



COURT OF MAGISTRATES (MALTA)

DR. RACHEL MONTEBELLO B.A. LL.D.
MAGISTRATE

DR. ALEKSANDR SIDOROV

-Vs-

GLOBAL VOYAGER ASSISTANCE (CYPRUS) LIMITED

Today 27th June 2022

The Court,

Having seen the Application filed by Dr. Aleksandr Sidorov in the Registry of this Court on the 18th December 2019 where he requested that defendant company Global Voyager Assistance Limited is ordered to pay

‘(i) the sum of eight thousand four hundred and nie Euro and fifty eight cents (€8,409.58) or any other monetary sum as may result from the evidence filed in this case that does not exceed the competence of this Court, which sum represents the medical expenses incurred by the applicant for urgent medical treatment required by Liliya Polyakova, holder of Russian Passport Number 71 8367342. Such amount was to be covered under the insurance policy bearing number GVA-0344001860066 issued by the defendant company in the name of the applicant, who was and is still the relative policy holder, and which payment in its entirety and tied to this there is the

request for payment numbered M-4470036, and in relation to said insurance policy the insurance company had no reason at law to refuse to honour the policy holder's claim for the payment, and

(ii) all sums of interest due up to the date of effective payment.

For the purposes of good order it must be declared that for the purposes of jurisdiction, this action is being filed in Malta in terms of Article 10 paragraph (1) (b) of EU Regulation No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 concerning jurisdiction and recognition and enforcement of judgements relating to civil and commercial matters.

With expenses against the defendant company and that notice is also being given to the defendant company in that reference will be made to the oath of the defendant company in terms of the presentation of evidence.'

Having seen the order given during the hearing of the 2nd June 2022 for the proceedings to be conducted in the English language and for the Registrar to carry out a translation into the English language of all the acts of the proceedings;

Having seen its decree given on the 6th January 2021 whereby plaintiff was authorised to notify defendant company in terms of EU Regulation 1393/2007;

Having seen that defendant company was duly notified with the Application and the notice of hearing on the 20th April 2021¹ but failed to file a reply to contest plaintiff's demands;

Having heard plaintiff testify during the hearing of the 18th November 2021 and having seen all documents filed and exhibited in the acts of the proceedings;

¹ Vide certificate of execution, folio 21.

Having seen the sworn Affidavit of Dr. Mark Gingell Littlejohn filed on the 28th February 2022 and duly notified to defendant company.

Having seen that defendant company failed to contest the demand and brought no evidence despite having been given an opportunity to do so;

Having heard the oral submissions made by plaintiff's legal counsel during the hearing of the 7th April 2022;

Having seen all the acts of the proceedings;

Having seen that the case was adjourned for delivery of judgement today;

Having considered;

This is an action for payment of medical expenses following a claim made under an insurance policy, International Insurance Policy GVA bearing number 0344001860066 and issued on the 29th of November 2018. The plaintiff, who is the policy holder is claiming from the defendant company reimbursement of the sum of €8,409.58 representing expenses that he paid to Mater Dei Hospital for medical treatment provided by the same Hospital to the insured person under the said insurance policy, Liliya Polyakova. The plaintiff contends that while such expenses are covered by the insurance policy, the defendant company failed to honor its obligation under the Policy to reimburse him for the medical expenses that he incurred.

As would result from an examination of the form sent by the insurance company to Mater Dei Hospital in order to process the claim made by plaintiff under the policy, the cover provided by said insurance policy is limited to reimbursement of medical expenses incurred for urgent medical care provided during the travel period insured under the policy. However the same policy excludes cover in respect of medical tests

and medical treatment that are not related to the urgent treatment and which can be postponed and it is expressly stipulated that such tests and treatment are to be carried out or provided in the country of where the patient permanently resides. Furthermore, the policy stipulates “*Insurer is bound after acceptance of one-time payment according to the insurance contract (insurance premium) to pay the claims according to the terms and conditions of this named policy-offer of the Insurer...*”²

In the judgement in the names **Salvatore Sammut vs Middlesea Insurance p.l.c.**, decided on the 14th of May 2004, the Court of Appeal defined an insurance policy as follows:-

