North Dakota Law Review

Volume 23 | Number 2 Article 10

1947

# Insurance - Authority of Agent to Bind Insurer by Oral Agreement, Waiver of First Premium, Non-Delivery of Policy

Douglas B. Heen

INSURANCE—AUTHORITY OF AGENT TO BIND INSURER BY ORAL AGREEMENT, WAIVER OF FIRST PREMIUM, NON-DELIVERY OF POLICY. Agent accepted an oral application for a policy of fire insurance covering personality, waiving payment of the first premium, subject to a rate to be determined, and stating said policy to be effective at once and to cover loss by fire occurring between the time of application and before delivery of the policy to the insured. Held, on such facts, the contract of insurance was consumated and the insured was entitled to the proceeds of the policy. *Ulledalen v. United States Fire Insurance Co.*, (N. D. 1946) 23 N. W. (2d) 856.

It is well established that to effectuate a contract of insurance, the agent must be acting within the scope of his actual or apparent authority and that there must be a meeting of the minds with regard to the terms of the contract, subject matter, parties, amount of indemnity, duration of risk, extent of risk, and rate of premium. *Anderson v. Westchester Fire Ins. Co.*, 45 N. D. 456, 178 N. W. 434 (1920); *Morford v. California Western States Life Ins. Co.*, 166 Ore. 575, 113 P. (2d) 629 (1941); *Nordness v. Mutual Cash Guaranty Fire Ins. Co.*, 22 S. D. 1, 114 N. W. 1092 (1908). Acceptance of the application, by one having such authority to accept, is essential to the formation of the insurance contract and until this is done the application is not a contract, but merely a proposal. *Wacker v. Globe Fire Ins. Co.*, 37 N. D. 13, 163 N. W. 263 (1917). In addition to the acceptance by the insurer, there must be an actual or constructive delivery of the policy; on the theory that delivery is necessary to the validity of a written instrument. *Hartford F. Ins. Co. v. Whitman*, 75 Ohio St. 312, 79 N. E. 459, 9 Ann. Cas. 218 (1906); Vance, *Insurance* (2nd ed. 1930) 204.

North Dakota Revised Code of 1943, Section 26-0702, provides that "any person soliciting insurance on behalf of any insurance corporation or on behalf of any person desiring insurance of any kind, or transmits an application for a policy of insurance other than for himself, to or from any insurance corporation, or makes any contract for insurance, or collects any premiums, is regarded as agent of such corporation to all intents and purposes, unless it can be shown that he receives no compensation for such services."

Interpretations of such statutory provisions uniformly hold that soliciting insurance, receiving applications, forwarding premiums, and transmitting policies is sufficient to establish the fact of agency on behalf of the insurance company, *New York Life Ins. v. Hanson*, 71 N. D. 383, 2 N. W. (2d) 163, 170 (1941); *Bekken v. Equitable L. Assur. Soc.*, 70 N. D. 122, 293 N. W. 200 (1940); *Lechler v. Montana Life Ins. Co.*, 48 N. D. 644, 186 N. W. 271, 23 A.L.R. 1193 (1921), and that the effect of such statutes is, "to forestall defenses based on the premise that the agent, was in fact, agent for the insured and not for the insurer" *Schoener v. Hekla Fire Ins. Co., 50 Wis.* 575, 7 N. W. 544 (1880); *Stearns v. Merchants Life & Casualty Co.*, 38 N. D. 524, 165 N. W. 568 (1917); *French v. State Farmers' M. H. Ins. Co.*, 29 N. D. 426, 151 N. W. 7, L.R.A. 1915D, 766 (1915); *American Fire Ins. Co. v. King Lumber & Mfg. Co.*, 74 Fla. 130, 77 So. 168 (1917). That the business of insurance is quasi-public in nature and that such business may be regulated generally and specifically by the state through exercise of its police power in the interest of the general welfare is well established. *National Union F. Ins. Co. v. Wanberg*, 260 U. S. 71, 43 S. Ct. 32, 67 L. Ed. 136 (1922); *German Alliance Ins. Co. v. Hale*, 233 U. S. 389, 34 S. Ct. 612, 58 L. Ed. 1011, L.R.A. 1915C, 1189 (1913).

