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Clerk, Supreme Court of Appeals,
Richmond, Va.

Record No. 6132

In the
Supreme Court of Appeals of Virginia
at Richmond

GRACE L. SUGGS

v

LIFE INSURANCE COMPANY OF VIRGINIA

FROM THE CIRCUIT COURT OF HENRICO COUNTY

RULE 5:12—BRIEFS

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 6132

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Tuesday the 27th day of April, 1965.

GRACE L. SUGGS, Plaintiff in Error,

against

LIFE INSURANCE COMPANY OF VIRGINIA, Defendant in Error.

From the Circuit Court of Henrico County
Edmund W. Hening, Jr., Judge

Upon the petition of Grace L. Suggs a writ of error is awarded her to a judgment rendered by the Circuit Court of Henrico County on the 30th day of November, 1964, in a certain motion for judgment then therein depending wherein the said petitioner was plaintiff and Life Insurance Company of Virginia was defendant; upon the petitioner, or some one for her, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of three hundred dollars, with condition as the law directs.

RECORD

* * * * *

Filed in the Clerk's Office the 10 day of Dec., 1963.

Teste:

HELEN D. CLEVENGER, Clerk.

MOTION FOR JUDGMENT.

Plaintiff, Grace L. Suggs, respectfully moves the court for judgment against the defendant, The Life Insurance Company of Virginia, a Virginia corporation, in the amount of $15,000.00, together with interest thereon, costs and attorneys' fees, and in support thereof alleges the following:

1. Plaintiff is a resident of Henrico County, Virginia, and defendant, a Virginia corporation, is engaged in the business of writing life insurance contracts with its home office located in Richmond, Virginia. William Durwood Suggs, III, the insured as hereinafter alleged, resided in Henrico County, Virginia, at the date of the policy upon which this suit is brought and at the date of his death.

2. On July 1, 1955, defendant entered into a contract insuring the life of William Durwood Suggs, III, the son of plaintiff, in the initial amount of $3,000.00 and in the ultimate amount of $15,000.00, plaintiff being named as beneficiary in said contract. At that time William Durwood Suggs, husband of plaintiff and father of the insured, paid to defendant the annual premium of $165.54 which defendant retained. Defendant thereupon issued its policy, No. 707740, evidencing said contract of insurance. A copy of said policy is attached hereto as Exhibit A.

page 2 } 3. Upon the terms and provisions of said policy and in consideration of the premiums paid and to be paid to defendant, defendant promised and agreed to pay to the beneficiary, plaintiff herein, the sum of $15,000.00 upon due proof of the death of the insured after he had attained the age of 21 years.

4. The insured was born on February 16, 1942, became 21 years of age on February 16, 1963, and died on April 16, 1963. The said contract or policy of insurance was in full force and effect on April 16, 1963, all premiums having been paid and all conditions having been met as required by said contract or

policy, which date was after the insured had attained the age of 21 years.

5. On October 29, 1963, proof of death of the insured was filed with defendant in accordance with the requirements of the contract or policy of insurance, together with a claim on the form provided by defendant for the payment to the beneficiary of $15,000.00.

6. Defendant has refused and continues to refuse payment of the sum due under the said contract or policy of insurance though it has expressed willingness to pay to plaintiff the sum of $3,000.00, the amount of the initial insurance.

Plaintiff therefore respectfully moves the court for judgment against defendant in the amount of $15,000.00 with interest thereon and the costs of this proceeding including attorneys' fees.

GRACE L. SUGGS
By JOHN F. KAY, JR.
Of Counsel.

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Received and filed in Office March 27, 1964.

Teste:

HELEN D. CLEVENGER, Clerk.

ANSWER AND GROUNDS OF DEFENSE OF THE LIFE INSURANCE COMPANY OF VIRGINIA.

Defendant, The Life Insurance Company of Virginia, by counsel, for its answer to the Motion for Judgment, or to so much thereof as it is advised it is material that it should answer, assigns the following as its grounds of defense:

(1) Defendant admits it is a Virginia corporation engaged in the business of writing life insurance and that its home office is located in the City of Richmond, Virginia, but it neither admits nor denies the truth of the remaining allegations contained in paragraph 1 of the Motion for Judgment and calls for strict proof thereof.

(2) Defendant admits that the material allegations contained in paragraph 2 of the Motion for Judgment are substantially correct.

(3) Defendant denies the allegations contained in paragraph 3 of the Motion for Judgment and calls for strict proof thereof.

(4) Defendant admits the allegations contained in paragraph 4 of the Motion for Judgment.