“Polza t’assikurazzjoni tohloq relazzjoni bilaterali bejn il-kontraenti fejn, in konsiderazzjoni tal-hlas ta’ premium mill-assikurat lis-socjeta` assikuratrici, dik l-istess socjeta` tintrabat li tindennizza lill-assikurat taghha fl-eventwalita` li dan isofri xi telf bhala rizultat ta’ event dannuz kopert bl-istess polza ta’ assikurazzjoni. L-element principali f’dan it-tip ta’ kuntratt huwa r-riskju, liema riskju tassumieh is-socjeta` assikuratrici. F’dan is-sens, ghalhekk, dan huwa kuntratt bilaterali b’titolu oneruz in kwantu l-kontraenti jirregolaw l-obbligazzjonijiet ta’ bejniethom billi l-hlas ta’ premium da parti tal-assikurat tiskatta l-obbligazzjoni ta’ indennizz da parti tas-socjeta` assikuratrici”.

Plaintiff has brought this action in his capacity as the policy holder under the International Insurance Policy GVA bearing number 0344001860066. Although it is evident that the sum of €8,409.58 claimed by Mater Dei Hospital by way of medical expenses was due by the patient, Lilya Polyakova³ who is also the insured person under the policy, it results that the payment of this debt was effected on her behalf⁴ by the plaintiff. This notwithstanding, it does not result that plaintiff was surrogated in her rights in terms of the provisions of Article 1164 *et sequitur* of the Civil Code. However, plaintiff testified that when he applied for the issue of a Schengen Visa for

² Doc. AS1, fol. 40.

³ Refer to Patient Bill Dok. AS16, fol.65.

⁴ Vide: Doc.AS21 fol. 71, Doc. AS22, fol.73.

his mother-in-law, he was made to sign a declaration under oath assuming responsibility for the payment of all medical and non-medical expenses that the applicant might incur in Malta. He also explained that in the event that such expenses remain unpaid by the subject of the Schengen visa, such individual would no longer be eligible to obtain a Visa to enter into the Schengen zone.

Having considered;

The Court observes that although the insurance policy Dok. AS1, states that the insurer is the Russian company AlfaStrakhoanie, the defendant company, Global Voyager Assistance (Cyprus) Limited may be deemed to have been correctly sued on the basis of the fact that it is indicated in the insurance policy as “*the Service company for this policy*”.

In so far as the jurisdiction of the Maltese Courts to take cognisance of this action is concerned, this appears to be founded in the fact that although the insurer under the insurance policy is a Russian company (Alfastrakhovenie), the entity that operates the policy and in respect of whom any claims brought under the policy, are to be addressed, is a company registered in Cyprus. Since Cyprus is a Member State of the European Union and the EU Regulation 1215/2012 of the European Parliament and the Council, of the 12th December 2012 is directly applicable in every Member State, the provisions laid down in Article 11(1)(b) of the same Regulation apply: “*an insurer domiciled in a Member State may be sued in another Member State, in the case of actions brought by the policyholder, the insured or a beneficiary, in the courts for the place where the claimant is domiciled.*”

Although it is true that plaintiff did specifically prove that he is domiciled in Malta, nothing in the records of the case excludes that he is so domiciled. On the contrary, the evidence shows that plaintiff’s regular residence is in Malta where he has been

employed with the Government for the last fourteen years as an anesthetist⁵ at Mater Dei Hospital, and also has bank accounts in Malta and in any event, defendant company brought no contrary evidence.

However in any case and in addition to this, it must be pointed out that the jurisdiction of the Maltese Courts is also established in Article 742(b) and (c) of Chapter 12 in so far as the policy holder - the plaintiff - is resident in Malta, and the fact that the medical expenses of which plaintiff claims reimbursement under the insurance policy, have been incurred in Malta. It is a known fact that each paragraph of Article 742 of Chapter 12 is autonomous and that each of the individual provisions of the said legal provision are to be interpreted in an extensive rather than in a restrictive, manner: after all, denial of jurisdiction is the exception not the rule.

Having considered;

The plaintiff testified that his mother-in-law, Liliya Polyakova, who is a Russian citizen, wanted to come to Malta to visit her family. Since one of the requisites that non-EU citizens must satisfy in order to be eligible for the issue of a Schengen visa for entry into Malta, is insurance cover for medical expenses, on the 29th of November 2018 he purchased an insurance policy from a Russian company. The policy that provided insurance cover for a maximum amount of €35,000 in medical expenses and ancillary costs, was valid from the 14th of December 2018 till the 25th of February 2019. He paid the sum of €600 due on such policy on the 29th of November 2018⁶. In his testimony, the plaintiff explained that on the 6th of January 2019 while his mother-in-law was in Malta, she suffered bleeding and he took her to Mater Dei Hospital where he works as an anesthetist. On the 14th of January 2019 she underwent two surgical interventions, a gastroscopy and a colonoscopy, under

⁵ Refer to bank statements in the acts as well as the plaintiff's testimony, fol.27.