Thus, interpretation of the above North Dakota statute and like statutes of other jurisdictions indicates that the restrictive titling of the agent by the insurer as a "soliciting agent only," in an attempt to narrow the field of the agent's activities, is immaterial, "since the authority of the agent is such as is expressly given him by his principal, and in addition thereto, such as his appointment and duties necessarily imply," *McCabe Brothers v. Aetna Ins. Co.*, 9 N. D. 19, 81 N. W. 426, 47 L.R.A. 641 (1899).

This ruling being predicated "upon whether a third party would have reasonable grounds for believing the agent had authority given by the principal, and this a question of actual fact and not mere title." *Anderson v. Northwestern Fire & M. Ins. Co.*, 51 N. D. 917, 201 N. W. 514 (1924). True, the insurer may limit the powers of the agent, but these limitations must be made known to third parties dealing with the agent, and the principal is bound by the acts of the agent when such acts are within the apparent scope of the agent's authority. *Michigan Idaho Lumber Co. v. Northern Fire & M. Ins. Co.*, 35 N. D. 244, 16 N. W. 130 (1916); *Union Mutual Ins. Co. v. Wilkinson*, 80 U. S. 222, 13 Wall. 222, 20 L. Ed. 617 (1872); *St. Paul Fire & M. Ins. Co. v. Parsons*, 47 Minn. 352, 50 N. W. 240 (1891).

In the principal case an ostensible agency relationship arose, for the insured was under the impression that the agent was the company to all intents and purposes; hence, the insurer was estopped to deny the agent's apparent authority to accept the application and waive the payment of the first premium, *Wieland v. St. Louis Farmers' Mutual Fire Ins. Co.*, 146 Minn. 255, 178 N. W. 499 (1920); *Phoenix Ins. Co. v. Walter*, 51 Neb. 182, 70 N. W. 938 (1897). And the taking of an oral application, when accepted, binds the insurer, notwithstanding that the policy has not yet been issued or delivered. *Anderson v. Northwestern Fire & M. Ins. Co.*, 51 N. D. 917, 201 N. W. 514 (1920); 26 C. J. 54; 44 C. J. S. 968.

In the instant case, where the policy had been issued and forwarded to the agent but had not been delivered by the agent to the insured, the defendant company contended that the policy had not been delivered, therefore the contract of insurance was not effective. "In the absence of other evidence to show assent of the company to the making of a contract of insurance, delivery of the policy must be shown." *Newark Machine Co. v. Kenton Ins. Co.*, 50 Ohio St. 549, 35 N. E. 1060, 22 L.R.A. 768 (1893).

Thus, it may be stated as a general rule, "that delivery is necessary to the validity of a written instrument, nevertheless, the actual delivery or non-delivery of a policy of insurance is not always the final test of a contract of insurance, . . . ." *Hartford Fire Ins. Co. v. Whitman*, 75 Ohio St. 312, 79 N. E. 459, 9 Ann. Cas. 218 (1906); *Herring v. American Ins. Co.*, 123 Iowa 553, 99 N. W. 130 (1904); *Pruitt v. Great Southern Life Ins. Co.*, 202 La. 527, 12 So. (2d) 261 (1942). Accordingly, on the facts of the principal case, the policy had been issued and the act of issuance bound the insurer; since the issuance, unequivocally, was indicative of the assent of the company to the making of the contract of insurance, thus the actual delivery of the policy to the insured was immaterial.

DOUGLAS B. HEEN.

---

DIVORCE—ALIMONY—POWER OF COURTS TO DECLINE LIENS. A divorce decree was awarded granting the plaintiff-wife a specific amount of money payable monthly until further order of the court. The court further ordered that, "she have and is awarded judgment against the defendant for said sums and debts as aforesaid, all in favor of the plaintiff and against the defendant and such judgment is made a lien upon any and all properties of and belonging unto him and any and all earnings which he may hereafter attain or acquire." The action under discussion was then brought by the husband to clear title to land owned by him, and to test the lien declared on the land by the court in the divorce decree.

The Supreme Court of North Dakota in the syllabus stated "While the district court, in an action for divorce, has power to decree alimony to the wife and to require future payments thereof for an indefinite period, subject to the power of the court to change the amounts and terms of payment, the district court has no power to decree that the provision for such payments is a lien upon all the property of or belonging to the