

## **?Subject To Contract?**

We have received some interesting Insurance questions from our friend and Colleague, Mr. Uzo Aghaegbuna, Legal Adviser of Citizens International Bank. We also received some inquiry from a Client on what the legal effect of the term ?Subject to Contract?, meant under Nigerian Law.

In summary, we would answer the Insurance questions first and then treat the one on ?subject to contract?.

Insurance: Questions arising from Newsletter on Insurance

Question 1:

Does liability arise where only part premium payment was paid, whether or not the instalmental payment was agreed to between the Insurer and the Insured or between the Broker and the Insured?

Answer:

This is dependent on the terms of the contract policy. In practice, Insurance companies insist on the payment of the premium in advance. However, with the slow run in the Nigerian economy, and to sustain their clientele, Insurance companies accommodate instalmental or part payment of premiums. In the event of a loss, the practice is to make a pro-rata basis payment in order to meet the justice of the situation and maintain client loyalty.

A Broker does not have a contractual right to commit his principal, the Insurance Company, to terms of a policy different from that that the Insurance Company has imposed. Also, the practice of Insurance Brokers collecting Insurance premiums and not remitting to the Insurance companies could lead to numerous litigation and loss for the Insured because of the age long rule of ?no premium, no cover'.

Question 2:

Can an Insured, whose car is comprehensively insured, insist, in the case of a loss, on a new car rather than repairs been effected on the old car, which the Insurer and the Loss Adjuster may insist on?

Answer:

Most Insurance policies usually give the Insurer the sole right of exercising the options of whether to repair the car or to pay cash to the Insured, or to assist in the purchase of another car.

In practice, we believe that these are matters that can always be negotiated especially where the Insured is a valued client of the Insurer.

Last word on Insurance

Rate cutting remains an unethical and wrong corporate behaviour. We hope that the current controversy on rate cutting, between some big Insurance companies and the Nigerian Insurance Association on this subject will be resolved soon in the best interest of the Insurance industry.

Agreements 'Subject to Contract'?

The use of the proviso, 'Subject to Contract', in preliminary contract papers, continues to be on the increase. Sometimes, this term has been used in correspondence after the parties have agreed on the terms of the contract and payment/consideration is made.

In the case of **International Textiles Industries v. Dr. Aderemi & 4 Ors** [1999] 6 SC (Part 1) Page 1, the Appellant received a letter of offer from the 1<sup>st</sup> to 4<sup>th</sup> Respondents marked 'Subject to Contract?'. By various correspondence, (the Respondent's own correspondence, all marked 'subject to contract?'), the parties agreed on the terms of the contract and payment was made to the 1<sup>st</sup> to the 4<sup>th</sup> Respondents in furtherance of these terms and agreement.

The 1<sup>st</sup> to the 4<sup>th</sup> Respondents breached the contract by selling the property to the 5<sup>th</sup> Respondent on the grounds that their negotiation papers were marked 'subject to contract?' and that the consent of the Governor of Lagos State was not obtained to the Lease in breach of the provisions of the Lands Use Act.

The Supreme Court held that the phrase, 'subject to contract' seemed irrelevant and perhaps meaningless in Nigeria, unlike in the United Kingdom, unless it can be shown that the vendor or purchaser or both evinced as their intention a special formal contract to embody terms and conditions which go beyond the mere offer and acceptance implication.

We are of the opinion that it would have been an act of fraud if the Supreme Court had held otherwise because exhibit F in this case, confirmed the terms of the contract, exhibit G was the

receipt of payment for 5 (five) years rent and the Appellant was already in possession of the property after expending a lot of money on carrying out improvements on the property.

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