

1953

Marie C. Clausse v. First Security Corporation et al : Brief of Respondent

Utah Supreme Court

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Fabian, Clendenin, Moffat & Mabey; Peter W. Billings; Attorneys for Respondent;

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IN THE SUPREME COURT
of the
STATE OF UTAH

MARIE C. CLAUSSE, Administra-
trix of the Estate of LEON L.
CLAUSSE, Deceased,

Plaintiff and Appellant,

vs.

FIRST SECURITY CORPORA-
TION, a corporation, FIRST SE-
CURITY BANK OF UTAH, a
corporation, and AMERICAN NA-
TIONAL INSURANCE COM-
PANY, a corporation,

Defendants and Respondents.

Case No. 7930

BRIEF OF RESPONDENT
AMERICAN NATIONAL INSURANCE COMPANY

FILED

MAR 20 1953

FABIAN, CLENDENIN, MOFFAT
& MABEY

PETER W. BILLINGS

Clerk, Supreme Court,

Attorneys for Respondent

American National Insurance Co.

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BRIEF OF RESPONDENT

AMERICAN NATIONAL INSURANCE COMPANY

STATEMENT OF THE FACTS

Because Appellant's statement of the facts is incomplete and leaves out many essential details of the transactions in question, Respondent insurance company feels it necessary to restate the facts.

In December, 1948, Mr. and Mrs. Leon Clausse applied for a loan of Twenty-Five Hundred Dollars (\$2,500.00) from the First Security Bank of Utah, NA, the loan to be secured by a mortgage on their home

in Ogden. (Tr. 42). Later in December Mr. S. T. Jeppesen and Mr. Carl Porter, both Vice-Presidents of the bank, visited the home of the Clausses to appraise it and advised them that the bank would make the loan. (Tr. 43). At the time of this visit Mr. Jeppesen suggested to the Clausses that the bank had a plan whereby the Mortgagor could take out a policy of life insurance on his life, pay the premiums along with the monthly payments on the Mortgage, and that the insurance proceeds would pay off the mortgage in the event of the death of the Mortgagor and gave Mr. Clausse a pamphlet describing the plan (Plaintiff's Exhibit "A"). (Tr. 22-3). On December 18, 1948 the note and the mortgage were executed by the Clausses (Defendant's Exhibit "B").

On December 27, 1948 Mr. Clausse received a letter from the bank outlining the plan and telling them they would be given an opportunity to carry it, "if they so desired," (Plaintiff's Exhibit "C") and on January 5, 1949 Mr. Reynolds Blackington, Soliciting Agent of Respondent American National Insurance Company, called on the Clausses to explain the plan and solicit the necessary insurance. (Tr. 30) In the course of the discussion Mr. Clausse agreed to adopt the plan and signed an application for life insurance with American National Insurance Company in the sum of Two Thousand Dollars (\$2,000.00) (Defendant's Exhibit 1). No premium was paid or tendered at the time the application was signed (Tr. 40), and no policy was ever issued or delivered. (Tr. 39) Mr. Clausse died on January 24,

1949 of a sudden heart attack, although he had apparently passed the physical examination of the insurance company, given shortly after the visit of Mr. Blackington, (Tr. 32-33).

The application provided in paragraph 4e thereof:

“Insurance liability of the company by reason of this application shall be created ONLY as follows: One. Either in accordance with the terms of the aforementioned conditional receipt properly executed and delivered; or Two. By complete and concurrent fulfillment at the time of any policy delivery of three (3) conditions as follows: (i) Issue of such policy and actual delivery of same during the lifetime and good health of the person to be insured must have taken place; (ii) The whole premium (or regular installment thereof) must have been settled for and accepted by the Company or its authorized agent; and (iii) Neither the Company nor any person, the Company’s agent or not, shall by such delivery or otherwise determine at the time thereof the existence of such good health, but acceptance of such policy by the undersigned shall be deemed representation that then and theretofore no change in such good health has taken place since the date hereof.”