⁶ Doc. AS3.

general anaesthesia⁷. During the colonoscopy, in which procedure the plaintiff was also involved as an anaesthetist, four polyps in different parts of the colon were identified, together with a vascular malformation that was suspected to be the cause of bleeding. The patient was released from hospital after a couple of hours and was in a stable condition. However, the next day, the 15th of January 2019, his mother-in-law woke him up at night as she felt severe pain in her abdomen. She was immediately admitted to the Emergency Department where she was examined by the on-duty specialist surgeon, Mr. Mark Gingell Littlejohn.

The plaintiff testified that from the examination that was conducted, it transpired that there was a perforation of the intestine that caused air to enter her abdomen, a very serious condition that requires immediate surgery. According to the plaintiff, without this timely emergency surgery, the patient would have died in a few days as a result of complications and infection. Therefore on that very same day, with the patient's consent, the patient underwent another surgical intervention, a laparoscopy, whereby the part of the gastrointestinal tract including the ruptured part of the intestine, was removed. The surgery was successful and the patient was transferred to a surgical ward until she was discharged from hospital on the 20th of January 2019. Subsequently, she had an appointment at the Outpatients Department where her stitches were removed.

The Hospital's representatives sent an email to the insurance company Global Voyager Assistance, with a copy of the case summary report, the discharge letter and the notification of disease quote, as requested from the same company. The ICD 10 Code that was cited in the email was K63.1 which is the code for *spontaneous bowel perforation-non traumatic*. The Billing Section from Mater Dei Hospital had also sent the *fit-to-fly form* as requested by Global Voyager Assistance (vide email Doc. AS14, fol. 62 and 63.) together with the invoice of the medical treatment expenses in the total sum of €8,409.58. However, the insurance company only provided a limited

⁷ Vide Doc. AS5. Both the gastroscopy and colonoscopy were held and paid for prior to the patient's admission to Mater Dei Hospital on the 15th of January 2019 and the expenses of medical tests not included in the amount claimed under such policy.

guarantee of payment of medical expenses in the total amount of €1,050 and to date, said company has not made any payment whatsoever in respect of the amount amount being claimed under such policy.

Having considered;

From the exchange of email correspondence forming part of the acts of the proceedings, it transpired that the insurance company does recognise Liliya Polyakova as the insured person under the insurance policy⁸ as it requested information from medical records of the insured in order to be in a position to analyse the claim for settlement under such policy: this the patient had duly authorised that such data is made available to the insurance company. In addition, the defendant company had accepted to guarantee a payment of €1,050 to Mater Dei Hospital⁹. However, as would result from correspondence dated 29th of January 2019, the insurance company claims that the condition of poliposys is a chronic condition hence the company's obligation to indemnify against medical expenses in relation to this medical condition is limited to the sum of €1,050.

It would result that the plaintiff did not exhibit as part of the evidence he brought, all the terms and conditions applicable to the insurance policy which are to be considered as an integral part of the policy (specifically "*Terms and conditions of insurance cover for people travelling away from their place of permanent residence*")¹⁰. However, the reason why the defendant company refused to pay the amount claimed under the policy is evident from the correspondence exhibited in the acts of the proceedings and after examining this correspondence, the Court understands that the insurance policy was subject to the particular condition that the obligation of reimbursement of medical expenses claimed under the policy is limited to an amount not exceeding €1,050 in the

⁸ Dok. AS10, fol. 54.

⁹ Vide Doc. AS17 and AS 20.

¹⁰ In the policy's certificate it was declared that these terms and conditions were sent to the policy holder via electronic policy.

event that the medical condition in connection with which such medical expenses have been incurred, is a chronic one¹¹.

The plaintiff is not challenging the applicability of the condition that was invoked by the insurer to avoid its obligation under the policy; he however contests the defendant's decision to classify the medical expenses incurred by the beneficiary under such policy, as expenses incurred in connection with colon poliposys which is a chronic condition. The plaintiff claims that apart from the consideration as to whether colon poliposys is a chronic condition or otherwise – and in this respect no evidence was brought to show that indeed this is a chronic condition - the medical expenses claimed under the policy for the treatment that was provided and the surgery that was performed, were not connected with the polyps condition but with the urgent laparoscopy surgery that had to be performed due to the intestinal perforation that occurred during the ACP procedure that was carried out on the patient after the colonoscopy¹².

