Blackburn, Nickels & Smith, Inc. and **Rued Insurance, Inc.**

v.

National Farmers Union Property & Casualty Company and **Aetna Casualty & Surety Co.**

Supreme Court of North Dakota
March 19, 1992.

This is an appeal from a declaratory judgment in an insurance coverage dispute involving an October 7, 1985 automobile accident. The district court ruled that Scott Smith, d/b/a Smitty's Lawn Service (Smith), was insured by Aetna Casualty & Surety Company (Aetna) and that Aetna was entitled to indemnity against Rued Insurance, Inc. (Rued). We affirm. [Ed. note: numerous omissions not indicated in the remainder of this opinion]

Smith alleged that he had liability insurance coverage on his vehicle with Aetna. Aetna denied coverage for the accident and refused to defend Smith in the lawsuits. Smith then filed a third-party complaint against Rued, an independent insurance agency representing several insurers, including Aetna, alleging that Rued breached its promise to procure a liability insurance policy for Smith with Aetna in April 1985. Rued filed a third-party complaint against Blackburn, Nickels & Smith, Inc. (BNS), an insurance brokerage firm, alleging that BNS negligently failed to obtain insurance coverage for Smith. Thereafter, BNS [brought] this declaratory judgment action against Farmers Union and Aetna.

The trial court entered a judgment declaring that Smith had automobile liability insurance coverage with Aetna for the October 7, 1985 accident and that Aetna was entitled to "complete indemnification" from Rued. Rued appealed, and BNS, Farmers Union, and Aetna filed cross appeals.

On April 16, 1985, Scott Smith asked Rued's insurance agent, Corinne Savelkoul, to provide him with liability insurance coverage for his commercial lawn spraying business and for his vehicles. Smith gave Savelkoul $200 as a down payment for the insurance premium. Savelkoul gave Smith an oral insurance coverage binder and then sent an application for the coverage to Aetna.

On April 26, 1985, before Aetna had any contact with Rued about the application, Savelkoul, at Smith's request, gave him a Certificate of Insurance showing that Smith had insurance coverage with Aetna until April 1, 1986-- general liability insurance of $500,000 and automobile liability insurance coverage of $300,000. On the Certificate of Insurance, under the column marked "policy number" Savelkoul had typed in the word "pending." Savelkoul gave Smith a copy of the Certificate of Insurance and retained other copies of the certificate in Rued's offices. Neither a copy of the Certificate of Insurance nor any information as to its contents were ever transmitted by Rued to Aetna.

A few days after Savelkoul issued the Certificate of Insurance to Smith, she received a telephone call from Nancy Abbott, an underwriter employed by Aetna at its Minneapolis-St. Paul offices. Abbott told Savelkoul that Aetna would not provide commercial liability insurance for Smith because of the dangerous chemicals used in the business but that, as a courtesy to Smith, Aetna would provide temporary automobile liability insurance coverage for Smith until Rued could place coverage with another company. Abbott told Savelkoul that the temporary coverage was not to extend beyond June 1, 1985. Savelkoul then prepared another application which she sent to BNS, requesting them to place insurance coverage for Smith.

When Smith notified Rued about the October 7, 1985 accident, Rued asked BNS to forward an insurance policy showing that Smith had coverage. BNS denied that it had agreed to secure coverage for Smith, and Rued then returned to Smith the $200 insurance premium that he had paid in April 1985.

In its cross appeal, Aetna asserts that the trial court erred in concluding that Smith had liability insurance coverage with Aetna on the date of the accident. Aetna claims that Smith was not insured by Aetna at that time because the oral temporary binder had expired by June 1, 1985. It appears that Aetna has misconstrued the basis for its liability in this case, which is predicated upon the Certificate of Insurance issued to Smith by Rued, and not upon the oral binder of insurance.

A Certificate of Insurance is a document evidencing the fact that an insurance policy has been written and includes a statement of the coverage of the policy in general terms. Black's Law Dictionary (5th ed. 1983). A Certificate of Insurance is an insurance company's written statement to its customer that he has insurance coverage, and the insurance company is estopped from denying coverage that the Certificate of Insurance states is in effect. [string citation omitted]

The Certificate of Insurance given to Smith by Rued included the following statement:

> "This is to certify that policies of insurance listed below have been issued to the insured named above and are in force at this time."

The certificate also states that it is intended as "information only" and that it does not "amend, extend or alter the coverage" afforded by the listed policies. The trial court correctly summarized the underlying reason that the statement of insurance coverage provided in the Certificate of Insurance must be given legal effect:

> "This case must be viewed through the insured, Smith's eyes, who left Rued's premises on April 26, 1985, with a certificate in his hand indicating that he was covered for almost a year and he felt that he in fact did have insurance coverage through Rued."

The trial court subsequently concluded:

> "One of the tests of an agents powers is his ostensible or apparent authority. An agent has the power to bind the princip[al]. An agent can make contracts, receive payments and can do all of the other items specified in the agency agreement. Rued was invested with all these powers and under these powers accepted Smith's application and bound coverage through Aetna until the coverage was legally cancelled."

Aetna's employee, Nancy Abbott, testified that Rued's agents had authority to sign and issue binders and certificates of insurance on Aetna's behalf. Smith testified that he relied on the certificate in assuming that he had automobile liability insurance coverage for a year. There is no contrary evidence to dispute this testimony. Rued, as Aetna's agent, had actual authority to write the Certificate of Insurance and at least an ostensible authority to bind Aetna to provide coverage in accordance with the certificate.

The trial court's finding of agency will not be disturbed on appeal unless it is clearly erroneous. Red River Commodities, Inc. v. Eidsness, 459 N.W.2d 805 (N.D.1990). The trial court's finding is not clearly erroneous that Rued exercised actual and ostensible authority, as Aetna's representative, in issuing the Certificate of Insurance to Smith certifying a one-year coverage.

Section 3-03-03, N.D.C.C., provides when a principal is bound for the acts of his agent in exercising an [apparent] authority:

> "A principal is bound by acts of his agent under a merely [apparent] authority to those persons only who in good faith and without ordinary negligence have incurred a liability or parted with value upon the faith thereof."

There is no finding that Smith acted negligently or without good faith in relying on the certificate for his belief that he had insurance coverage. He paid $200 for that coverage and, in reliance on the certificate's statement of coverage, he did not attempt to secure other coverage. Therefore, we conclude that when Rued issued the Certificate of Insurance to Smith, Smith acquired liability insurance coverage with Aetna, as provided by the certificate. Absent cancellation of the coverage by Aetna in accordance with the terms of its policy, Aetna was liable for the coverage

indicated by the certificate. Aetna makes no claim that it cancelled Smith's coverage by notice of cancellation under the policy terms. We hold, therefore, that the trial court did not err in concluding that Smith had automobile liability insurance coverage with Aetna for the October 7, 1985 accident.

[The Supreme Court affirmed the trial court's ruling that Aetna was entitled to complete indemnification from Rued, based on Rued's negligent failure to forward information on Smith's Certificate to Aetna.] Because Rued failed to inform Aetna about the contents of the Certificate of Insurance, Aetna had no knowledge that Smith had liability insurance coverage with Aetna through April 1, 1986. Without that knowledge, Aetna was unaware that it had to cancel Smith's coverage if it did not want to insure him for that entire period.

In accordance with this opinion, the judgment of the district court is AFFIRMED.