The conditional receipt mentioned above was never issued, it being still attached to the application and Appellant makes no claim to coverage thereunder. No premium was ever paid or tendered and no policy was ever issued. (Tr. 39-40)

At the conclusion of Plaintiff’s evidence Respondent insurance company moved: (1) to strike all the

testimony of Mrs. Clausse and her son, Roscoe, as to conversations with Reynolds Blackington on the grounds (a) that the testimony violated the parol evidence rule, as attempting to vary the terms of a written instrument (the application) and (b) that there was no evidence of any authority of Blackington to make any oral contract on behalf of the insurance company. (2) To strike the testimony of Mrs. Clausse as to conversations with officers of the Defendant First Security Bank on the ground that such testimony was hearsay and incompetent as to Respondent insurance company, as there was no evidence of any authority of the bank or its officers to act on behalf of the insurance company, and (3) To dismiss the action under rule 41b on the ground that there was no evidence of any contract between the insurance company and the Claussees other than the application, and that there was no evidence that either the bank, its officers or Blackington had any authority other than to solicit the application and submit it to the insurance company and had no authority to vary its terms (Tr. 68-69). The trial court, after full argument on these motions, ruled,

“Now at this time gentlemen the Court has considered the evidence introduced in this trial by the Plaintiff and in considering the allegations in the Complaint of the Plaintiff the Court is of the opinion that there is not sufficient facts to warrant the cause being submitted to the jury for its deliberation, and at this time a non-suit is ordered entered in favor of the Defendants and each of them and their motions are granted

as against the Plaintiff, and that is the order of the Court.” (Tr. 75)

It is Respondent’s position that this order of the court was correct

STATEMENT OF POINTS

I. NO CONTRACT OF LIFE INSURANCE ON THE LIFE OF LEON L. CLAUSSE WAS EVER MADE BY RESPONDENT INSURANCE COMPANY.

A. No insurance liability was created by the application signed by Leon L. Clausse.

B. No Mortgage Cancellation Plan Agreement was made with Respondent insurance company.

II. THERE IS NO COMPETENT EVIDENCE OF ANY AUTHORITY OF BLACKINGTON OR THE BANK OFFICERS TO ACT ON BEHALF OF THE RESPONDENT INSURANCE COMPANY TO MAKE THE CLAIMED CONTRACT.

ARGUMENT

I. NO CONTRACT OF LIFE INSURANCE ON THE LIFE OF LEON L. CLAUSSE WAS EVER MADE BY RESPONDENT INSURANCE COMPANY.

A. No insurance liability was created by the application signed by Leon L. Clausse.

The only writing evidencing any dealing between the Clausses and Respondent insurance company was the application (Defendant’s Exhibit 1). That application provided as quoted in the Statement of Facts that insurance liability of the company could be created by the application *only* in accordance with the terms of the conditional receipt, which was never issued, or by delivery of the policy during the lifetime and good health of the applicant and the payment of the premium.

The evidence is clear and undisputed that no policy was ever issued and no premium paid. In view of that provision there can be no contractual liability of the insurance company by virtue of the application, nor can there be any liability on some oral contract between Clausse and Blackington for insurance coverage contrary to the terms of that application. Such a proposition has already been passed upon by this court in

Field vs. Missouri State Life Insurance Company

77 Utah 45, 290 Pacific 979.

In that case there had been an application substantially similar to that in the case at bar. One of the theories of the Plaintiff was that the soliciting agent entered into a temporary oral contract with the assured to insure his life until such time as the application could be acted upon by the proper officer of the Defendant insurance company. Said this court of such a contention:

“By the terms of the written application, the insurance is to take effect at the time the application is approved by the company, provided the first premium is paid in cash, otherwise it is not to take effect until the first premium is paid and the policy delivered to and accepted by the applicant during his life and good health. The receipt that was issued to Mr. Field for the premium paid provides that ‘insurance subject to the terms and conditions of the policy contract issued shall take effect as of the date of approval of above application by the company at its home office in Saint Louis, Mo. Otherwise the payment evidenced by this receipt shall be

returned.' The language of the application and of the receipt is clear and certain. There is no necessity of resorting to parol testimony to clarify the meaning of the language used in either the application or the receipt. It is impossible to reconcile the written provisions of the application and of the receipt wherein it is agreed that the insurance shall take effect upon the approval of the application by the home office of the defendant at St. Louis, Mo., with the claim made by the plaintiff and supported by parol testimony that the insurance should be in force as soon as the first premium was paid. Under such circumstances full effect must be given to the written contract, and the claimed parol agreement must be disregarded." (290 Pac 979, 983)

In that case the Plaintiff also contended that by some oral arrangement between the agent and the assured the provision of the application had been waived. This court also disposed of that contention as follows:

"It would be more in accord with the rule of law under discussion to say that, when parties reduce a contract to writing, they thereby estop themselves from claiming under the terms of a prior or contemporaneous parol agreement, and also that by entering into a written agreement all rights that the parties may have had under prior or contemporaneous oral agreements are thereby waived. Under the pleadings and the admitted documentary evidence in this case it was not competent for the plaintiff to show that prior to or at the time that Mr. Field signed the written application Mr. Cotterell stated that the life of Mr. Field would be insured as soon as he paid the first premium." (290 Pac 979, 983-4)

In short, the written application, by its very terms, precludes any liability of the company on that document, and the parol evidence rule precludes any reliance on any oral agreement tending to vary its terms.