The Court, after having reviewed the evidence brought by the plaintiff, understands that the medical treatment given to the patient on the 15th of January 2019 consisted of an emergency laparoscopy hemicolectomy (carried out the day after the patient undergone colonoscopy and gastroscopy) and that the medical expenses incurred at and claimed by Mater Dei Hospital, amounting to a total amount of €8,409.58, were specifically due in relation to the said laparoscopy, CT scan and six nights accomodation at the Hospital¹³, not for colonoscopy and gastronoscopy interventions. Mr. Jo Etienne Abela, the consultant surgeon who performed both procedures (colonoscopy and gastroscopy) had concluded that the perforation of gastrointestinal tract (bowel perforation)¹⁴ is a serious condition that requires immediate surgery. This perforation results to have been caused by “*argon plasma coagulation*” (APC) which

¹¹ Vide Doc.AS17 and AS23, fol. 75.

¹² Vide explanation in Doc. AS24, fol.77.

¹³ Doc. AS16, fol 65. The patient received tratment in hospital from the 15th of January 2019 till the 21st of January 2019.

¹⁴ Vide medical certificate Doc.AS7, dated 15th of January 2019, fol. 50.

the patient had received specifically due to angiodysplasia¹⁵ that was identified from both colonoscopy and polypectomy procedures that she had undergone on the 14th of January 2019. Even though small polyps were identified from the colonoscopy, the Court did not identify any evidence showing that the urgent laparoscopy procedure was required due to the existence of these polyps or because of colon polyposis. As a matter of fact, these polyps were certified by Mr Jo Etienne Abela as “*benign looking polyps*”. Moreover, upon a request of the insurance company for a medical report containing the specific diagnosis, or ICD-10 code classification¹⁶, Mater Dei Hospital referred to ICD-10 Code-K63.1 which code, as outlined by the plaintiff in his testimony, represents perforation in the intestine (non-traumatic).¹⁷

The Court is of the firm opinion that the plaintiff satisfactorily proved that the laparoscopic procedure had to be performed urgently following the perforation of the intestine which, as established, most likely occurred during the previous procedure (APC) that had been carried out, and specifically on the basis of the fact that a case of angiodysplasia was identified from the colonoscopy and gastroscopy that the patient had previously undergone, and not due to a diagnosis of polyps.

This leads the Court to conclude that the expenses which plaintiff demands reimbursement were not incurred due to the condition of colon polyps and consequently, once it results that the premium due under the policy had been duly paid, the defendant company cannot avoid its obligation under the policy to indemnify plaintiff as policy holder, under the claim made in terms of said policy. As already established, upon the issue of an insurance policy, the insurer undertakes to indemnify the insured in the event of the occurrence of an insured risk. A risk which in this case materialised since the intestinal perforation which required emergency surgery, was not caused as a result of a chronic condition but due to diagnosis of angiodysplasia. In any case, the expenses for which plaintiff is claiming indemnification are limited to

¹⁵ Doc.AS7

¹⁶ Email 17th of January 2019- Dok.AS10, fol. 54.

¹⁷ Doc. AS14- email sent from Steve Ellul (Manager- Revenue Collection Department) to the Insurance Company on the 21st of January 2019.

those expenses related to the laparoscopic surgery that was necessary in order to repair the tear of the intestine and do not include the expenses incurred in connection with the existence of polyps.

Therefore, the defendant company, as the company which administers the policy holding number GVA 0344001860086, is bound to honor the claim by paying the sum claimed by the policy holder with whom the insurance contract was concluded in fullfilment of its obligation laid down in the same policy. Since no evidence was brought to show that the risk to which this claim relates is limited or excluded under some other clause of the policy, the Court considers that it must find in plaintiff's favour and his demand must be acceded to.

For these reasons it accedes to plaintiff's claim and consequently condemns defendant company, Global Voyager Assistance (Cyprus) Limited to pay unto DR. ALEKSANDR SIDOROV the sum of eight thousand four hundred and nine Euro and fifty eight cents (€8,409.58) for the reasons set out in the Application, with interest from the date of filing of the said Application that is, 18th December 2019 and with all costs to be borne by defendant company.

**DR. RACHEL MONTEBELLO
MAGISTRATE.**