(5) Defendant admits the allegations contained in paragraph 5 of the Motion for Judgment.

page 16 } (6) Defendant admits the allegations contained in paragraph 6 of the Motion for Judgment; but further answering, defendant says that the insured, although 21 years of age on February 16, 1963, died on April 16, 1963; that although the insured was 21 years on February 16, 1963, he was not alive on July 1, 1963, such being the policy anniversary nearest the insured's 21st birthday; that the insured being deceased prior to such policy anniversary, died during the initial insurance period, such period being defined in Policy No. 707740 as "the period between the policy date and the policy anniversary nearest the Insured's 21st birthday excluding such policy anniversary"; that plaintiff, being the named beneficiary of said Policy, is thereby entitled to receive from defendant, the sum of $3,000, such being the amount of initial insurance payable under the terms and provisions of said Policy; and plaintiff is, in no manner, entitled to the sum of $15,000, such being the amount of ultimate insurance payable under the terms and provisions of said Policy only "after the initial insurance period."

(7) Defendant says that it has offered to pay, and is presently able and willing to pay, the sum of $3,000 to plaintiff but that all such offers of payment have been refused.

(8) Defendant reserves the right to move the Court to strike out the Motion for Judgment, in whole or in part, as insufficient in law, or for lack of evidence to support it; and said defendant reserves the right to amend its Answer and Grounds of Defense at any time and if it may be so advised.

WHEREFORE, The Life Insurance Company of Virginia asks that the Court not enter any judgment in this case against it for any amount in excess of $3,000 and that defendant be permitted to recover its costs from the plaintiff.

THE LIFE INSURANCE
COMPANY OF VIRGINIA
By WALTER J. McGRAW
Counsel.

* * * * *

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MOTION FOR SUMMARY JUDGMENT.

Defendant, The Life Insurance Company of Virginia, by counsel, hereby moves the Court to enter summary judgment on its behalf against plaintiff as to the sum of $15,000 alleged by her to be payable under the terms and provisions of defendant's life insurance policy No. 707740 and to enter summary judgment for plaintiff against defendant in the sum of $3,000, in accordance with the provisions of Rule 3:20 of the Rules of the Supreme Court of Virginia, on the grounds that the pleadings and admissions on file show that the insured died during the initial insurance period as defined in said policy and that thereby plaintiff is entitled, as the policy beneficiary, to receive from defendant the sum of $3,000, but not the sum of $15,000 which is the amount of ultimate insurance otherwise payable under the terms and provisions of said policy after termination of the initial insurance period.

THE LIFE INSURANCE
COMPANY OF VIRGINIA
By WALTER J. McGRAW
Counsel.

Received and filed in Office April 6, 1964.

Teste:

HELEN D. CLEVENGER, Clerk.

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MOTION FOR SUMMARY JUDGMENT.

Plaintiff, Grace L. Suggs, by counsel, pursuant to Rule 3:20 of the Supreme Court of Appeals of Virginia, respectfully moves the Court to enter a summary judgment in plaintiff's favor against the defendant in the amount of $15,000.00, with interest thereon, from April 16, 1963, and the costs of

this proceeding including attorneys' fees, as demanded in the Motion for Judgment, on the ground that there are no material facts genuinely in dispute and that plaintiff is entitled to such a judgment against defendant as a matter of law.

This motion is based upon:

1. Plaintiff's Motion for Judgment;
2. Contract of life insurance, Policy No. 707740, issued by defendant, attached to Motion for Judgment as Exhibit A; and
3. Defendant's Answer and Grounds of Defense.

GRACE L. SUGGS
By JOHN F. KAY, JR.
Of Counsel.

Received and filed in Office April 16, 1964.

Teste:

HELEN D. CLEVENGER, Clerk.

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October 21, 1964

Mr. John F. Kay, Jr.
Attorney at Law
1300 Travelers Building
Richmond, Virginia

Mr. Walter J. McGraw
Law Department
Life Insurance Company of Virginia
914 Capitol Street
Richmond, Virginia

Re: Grace L. Suggs *v.* The Life Insurance Company of Virginia

Gentlemen:

After the plaintiff instituted her Motion for Judgment and the defendant's demurrer was overruled, the defendant filed its Answer and Grounds of Defense, which by its admissions

left no material fact genuinely in dispute. This led to the filing of a Motion for Summary Judgment pursuant to Rule 3:20 by the plaintiff and the defendant.

