

IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

CAUSE NO: 206 OF 2019

BETWEEN:

SAXON MOTOR & GENERAL INSURANCE COMPANY LIMITED

PLAINTIFF

AND:

RANDOLPH SMITH

AND:

CHRISTOPHER JOHNSTON

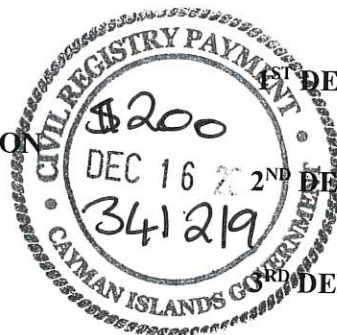
AND:

PHILIP RITCH

DEFENDANT

DEFENDANT

DEFENDANT



WRIT OF SUMMONS



TO: Randolph Smith
107 Hally Street, North Side, Grand Cayman

Christopher Johnston
107 Hally Street, North Side, Grand Cayman

Philip Ritch
10 Aunt Shannys Road, Northward, Grand Cayman

THIS WRIT OF SUMMONS has been issued against you by the above named Plaintiff, of DMS House, 20 Genesis Close, George Town, Grand Cayman in respect of the claims set out on the next page.

Within 14 days after service of this Writ on you, (or where this Writ is served on you out of the jurisdiction pursuant to an Order of the Court, within 28 days) counting the day of service, you must either satisfy the claim or return to the Courts Office, P.O. Box 495, George Town, Grand Cayman, KY1-1106, Cayman Islands the accompanying Acknowledgement of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgement within the time stated, or if you return the Acknowledgement without stating therein any intention to contest the proceedings, the Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 13th day of December 2019.

NOTE this Writ may not be served later than 4 calendar months (or, if leave is required to effect service out of the jurisdiction, 6 months) beginning with the date of original issuance unless renewed by order of the Court.

IMPORTANT

Directions for the Acknowledgement of service are given with the accompanying form.

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BETWEEN:

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AND:

RANDOLPH SMITH

1ST DEFENDANT

AND:

CHRISTOPHER JOHNSTON

2ND DEFENDANT

AND:

PHILIP RITCH

3RD DEFENDANT

STATEMENT OF CLAIM

1. The Plaintiff, Saxon Motor & General Insurance Company Limited, ("**Saxon**") is a duly incorporated Cayman Islands company with a registered office located at DMS House, 20 Genesis Close, George Town and carries on business in the Cayman Islands as a Class "A" licenced general insurer in accordance with the provisions of s.4(3)(a) of the Insurance Law, 2010, and *inter alia* as an authorized insurer of motor vehicles pursuant to the provisions of the Vehicle Insurance (Third Party Risks) Law (2012 Revision) ("**the Law**").
2. The 1st Defendant, Randolph Smith ("**Smith**"), born 14 October 1949 resides at 107 Hally Street, North Side, Grand Cayman and at all material times was the owner in equity, and operator, of a 2005 Ford Ranger 4x2 pick-up truck bearing registration plate no. 117 592 ("**the Ford Ranger**").
3. The 2nd Defendant, Christopher Johnston ("**Johnston**"), born 2 August 1978 resides with Smith at 107 Hally Street, North Side, Grand Cayman and at all material times was the registered owner of the Ford Ranger, and stepson of Smith.
4. The 3rd Defendant, Philip Ritch ("**Ritch**"), born 31 March 1981 resides at 10 Aunt Shannys Road, Northward, Grand Cayman and at all material times was the owner and unlicenced operator of an unregistered 2011 Suzuki GSXR 1000 cc motor cycle ("**the Suzuki motorcycle**").

The Proposals

5. On 16 July 2015, 7 August 2015 and 26 February 2016 Johnston completed, signed and submitted written proposals to Saxon ("**the Proposals**") seeking third party liability insurance coverage with Saxon for the use and operation *inter alia* of the Ford Ranger by himself and Smith as insured drivers. In each of the Proposals Johnston was asked a number of questions pertaining to himself and to Smith and the subject Ford Ranger, to which questions Johnston responded in each of the Proposals in their relevant part as follows:

Policy Information

Are you the sole owner of the vehicle(s) to be insured? Yes

Driving History

Has there been any violation or accident in past five (5) years? No

- 6. The Proposals concluded with a Declaration signed by Johnston which provided in their material part as follows:

Please read the following carefully, and then re-read the questions in this form and the answers you have provided before signing the form.