Appellant apparently recognizes this difficulty for in this opening statement counsel for Plaintiff stated:

“We are not suing on the life insurance policy, that is a matter between the bank and the insurance company.” (Tr. 4)

And in Appellant’s brief at page 14, it is again recognized, counsel stating,

“This is not a suit on said application for life insurance.”

B. No Mortgage Cancellation Plan Agreement was made with Respondent insurance company.

To escape this situation, Plaintiff has conjured up an oral “mortgage cancellation plan”, whereby the agreement was to insure the mortgage on the Clausse’s home, not to insure the life of Mr. Clausse. (Appellant’s Brief Page 2) Under this theory Plaintiff contends that the making of the application for life insurance to the Respondent insurance company was merely one of the things which had to be done by the deceased in order that he might receive protection on his mortgage under this plan, and that he had no direct interest in the life insurance policy, except what might have accrued to him from it under the cancellation agreement if he had lived to pay off the mortgage. Taking the statement of this theory from Appellant’s brief at pages 14 and 15 and looking at the same statement

made in counsel's opening statement to the jury at pages 2, 3 and 4 of the transcript, it is difficult to see on what basis the Respondent insurance company could be a proper party to this action. In fact, after Plaintiff's counsel's opening statement, a motion to dismiss was made on the ground that such opening statement failed to state any facts which would constitute a claim for relief against the Respondent insurance company. This motion was denied by the court, but the ruling was corrected later when the motion for dismissal at the conclusion of Plaintiff's case was granted. But even taking Appellant's theory of the case, and applying the rule established by this court that on a motion for a non-suit there must be given to the Plaintiff the benefit of every fair and legitimate inference that could be drawn from the evidence by the jury,

Winegar vs. Slim Olson, Inc., ----- Utah -----,
250 Pac. 2d 205 (1953),

it is clear that Appellant has no claim for relief against Respondent American National Insurance Company. For example, analyze the claimed "mortgage cancellation plan" agreement in order to determine its terms.

A. *The Amount of Insurance.* The mortgage and note were for Two Thousand Five Hundred Dollars (\$2,500.00), and if the mortgage was to be cancelled the agreement would have to be for a like amount. The Appellant admits that this was not so in her Statement of Facts. (Appellant's Brief, Page 2). The claimed agreement was for only Two Thousand Dollars

(\$2,000.00), the amount specified in the application for life insurance which Plaintiff rejects as only a form required by the bank for the purpose of some agreement, not outlined or specified, between it and the insurance company (Appellant's Brief Pages 14 and 15), but certainly the life insurance to be issued pursuant to the application was the only part of the plan for cancellation of the mortgage to the tune of Two Thousand Dollars (\$2,000.00) which concerns the insurance company. And such insurance was never issued, as Mr. Clausse died before the policy was issued and delivered and before any premium was tendered or paid.

B. *The Effective Date.* What was the effective date of the mortgage cancellation plan claimed by the Plaintiff? It is on this point that Plaintiff's evidence becomes most vague and uncertain, yet it is this date which is all-important to Plaintiff's right to recovery. There must be some substantial evidence of the essential facts of an agreement effective at a date prior to the death of Mr. Clausse in order to entitle Plaintiff to go to the jury.

Winegar vs. Slim Olson, Inc.

Supra

This date could not have been on the day in December, 1948 when the two bank officials called at the Clausse home for appraisal purposes and mentioned the plan to Mr. Clausse. Exhibit "A", handed to Plaintiff at that time, merely announced the plan and suggested that the prospect ask for full details thereof,

and there was yet no mortgage to cancel.

