

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

SUIT NO.: 742 of 1994

BETWEEN

COLONIAL LIFE INSURANCE COMPANY
(TRINIDAD) LIMITED

Plaintiff

and

PETER EUSTACE ALEXANDER

Defendant

Appearances

Mr. R. McNamara for the Plaintiff

Ms. D. Daniel for the Defendant

2001: October 15th & 22nd
November 7th

JUDGMENT

- [1] **Saunders J:** On 1st October 1991, Mr. Peter Alexander, the defendant, was employed by CLICO, the plaintiff, as an Insurance Agent. Mr. Alexander's terms and conditions of service were covered by a written agreement entered into between the parties. Pursuant to that agreement CLICO used to advance Mr. Alexander the sum of \$2,000.00 each month. These sums were loans fully recoverable by CLICO. When Mr. Alexander earned commissions, his commissions were set off against the advances.
- [2] In August, 1992 Mr. Alexander was appointed Agency Manager. No written contract was ever executed by the parties to govern his new terms and conditions of employment. Each side has a different account of the reasons for their failure to conclude a written contract.

At any rate it is common knowledge that after he was promoted, CLICO provided Mr. Alexander with roughly \$5,000.00 monthly.

- [3] This case concerns these sums of \$5,000.00. CLICO says they were loans to be regarded in the same way as the sums of \$2,000.00 were treated when Mr. Alexander was a salesman. Mr. Alexander says that these sums represented a salary to him; that he had been assured at the inception of his tenure as Agency Manager that he would not be called upon to repay these monies or to set them off against his earned commissions. If these \$5,000.00 sums were loans, then as at September, 1994, Mr. Alexander was owing CLICO a total of \$28,253.97. If the monies represented a salary, or an amount that was not repayable by Mr. Alexander, then as at the said date (September, 1994) CLICO owed Mr. Alexander the sum of \$8,913.71.
- [4] CLICO is suing to recover the said sum of \$28,253.97. Mr. Alexander says he owes none of that. Instead he has counterclaimed for the sum of \$8,913.71. The issue for determination is what was the agreement between the parties when Mr. Alexander became Agency Manager and specifically, how should the \$5,000.00 payments be regarded.
- [5] Mr. Alexander in his evidence gave the court a significant amount of detail as to what transpired between himself and the representatives of CLICO when he was appointed Agency Manager. According to him, in his discussions with a Mr. Leroy Parris of CLICO, he informed Mr. Parris at the time that he was earning \$5,000.00 - \$7,000.00 from his own sales business apart from his earnings as a Salesman for CLICO. He testified that, as an inducement to accept the new position, Mr. Parris then verbally agreed to pay him a fixed salary of \$5,000.00 monthly as Agency Manager. Mr. Parris gave him a standard Manager's Contract for his signature but he pointed out that this standard Contract did not encompass the verbal agreement they had concluded. According to Mr. Alexander, Mr. Parris then promised to prepare, at head office in Barbados, an addendum to reflect the true agreement. Mr. Alexander says that he never did receive this new contract as promised but that he was paid \$5,000.00 monthly.

[6] Mr. Parris is still with CLICO. He gave evidence at the trial. He asserted that at no time did he or any other person orally agree with Mr. Alexander that the latter would be paid a fixed salary of \$5,000.00. Such an agreement, he stated, would run counter to CLICO's norms in appointing Agency Managers. The sums of \$5,000.00, he maintained, were advances or draws as were the original sums of \$2,000.00. Mr. Parris's recollection is that in August, 1992, CLICO sent to Mr. Alexander a letter confirming his appointment. A Manager's Agreement accompanied this letter. Mr. Alexander was required to sign and return the Agreement but he failed to do so. When asked about it he would respond that "it is in the mail."

[7] Faced with these vastly divergent recollections of events occurring about nine years ago, this court would must place a high value on any contemporaneous documents or other independent evidence that may assist in shedding some light on how the dispute should be resolved. There is such evidence before me.

