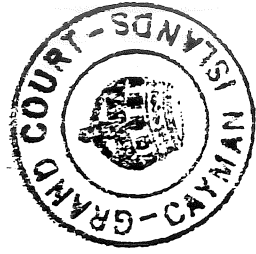


Mr. Henry



10-06-92

IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

CAUSE No. 149 of 1992

MIRIAM JOYCE FREDERICK

v.

CAYMAN AIRWAYS LIMITED

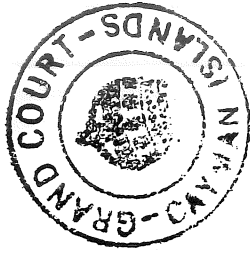
Mr. Turner for the Plaintiff
Mr. Barrie for the Defendant

JUDGMENT

Schofield J.

Miriam Joyce Frederick, the plaintiff, was employed by the defendant Cayman Airways Ltd., from 3rd June, 1991 until her resignation on the 15th December, 1991. She became eligible for medical insurance with her employer from 1st September, 1991 and according to her specially indorsed writ incurred medical expenses amounting to US\$9,713.65. These expenses Cayman Airways had, prior to writ, refused to pay. Before the hearing of this summons for summary judgment Cayman Airways agreed to pay the plaintiff an amount which takes care of part of the claim. The only amounts in dispute on this summons are \$6,966.35 which are set out in paragraph 4(a), 4(b)(iii) and 4(c)(i) of the writ of summons.

Cayman Airways claims that the amounts in dispute relate to treatment for medical conditions which were not covered by the medical insurance because those conditions existed prior to the plaintiff's employment with them. The insurance plan which the plaintiff was entitled to the benefits of was exhibited to the affidavit of one Suri Singh who is a claims supervisor of the company which administers the Cayman Airways employee health benefit plan. This provision is included in the plan:



PRE-EXISTING CONDITION PROVISION

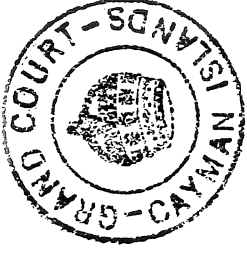
A "pre-existing condition" is an injury or disease for which an individual received treatment or took prescribed drugs or medicines before he last became covered.

No payment will be made for expenses incurred for or in connection with a Pre-Existing Condition unless those expenses are incurred after the earlier of:

- A. a 6 month period which ends while You are covered under this Plan and during which You receive no treatment and incur no expenses in connection with that sickness or injury; or
- B. a 12 month period during which You are continuously covered under this Plan. "

This plaintiff could not make a claim in respect of a "pre-existing condition" because of the short length of time she had worked for the company.

The figure of US\$694.50 at paragraph 4(c)(i) of the writ of summons was incurred for treatment at the Woman's Health Care Centre at Houston in Texas, United States of America, on 25th November, 1991. The diagnosis was "polycystic ovaries" which, says Cayman Airways, was a condition for which the plaintiff had received treatment prior to her employment with them. On 15th May, 1991 the plaintiff had been referred to Dr. Lynn F. Hoffman a gynaecologist in Houston, Texas, because her doctor in Cayman had diagnosed an ovarian cyst. This condition was confirmed. The defendant says that this is the same condition as polycystic ovaries, the condition for which the plaintiff was treated in September, 1991. Thus the condition of polycystic ovaries was a "pre-existing condition" under the terms of Cayman Airways health Plan. At least, says the defendant, there is sufficient doubt in the matter for it to be put to the test at a trial. Not so, says the plaintiff, pointing to the physician's statement dated 25th November, 1991, (attached as exhibit NJP6 to the plaintiff's first affidavit) which shows a separate box for a diagnosis of "ovarian cyst" to that for a diagnosis of "polycystic ovaries".



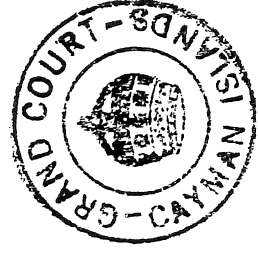
There is scant evidence before me as to whether the diagnosis and treatment in May, 1991 related to the same condition as that diagnosed on 25th November, 1991. I am unable to make a decision on the evidence before me and must leave the issue to trial. I will not therefore grant the plaintiff summary judgment for the sum of \$694.50.

As stated above, Dr. Hoffman saw the plaintiff on 15th May, 1991. She saw her again on 27th September, 1991 and at that time undertook a diagnostic examination of the plaintiff called laparoscopy which, it seems, is conducted to detect a condition known as endometriosis. It was, in fact, ascertained that the plaintiff was suffering from that condition. The balance of the claim on this summons relates to the cost of the examination and, perhaps, treatment thereon.

When Dr. Hoffman examined the plaintiff in May, 1991, she diagnosed an ovarian cyst. The plaintiff showed certain other symptoms and the possibility of a diagnostic laparoscopy was discussed, as was the possibility that the plaintiff was suffering from endometriosis. Other possibilities were also discussed, according to an affidavit of Dr. Hoffman. The plaintiff's argument was that before September, 1991, there was no examination leading to a conclusion that the plaintiff was suffering from endometriosis and therefore there was no treatment for that condition. I was referred to the following definition of the word "treatment" in Black's Law Dictionary:

"Treatment. A broad term covering all steps taken to effect a cure of an injury or disease, including examination and diagnosis as well as application of remedies".

The plaintiff argues that as in May, 1991, there was no firm diagnosis of endometriosis and no attempt to pursue the necessary diagnostic examination in that connection, endometriosis cannot be said to come within the definition of "pre-existing condition" in Cayman Airways health care plan. She argues that as she did



not receive treatment for endometriosis within the above definition of the word "treatment" then endometriosis was not a pre-existing condition within the meaning of the health care plan even if, in fact, she was suffering from that condition in May, 1991.

I cannot accept that argument for to do so would be to focus on the treatment rather than the condition. I accept that if an employee is suffering from a latent illness for which she did not seek any form of medical attention until after she was entitled to medical benefits under the plan then that would not be a pre-existing condition within the meaning of that term in the plan. However, if she attends for medical examination for a condition which manifests itself prior to the time limits prescribed in the plan and subsequent examinations reveal the source of the condition, then the condition pre-existed the coming into operation of the plan. This must be so even if the patient went through a protracted period of diagnosis before the condition was correctly diagnosed. The condition pre-existed. Diagnosis often involves a process of elimination of various conditions and merely because the condition was in the process of diagnosis, or was originally wrongly diagnosed, does not affect the existence of the condition.

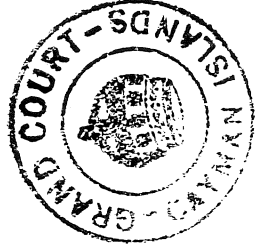
From the evidence I have before me it seems that the plaintiff was suffering from endometriosis in May, 1991, and went to Dr. Hoffman with problems related to that and other conditions. Dr. Hoffman diagnosed one condition but could not be certain that endometriosis existed. Certain other possibilities remained and had to be eliminated. The elimination of those possibilities was part of the diagnostic process for endometriosis and was therefore part of its treatment. Of course it is possible that endometriosis set in after May, 1991. On the evidence before me that is unlikely, but is an evidential problem which could be solved by the plaintiff at trial.

As it is I am unable to give her summary judgment.

The summons is dismissed with costs to Cayman Airways.



Judge



Dated this 10th day of June, 1992