It was not, as Appellant claims in her brief at Page 12, the date when the mortgage and note were signed and delivered to the bank. Plaintiff testified that Mr. Jeppesen agreed at that time to send a representative out to explain the plan and write the insurance. (Tr. 25) Besides, on December 27, 1948, about a week later, Plaintiff received a letter from the Real Estate Management Company, a subsidiary of the bank, signed by an officer of the bank, telling them a representative of the insurance company would call explaining the plan and give them an opportunity to carry it, "if they desired." (Plaintiff's Exhibit "C") Clearly neither the Clausses nor the bank believed a "plan" was yet in effect.

The next possibility as to an effective date would be January 5, 1949, when Mr. Blackington called to explain the plan and attempted to sell the necessary insurance. At the conclusion of this session Mr. Clausse executed the application (Exhibit 1), and in arguing for this date Plaintiff runs into the express terms of that application. To escape this road block, Appellant contends that the making of the application to the Respondent insurance company was merely one of the things which had to be done by Mr. Clausse to receive the protection on his mortgage under the mortgage cancellation plan (Appellant's Brief, Page 14).

It has already been shown that neither party thought there was yet a mortgage cancellation plan agreement, and it is a basic principle of contract law

that requires no citation of precedents that until there is a meeting of the minds there can be no contract. Therefore, how could the execution of the application by Mr. Clausse be merely a step in his performance of the terms of the mortgage cancellation plan agreement? And certainly the signing of the application could not make the cancellation plan agreement effective as to the insurance company — if it was ever intended to be a party to such an agreement, as the application by its very terms, which counsel for Appellant claims he does not seek to vary, says no insurance, unless and until delivery of the policy and payment of the premium.

Despite such protestations of acceptance of the terms of the application (Appellant's Brief, Page 14) Plaintiff and her son, Roscoe, both attempted to and were allowed to testify, over the timely objections of Counsel for Respondent insurance company, that Mr. Blackington, the soliciting agent, said the insurance would take effect "immediately and all during the period of the mortgage", (Tr. 36), and again, "immediately when the application was signed", (Tr. 38). Roscoe said Blackington said it was "in effect", (Tr. 64), which Roscoe guessed to mean when the mortgage was executed, and even that Blackington said that the "mortgage insurance" was in effect, i.e., that the mortgage would be cancelled upon death, irrespective of whether Mr. Clausse could pass the required physical examination arranged by Blackington (Tr. 66), although his mother, the Appellant, admitted that she understood that Mr. Clausse had to pass the physical exam-

ination (Tr. 48), to qualify for life insurance.

Leaving aside for the moment the question of authority of Mr. Blackington to make such statements, it is clear that such testimony is incompetent and in direct contravention of the parol evidence rule.

Field vs. Missouri State Life Insurance Company

Supra

Plaintiff admitted on cross examination that she knew and understood that there had to be a life insurance policy taken out and maintained before the plan could work (Tr. 46), and that the mortgage could not be credited with any Two Thousand Dollar (\$2,000.00) payment in the event of the death of Mr. Clausse unless there was a policy issued by the insurance company (Tr. 48). Therefore, unless the terms of the application are to be entirely ignored, which Plaintiff says is not the case, the effective date of the coverage under the plan could be no earlier than the issuance of the policy during the lifetime and good health of Mr. Clausse, and the payment of the premium, neither of which events ever occurred.

C. The place of the insurance company in the mortgage cancellation plan.

Finally, in determining whether Plaintiff's evidence could possibly support any contract with Respondent insurance company, the part the insurance company was claimed to play in the plan must be considered. Plaintiff admitted on cross examination (Tr. 46-48) that she and Mr. Clausse understood the plan contemplated

a life insurance policy on the life of Mr. Clausse payable to the bank to pay off the loan, and that there had to be such a policy issued before the plan could work. In other words, the only part the insurance company played in the picture was to write an insurance policy on the life of the mortgagor with the mortgagee bank as primary beneficiary. Under Plaintiff's theory of a cancellation plan agreement that was one of the steps to the plan, but also under this theory the insurance company could play no other part. It was not lending the money on the security of the mortgage. It was not agreeing to cancel the note and mortgage in the event of the death of Mr. Clausse. All it was to do was to write the insurance policy, and for that purpose Mr. Blackington called at the Clausse's home to have Mr. Clausse sign an application. Unfortunately Mr. Clausse died before the policy was issued. Counsel for Appellant recognizes in his brief that if this were the ordinary situation, without the bank and the claimed mortgage cancellation plan involved, the terms of the application would be definitive. It would be just the not too unusual case where the applicant for life insurance dies before the policy is issued or became effective. Bringing the bank into the picture and its mortgage cancellation plan cannot change the legal relationship of the insurance company with Mr. Clausse. Its contractual liability can be based only on the application. That application, as Appellant admits, says no insurance liability until certain conditions are met, which all agree were never met.