The material facts are as follows:

On July 1, 1955, the Life Insurance Company of Virginia issued its Policy No. 707740 upon the life of William Durwood Suggs, III, who was born on February 16, 1942, became twenty-one years of age on February 16, 1963, and died on April 16, 1963; that the plaintiff, his mother, was the beneficiary of the policy proceeds; that the premiums were duly paid up to the time of the death of the insured; that proof of claim was timely made.

page 24 } The policy, a copy of which was attached to the Motion for Judgment, provided for the payment of $3,000.00 as "Initial Insurance" and $15,000.00 as "Ultimate Insurance". The Initial Insurance period (set out in large type in the policy) is defined as "the period between the policy date and the policy anniversary nearest the Insured's 21st birthday excluding such policy anniversary." Pursuant to the provisions of Virginia Code Section 38.1-403. Title, there is on the face on the back of the policy the following:

"JUNIOR ESTATE BUILDER
Insurance Payable at Death of Insured—Increased After Age 21 Premiums Payable to Age 65 or Until Prior Death —Non-Participating—"

The plaintiff's Motion for Summary Judgment is for the sum of $15,000.00 on the ground that the $15,000.00 Ultimate Insurance was payable on the death of the insured on April 16, 1963; the defendant's Motion for Summary Judgment is for the sum of $3,000.00 on the ground that the $3,000.00 Initial Insurance was payable on the death of the said insured.

The briefs and oral argument of counsel for the parties makes mention of the fact that this is a case of first impression in the State.

In order to rule on the Motion for Summary Judgment filed by each of the parties the issues raised are:

(1) Whether the "Title" description on the policy pursuant to the provisions of Section 38.1-403 of the Code of Virginia is a part of the insurance contract, and if so;

(2) Whether that portion of the "Title" description read-

ing "increased after Age 21" is inconsistent or in conflict with any other provision of the policy, and if so;

(3) Which provision of the policy will prevail?

In argument to the answer as to No. 1 above it has been contended that the Legislature intended to make a descriptive title referred to in Virginia Code Section 38.1-403 a part of the contract. Although there seems to be different view points on this question as reported in 1 Couch (2d) On Insurance, Section 4:32 and 33, it should be pointed out that in eleven of the twelve sections of the Code prior to the Title section, the language used is "in each such policy there shall be a provision * * *", which is distinctively absent from Section 38.1-403. Nor in the Title section is there such page 25 } mandatory language as is applicable to automobile liability insurance policies such as the so-called "omnibus" clause, namely Virginia Code Section 38.1-381. Furthermore, the words "nature" and "form" of the policy as used in 38.1-403 are most general. Nature in most dictionaries is defined or synonymized as character, kind, or sort; form is defined or synonymized as figure, outline or shape; and title is defined or synonymized as name, which in turn is characterized as "mere designation as distinguished from fact". On the basis of the above analysis the Court is of the opinion that the Legislature did not intend to make the Title section part of the policy, which it could easily have done had it so intended by use of the language similar to that in the preceding sections.

The leading annotation in 168 A. L. R. 555 entitled "Effect of Stamped or Printed Matter Outside the Body of an Insurance Policy" is helpful in consideration of the answer to No. 1 above. After stating at page 556 the general rule with respect to endorsements on the back of the policy as not becoming a part of the contract of insurance, the annotation at page 567 points out that there is some conflict as to whether an endorsement on an insurance policy, *designating its kind,* is a part of it. There, cases both pro and con are set forth.

In the opinion of this Court the better reasoned cases hold that such a Title description is not a part of the insurance contract. See particularly the decisions in *Maryland Casualty Co.* v. *Massey,* C.C.A. 6 38 F. (2d) 724, certiorari denied 282 U. S. 853; *Connolly* v. *Standard Casualty Co.,* 76 S. D. 95, 73 N. W. (2d) 119; *Hill* v. *Travelers Insurance Co.,* 146 Iowa 133, 124 N. W. 898; *Rose* v. *New York Life Ins. Co.,* 237 Mo. 437, 168 S. W. (2d) 449. The leading insurance text writer recognized that the caption or designation of the type of the policy on the outside or top thereof does not constitute

a party of the policy so as to broaden the coverage as expressed in the body of the policy. See 1 Couch (2d) On Insurance, Section 438.

Counsel for the plaintiff relies principally upon *Hessler* v. *Federal Casualty Co.,* 190 Ind. 68, 129 N. E. 325; *New York Life Ins. Co.* v. *Jackson,* 94 F. (2d) 288; *Doty* v. *American National Insurance Co.,* 350 Mo. 192, 165 S. W. (2d) 862; *Farmer* v. *Prudential Ins. Co.,* (La.) 167 So. 234. These may be readily distinguishable in that *Hessler* emphasized that there was an enumeration on the back of the policy of what it also covered, *Doty* turned on an endorsement and the other two cases involved conflicting clauses.