I/We declare and warrant that the answers and statements given in this form are true and are within my/our knowledge. There is no other material fact or circumstance which should be disclosed. I/We agree that this declaration shall be held to be promissory and shall form the basis of the contract between me/us and Saxon Motor & General Insurance Company Ltd. (SaxonMG)

I understand and agree that if any answers or statements in this form are not in my/our handwriting, the person(s) who filled in these answers and statements shall be deemed to be my/our agent(s) for this purpose. I/We agree to accept a policy subject to the terms, conditions and exceptions prescribed by SaxonMG for this class of risk.

....

Name: Christopher Johnston

Signature: [signed]

Date: [various dates respectively]

[emphasis in italics added]

The Policy

- 7. On the basis of the representations made by Johnston in the Proposals, upon which Saxon relied, and in consideration of premiums paid by him, Saxon was induced to and issued to Johnston on 16 July 2015 a policy of motor vehicle insurance being policy no. P12242014-KY-021553 (“**the Policy**”), added another vehicle to the Policy on 7 August 2015, and renewed that Policy to him on 26 February 2016, providing in each case third party liability coverage for the use and operation of the Ford Ranger by Johnston and by Smith.
- 8. On each issuance, change or renewal of the Policy Johnston was provided with, or a copy was made available to him, of Saxon’s complete terms and conditions applicable to the Policy set out in Saxon’s “Private Motor Vehicle Flexi Policy” document, including inter alia the following express conditions:

CONDITIONS WHICH APPLY TO THE WHOLE POLICY

2. YOUR DUTY

You are to observe faithfully and satisfy, fulfil and meet all the conditions of the Policy, in so far as they relate to anything that You, or any person claiming to be indemnified, are to do or not to do. *The*

truth of the statements and answers You gave in the proposal form and compliance, observance and fulfilment of the terms and conditions of the Policy are conditions precedent to our duty to indemnify You or any person seeking to be indemnified under the Policy.

13. KEEPING YOUR POLICY UP TO DATE

Tell Us immediately if anything changes which might affect the insurance. Any change that materially affects the Policy and increases the risk that You do not advise Us of gives Us the right to void the Policy. We need to know things such as any changes to the Motor Vehicle which will affect its performance, if You change the Motor Vehicle, if You sell the Motor Vehicle, make any modifications to it from the manufacturer's original specifications, change Your occupation, change the use of the Motor Vehicle, change any named Authorised Driver, make any claim or have an incident likely to give rise to a claim under this or any other motor vehicle insurance policy, incur any convictions or fixed penalties or have any pending prosecutions.

[emphasis in italics added]

9. By the Policy Saxon agreed to indemnify Johnston and Smith inter alia against liability for death or bodily injury to any third party arising out of their use of the Ford Ranger on the road to a maximum of \$1,000,000.00 per claim and \$5,000,000.00 in the aggregate in accordance with and subject to the terms of the Policy and the Law.

The Accident

10. On Sunday 9 October 2016, at or shortly after mid-day Smith was operating the Ford Ranger, and had been proceeding in the Ford Ranger eastbound on North Side Road, coming from the Rum Point area. Smith had turned into the parking lot of Chisholm's Store at the intersection of Hutland Road and North Side Road, and had then exited the said parking lot making a signaled right hand turn onto North Side Road and proceeded westbound on North Side Road a short distance.
11. Smith was in the process of making the said right hand turn into the driveway of the apartment building immediately next to and west of Chisholm's Store (with the Ford Ranger effectively within the intersection of Hutland Road and North Side Road), when Ritch operating the Suzuki motorcycle at a high rate of speed, attempted to overtake the turning Ford Ranger coming into collision with the front quarter panel of the Ford Ranger as he attempted to do so ("**the Accident**").
12. Ritch was at the time of the Accident, (i) unlicensed to legally ride a motorcycle, (ii) riding the uninsured, unregistered high performance Suzuki motorcycle, and (iii) as evidenced by a video posted on social media, was engaged prior to and during the accident in a course of highly reckless conduct in riding and or racing as part of a "pack" of five motorcyclists at high rates of speed, including entering the lane for oncoming traffic, and representing a danger to themselves and other users of the road.

Saxon's investigation

13. Following the Accident, investigation by Saxon disclosed the following facts:
 - (a) That Smith had purchased the Ford Ranger new from Vampt Motors in 2006 and at all material times was, and remained, the owner in equity of the said vehicle.
 - (b) That on 1 August 2014 Smith had pled guilty to driving under the influence of alcohol ("**DUI**") and received an 18 month suspension of his driver's licence.