And what about consideration? The only consideration to the insurance company would be the actual payment of the premium. And no premium was ever paid or ever tendered. On that point alone, it is clear that the insurance company's participation in the claimed mortgage cancellation plan agreement was never consummated.

II. THERE IS NO COMPETENT EVIDENCE OF ANY AUTHORITY OF BLACKINGTON OR THE BANK OFFICERS TO ACT ON BEHALF OF THE RESPONDENT INSURANCE COMPANY TO MAKE THE CLAIMED CONTRACT.

Assuming that in some mysterious fashion the terms of an agreement by the bank *and* the insurance company with Mr. and Mrs. Clausse to provide for a mortgage cancellation plan can be spelled out from the evidence offered by the Plaintiff, such agreement providing that in the event of the death of Mr. Clausse, the note and mortgage of the Clausses would be cancelled by the bank, in which cancellation the insurance company would participate, even though it had received no premium, and issued no insurance policy. What evidence is there of an authorized agent of Respondent insurance company making such an agreement? In other words, by whose magic was this remarkable agreement claimed to have been created?

Appellant first relies on claimed statements made by Mr. Porter and Mr. Jeppesen, two Vice-Presidents of the First Security Bank of Utah. Now Respondent insurance company is a Texas corporation engaged in the life insurance business in Utah and elsewhere. In

order to enter into agreements, no matter how magical their terms, it must act through agents having authority. Even Appellant does not have temerity to claim that either of these two gentlemen had authority to act for the insurance company. She claims apparent authority. Appellant at Pages 6 and 7 of her brief discusses the apparent scope of authority of Jeppesen and Porter as binding the bank and at Page 17 states that the facts of the case are of such a nature as to raise a "strong inference" that both Blackington and the bank officers were representing both the insurance company and the bank.

At Page 16 of Appellant's brief appears a quotation from a Washington case,

Pagni vs. New York Life Insurance Company
173 Wash. 322, 23 Pacific 2d 6,

to the effect that an insurance company, like other corporate principals, is bound by the acts of agents within the scope of their apparent authority. With this proposition Respondent insurance company cannot and does not differ. But counsel for Plaintiff neglected to point out that the Washington court first found,

"In the case at bar there was evidence of apparent authority, a custom of which the insurer had knowledge, a course of conduct which it sanctioned, which would warrant a jury in finding that the insurer had clothed its soliciting agent with authority to act for it as he did."
23 Pac. 2nd 6 at page 15.

It is submitted that in this case at bar there is no evi-

dence of apparent authority by an agent, apparent or actual, of the insurance company. No custom, no course of conduct by the insurance company was shown which would warrant a finder of fact in concluding that Respondent insurance company had clothed Mr. Blackington or either of the bank officers with authority to act for it as Plaintiff claims they did.

Apparent authority is defined in the Restatement of Agency, Sec. 8, as follows:

“Apparent authority is the power of an apparent agent to affect the legal relations of an apparent principal with respect to a third person by acts done in accordance with *such principal's manifestations of consent* to such third person that such agent shall act as his agent.” (emphasis supplied)

and in Section 27, it is stated that apparent authority is created by written or spoken words or any other *conduct of the principal*, which, reasonably interpreted, causes the third person to believe that the principal consents to have the act done on his behalf by the person purporting to act for him. The issue is not, as Appellant contends at Page 8 of her brief, whether the claimed agents acted in such a way as to justify Mr. Clausse in assuming they had authority to make the claimed contract, but whether the principal, i.e the insurance company, engaged in such conduct as to reasonably create that belief by Mr. Clausse. That apparent authority requires some *conduct* by the principal to establish such authority has been recognized by this court in

where it was said,

“The extent of an agent’s apparent authority is not measured by the extent of power exercised by the agent; *but by the principal’s conduct* with reference to the power exercised by the agent. Either by action or by inaction where there is a duty to act, the principal may create a situation, the reasonable interpretation of which, by a third party with whom the agent is about to deal, is such as to lead that third party to believe that the agent has authority to deal with him as contemplated. Under such circumstances the law will hold the principal responsible to that third party for the results of that deal with the agent.” (emphasis supplied)

Such manifestations of conduct to create apparent authority must be gathered from the facts and circumstances of the transaction as shown by the evidence,

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vs.