On the basis of the above authorities, the Court is of the opinion that question No. 1 must be answered in
page 26 } the negative, and since the Title description is not a part of the insurance policy, the Initial Insurance period, as defined in the policy, is still in effect. Consequently the Motion for Summary Judgment of the defendant is granted and that of the plaintiff is denied. However, even if the Court was not of the opinion already expressed, and assuming that the Title description was a part of the policy no difference conclusion on the Motions for Summary Judgment seems to be justified under other applicable law. In 1 Couch (2d) On Insurance, Section 438 it is stated:

"* * * the caption of a policy does not overrule the intention of the parties as shown by the provisions and clauses inserted in the contract, but is to be read with such provisions and clauses as an aid in arriving at the intention of the parties."

It does not seem necessary in this case to reach and apply the doctrine of construing the language of the policy in favor of the insured as recently expressed in *Central Surety and Ins. Co.* v. *Elder,* 204 Va. 192 because even this doctrine presupposes doubt or uncertainty of language susceptible to two constructions. On the other hand, it seems appropriate in the instant case to consider and apply the time honored rule of harmonization set forth in *Phoenix Ins. Co.* v. *Shulman Co.,* 125 Va. 281. This doctrine in effect says that no doubt or uncertainty will exist if seemingly conflicting provisions can be harmonized to effect the intention of the parties as expressed in the contract.

In approaching the alleged ambiguity of the language "increased after age 21" in the Title description, counsel for the plaintiff has cited certain cases where the word "after" was

construed to mean "at". Since several of these are cases dealing with negotiable instruments law it is felt that the use of the word "after" should be given its ordinary meaning of "later in time" or "subsequent" as set forth in most dictionaries, and other applicable cases cited by the defendant.

Since the term "Initial Insurance period" sets forth such a clear definition of when the Initial insurance payment figure should apply and when the Ultimate insurance figure should apply, the phrase "increased after Age 21" becomes ineffective and no doubt or uncertainty exists.

In view of the above discussion the Court is of the further view that the plaintiff's Motion for Summary Judgment should be denied and the defendant's Motion for Summary Judgment should be granted.

page 27 } Counsel are requested to prepare, endorse and present a sketch for an order in conformity with the views herein expressed.

Very truly yours,

EDMUND W. HENING, JR.
Judge.

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ORDER.

This day came again the parties, by counsel, and the Court having maturely considered of its judgment on the plaintiff's motion for summary judgment and on the defendant's motion for summary judgment is of opinion that plaintiff's motion should be denied and that defendant's motion should be granted for the reasons stated in its letter opinion of October 21, 1964, which is hereby made a part of the record.

The Court doth accordingly ORDER and ADJUDGE that:

1. The plaintiff's motion for summary judgment be and the same is hereby denied;
2. The defendant's motion for summary judgment be and the same is hereby granted; and
3. The plaintiff recover of defendant the sum of $3,000.00.

Plaintiff, by counsel, objected and excepted to the action of the Court in denying her motion for summary judgment and to the action of the Court in granting defendant's motion for

summary judgment insofar as it determined that plaintiff is not entitled to a judgment of $15,000.00.

Enter 11/30/64.

EDMUND W. HENING, JR., Judge.

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NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

To the Clerk of the Circuit Court of the County of Henrico:

Counsel for Grace L. Suggs, plaintiff in the above-styled case in the Circuit Court of the County of Henrico, Virginia, hereby gives notice of appeal from the order entered in this case on November 30, 1964, and sets forth the following assignments of error:

1. The Court erred in denying plaintiff's motion for summary judgment and in granting defendant's motion for summary judgment insofar as it determined that plaintiff was not entitled to a judgment of $15,000.00, by holding as a matter of law that plaintiff, the beneficiary of life insurance policy No. 707740 issued by defendant, was not entitled to payment by defendant of $15,000.00, the amount of the ultimate insurance provided for by said policy, upon the death of the insured, William Durwood Suggs, III, on April 16, 1963.

GRACE L. SUGGS
By JOHN F. KAY, JR.
Of Counsel.

Received and filed in Office December 29, 1964.

Teste:

MARGARET B. BAKER, Dep. Clerk.

* * * * *

A Copy—Teste:

H. G. TURNER, Clerk.

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