- (c) That Smith had been the subject of a further earlier DUI conviction within some four to five years prior to the Accident, as acknowledged by Smith, the precise date of which is presently unknown.
- (d) Following the suspension of his driver's licence as the result of the DUI conviction, by agreement with Johnston, Smith arranged in 2014 for Johnston to register the Ford Ranger in Johnston's name with the Cayman Islands Department of Vehicle and Drivers Licensing, and for Johnston to apply to Saxon to insure the Ford Ranger in Johnston's name although Smith remained the equitable and true owner of the Ford Ranger.
- (e) When Smith's driver's licence was restored, Johnston applied to add Smith to the insurance policy with Saxon and in the Proposals submitted to Saxon, he falsely represented to Saxon (i) that he was the "sole owner" of the Ford Ranger and (ii) that Smith had not been subject of any violation in the past five years.

The Material Non-Disclosure/False Representation

- 14. Saxon pleads that in the premises Johnston and Smith failed to disclose to Saxon in the Proposals, on renewals of the Policy, or at any time prior to the Accident, the following facts:
 - (a) That Johnston was not the equitable owner of the Ford Ranger as represented in the Proposals, and that the equitable owner of the Ford Ranger was at all material times Smith; and
 - (b) That Smith had on 1 August 2014 been convicted on a guilty plea of the offence of DUI and had his driver's licence subject to suspension for 18 months; and
 - (c) That some four to five years prior to the Accident Smith had been convicted of an additional charge of DUI.
- 15. Saxon pleads that the failure to disclose these facts (or any of them) to Saxon in the Proposals, on the change or renewals of the Policy, or at any time prior to the Accident was a material non-disclosure, and/or constituted by the Proposals (and the continuing non-disclosure) a representation that was false in a material particular, within the meaning of s.15(3) of the Law and the definition of "material" under s.15(5) of the Law, since if disclosed by Johnston or Smith to Saxon would have influenced the judgment of Saxon in determining to decline to accept the risk by issuing or renewing the Policy, or would have issued or renewed the Policy at a higher premium.
- 16. Saxon pleads further that Johnston and Smith were at common law under a duty of utmost good faith in submitting the Proposals to Saxon, in changing, and in renewing the Policy, and seeking to induce Saxon to enter into a contract of insurance with them, and was obliged to disclose all material facts to Saxon including the actual and true position as to ownership of the Ford Ranger, and Smith's convictions for DUI, and that after submitting the Proposals, and after renewing, or changing the Policy they owed Saxon a continuing and ongoing duty of disclosure as to the facts in paragraph 14 above both at common law and by virtue of the terms and conditions of the Policy including the provisions of the Policy set out at paragraph 8 above.

The Proceedings

17. On 3 October 2019 Ritch, represented by KSG Attorneys at Law, commenced proceedings against Smith in the Grand Court of the Cayman Islands as Cause No. 166/2019 (the “**Proceedings**”) alleging negligence on the part of Smith in his operation of the Ford Ranger resulting in the Accident and claiming damages on account of personal injuries allegedly sustained by Ritch while operating the Suzuki motorcycle.

Section 15(3) proviso notice

18. By letter dated 11 October 2019, in compliance with the proviso to s.15(3) of the Law, Saxon by its attorneys, Hampson and Company, gave notice to Ritch, by his attorneys, KSG Attorneys, specifying the non-disclosure and false representation as set out at paragraphs 14-16 above on which Saxon relied, and gave notice also that it was avoiding the Policy on those grounds, and invited Ritch to confirm that he accepted that Saxon was entitled on these facts to avoid coverage. Ritch by his attorneys, KSG Attorneys, made no response to Hampson and Company’s letter of 11 October 2019 nor to follow up letters of 8 and 26 November 2019.

The declaratory relief sought

19. Saxon pleads accordingly that by reason of the foregoing that it is entitled to avoid the Policy issued to Smith on the grounds that it was obtained by reason of non-disclosure and/or false representation as set out at paragraphs 14-16 above.
20. Saxon seeks a declaration in accordance with the provisions of s.15(3) of the Law that it is entitled to avoid the Policy, and in consequence thereof not liable to indemnify Smith under the Policy, nor liable under s.15(1) of the Law to pay any sums to Ritch on account of any judgment obtained by him against Smith in the Proceedings.

THE PLAINTIFF THEREFORE CLAIMS:

- (a) A declaration that it is entitled to avoid the Policy on the grounds of non-disclosure and/or false representation as more particularly pleaded above;
- (b) A declaration that the Policy is avoided accordingly;
- (c) Its costs of this action; and
- (d) Such further and other relief as to this Honourable Court may seem just.

DATED at Grand Cayman this 13th day of December 2019.



Hampson and Company
Attorneys for the Plaintiff, Saxon Motor & General Insurance Company Limited

THIS STATEMENT OF CLAIM is filed by Hampson and Company, attorneys for the Plaintiff, whose address for service is that of its said attorneys, at Apollo House East, 4th Floor, 87 Mary Street, George Town, P.O. Box 698, Grand Cayman KY1-1107