National Building and Loan Association

80 Utah 62, 12 Pac. 2d 758,

These undisputed facts and circumstances so far as Jeppesen and Porter are concerned are:

(1) Jeppesen and Porter were not employees of the insurance company. They were officers of the First Security Bank. They were not even apparent agents of the insurance company.

(2) Jeppesen was an old friend of the Clausses

and his visit to their home in December, 1948 was to appraise it for a bank loan, at which time, as an old friend, he suggested they take out the plan (Tr. 50) and Plaintiff then understood that Mr. Jeppesen did not write life insurance (Tr. 50).

(3) The Clausses had never had any dealings with the Bank or Insurance Company before with respect to a mortgage cancellation insurance plan (Tr. 40); so there was not prior conduct of either principal upon which Plaintiff can claim reliance.

(4) The pamphlet (Exhibit "A") made no reference to Respondent insurance company.

(5) The letter of December 27, 1948 suggests the Clausses *consider* the mortgage cancellation plan and referred to Mr. Blackington, the local representative of American National Insurance Company, whom the bank was asking to call to explain the plan and to give them the opportunity to carry it, if they so desired.

Therefore, until Mr. Blackington called on January 5, 1949, Respondent insurance company had engaged in no conduct with these Defendants nor in any conduct of which these Defendants were aware, which would create a situation so as to lead the Clausses reasonably to believe either Jeppesen or Porter had authority to deal or speak as the agents of the insurance company. In fact, until the letter of December 27, which was after all the alleged conversations with either Porter or Jeppesen, there was not even any mention of the American National Insurance Company. It is clear and undisputed that Jeppesen and Porter were not agents of the

Respondent insurance company, had no apparent authority to act as such, and that any alleged statements made by them were incompetent and hearsay as to Respondent insurance company.

The only other person whom Appellant claims acted for the Respondent insurance company to make the oral mortgage cancellation contract with Plaintiff was Reynolds Blackington. What are the facts and circumstances shown by the evidence as to the conduct of Respondent insurance company as to him and his authority?

(1) He was the soliciting agent of the insurance company. He signed the application as such (Exhibit 1), and that same application expressly stated the methods of creating insurance liability of the company as only either (a) in accordance with the terms of the conditional receipt, still attached to the application when it was introduced in evidence or (b) by delivery of the policy and payment of the premium. The conditional receipt referred to expressly provided,

“No agent (which term includes every company representative) is authorized or has any power to make, modify or discharge the provisions of this receipt, to extend the time for paying any premium, to waive any Company's right or requirement or to bind the Company by any written or oral promise not contained in this receipt and any policy issued in pursuance of such application, except that the Company's President or Secretary may accomplish all such acts by a written statement bearing the signature of the official who made it and the date of its execution.”

This court has made it clear that when the application expressly so limits the authority of the soliciting agent he cannot waive the conditions of the application,

Jones vs. New York Life Insurance Company
69 Utah 172, 253 Pac. 200 at 202.

(2) Nor did Blackington tell the Clausses he had authority to change or modify the terms of the application (Tr. 38) and the Clausses did not think he had such authority (Tr. 39).

(3) There had been no previous dealings with Blackington before (Tr. 40) by the Clausses and they did not know him (Tr. 29).

There is no other evidence of any other dealing with this Defendant by Plaintiff or any acts by this Defendant holding Mr. Blackington or anyone else as its agent with authority to make a contract of the nature Plaintiff claims. It is submitted, therefore, that the testimony of Mrs. Clausse and Roscoe Clausse as to the alleged statements by Blackington in their conversations with him was incompetent and hearsay as to Respondent insurance company. It is further submitted that such testimony was incompetent as in contravention of the parol evidence rule. It is submitted that there is no competent evidence upon which reasonable men could find that the Respondent insurance company, on any basis, became a party to any mortgage cancellation plan or a party to any policy of insurance on the life of Mr. Clausse.

CONCLUSION

It is submitted that for the reasons above shown the trial court's ruling granting the motions of Respondent insurance company was correct on the facts and the law.

Respectfully submitted,

FABIAN, CLENDENIN, MOFFAT
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