, PW1 said that his yard was 35 acres in extent. An unknown person had set fire to his excavator at his quarry. There was no security nor a fence at that site. There is a gate at the entrance block with a wire, which was locked. It was accessible by foot from anywhere, as it was not fenced. There was a house located 300 meters or 400 meters away.
10. DW1, (*Mohammed Kazin Yasin*) a private investigator with the defendant since 2013 said that he interviewed the plaintiff and carried out an investigation on the fire. There was no gate or security at the entrance nor a wire or chain in place at the entrance to the plaintiff's site. There was no lighting. There were two houses far away.
11. DW2, (*Binay Dutt, Claims Manager, defendant*) said that the defendant stipulates a condition that the machine be moved to the insured's premises after hours or to a fully secured location with full security, where machinery operate in remote locations,.
12. The evidence of the plaintiff and DW1 reveals that the excavator was not at the plaintiff's residence, but at his work site without security. It was not at a fully secured location. The site was accessible by foot from anywhere, as it was not fenced.
13. The plaintiff contends that the warranty clause was not explained to him and he did not receive a copy of the policy till he made the claim.
14. In cross-examination, DW2 said that the policy was issued by the defendant's agent in Labasa. It is their practice to explain clauses in the insurance policy to the insured. He was not aware if the clause was explained by their agent.
15. It is established that it is only in exceptional circumstances that a person of full age and understanding will not be bound by a clause in an insurance policy.
16. The opening paragraph of the statement of claim states that the plaintiff carried on the business of general earthmoving, haulage and logging contractors, hire of D4, D6, Digger trucks, Grader and other equipments.

17. The plaintiff in evidence in chief said that he was a “*businessman and farmer*”. He was “*involved in Civil Engineering, logging and sub-division business, plant hire and quarrying*”. He has “*excavators, dozers, graders, loaders, trucks, vehicles, mixer trucks, crusher and sawmill*”.
18. I find it difficult to accept that the plaintiff, as a businessman with experience in varied fields did not understand the contents of the policy and required the warranty clause therein to be explained to him. And also that that he received a copy of the policy only when he made the claim.
19. The plaintiff said that he did not raise any concern or issue on the policy. He has been a client of the defendant “*as soon as he started business (for) more than 14 to 15 years*”.
20. I do not accept the contentions of the plaintiff. He is bound by the warranty.
21. In my judgment, the plaintiff breached the warranty contained in the policy that the excavator has to be moved to his residence or to a fully secured location after hours.
22. The plaintiff’s claim fails.
23. **Orders**
- The plaintiff’s action is declined.
  - I make no order as to costs.

  
A.L.B. Brito-Mutunayagam  
JUDGE  
17<sup>th</sup> April , 2023