[8] The letter from CLICO confirming Mr. Alexander's appointment is dated 13th August, 1992. The first page of the letter states, inter alia:

"You will be given a monthly advance of Five Thousand dollars (\$5,000.00) and will be required to produce personal production of \$12,000.00 API monthly in addition to your other managerial duties.

This arrangement will be reviewed quarterly.

All commissions earned by you during this financing period will be withheld by the Company and applied to reduce the loan balance."

[9] The second page of the letter had two paragraphs in addition to the signature of the writer, Mr. St. Clair. In one paragraph Mr. Alexander was congratulated on his appointment and best wishes were extended to him. The other paragraph stated,

"Attached please find agency managers agreements for your perusal and signature. Upon completion, these contracts should be returned to the writer's office."

[10] Mr. Alexander admitted receiving the first page of this letter. He states however that he never received the second page. This letter strongly supports the testimony of Mr. Parris.

Even if Mr. Parris were being truthful when he said that he never received the second page, a claim that puzzles me, the page of the letter he acknowledges receiving ought to have left him in no doubt that the \$5,000.00 payments to be made to him were not a fixed salary but were advances.

[11] In May, 1993 CLICO had occasion to write to Mr. Alexander. He was informed that he was to be paid by commissions effective May, 1993 as he had already surpassed the 18 month period allotted for financing. The company sought his "urgent directives" on how he proposed to clear his indebtedness to the company.

[12] Mr. Alexander was most upset by that letter. He responded on 28th May, 1993 expressing surprise and dismay at the manner in which his appointment, his "salary draw" and his commissions as Agency Manager had all been handled. He said he had been appointed without any consultations whatsoever and that terms and conditions were discussed subsequent to the announcement of his appointment. Mr. Alexander stated

"I can distinctly remember your offer of an increase in my draw from \$2,000 to \$5,000 monthly and writing \$12,000 in A.P.I. monthly, that I **WOULD BE PAID REGARDLESS OF WHETHER I WORK THE REQUIRED BUSINESS OR NOT, PLUS MY OVERRIDING COMMISSION** (his emphasis). You then stated that you would take up my management contract to Barbados and return it to me for my signature in a week's time with an addendum confirming the arrangements that we had agreed to. To date nine (9) months later I have not received any contract with the addendum as promised.

Further to that I informed you that I was also self-employed as a small businessman earning in the region of \$3,000 - \$5,000 monthly, and you insisted that I give it up as I could not function effectively as Agency Manager. I agreed and requested that I be given a few months to wind-up the business....."

The letter ends with a fervent plea that "the salary arrangements that we agreed ...be honoured as it would be impossible for me to function as an Agency manager without a proper remuneration package."

[13] Mr. Parris replied to this letter on June 7th disputing the accuracy of Mr. Alexander's recall and seeking to place his discussions with Mr. Alexander in a different light. Mr. Parris wrote

"In our initial meeting regarding your appointment, I pointed out that you would be unable to sell business, build and run an effective agency for [CLICO] and simultaneously operate your private business. I also said that if dedicated, you could write over \$12,000 a month in business for which you would receive a monthly draw of \$5,000 in compensation. At no time did I ever agree to your being paid regardless of whether you "work the required business or not, plus overriding commissions".

[14] This exchange of correspondence is not particularly helpful to Mr. Alexander's case. At the highest, the exchange establishes that as early as 1993 he was making the very allegations that he made before me in the witness box eight years on. But CLICO's current defence to those allegations are also placed on record. Looking at the letters closely, there seems to be some confusion about the manner in which Mr. Alexander addresses the issue of his "salary draw". In the first place the concept of a "salary draw" is perplexing. In this specific context, one word denotes a fixed monthly unconditional compensation. The other word specifically refers to loan advances made by the employer to be set off against commissions earned by the employee.

[15] Other parts of Mr. Alexander's said letter, particularly when juxtaposed with his oral testimony in court, reinforces the notion of confusion. On the witness stand Mr. Alexander appeared to renege from his pleadings that he was being paid \$5,000.00 monthly as salary. Instead he seemed to suggest that the \$5,000.00 payments were made to him conditional upon his writing \$12,000.00 in A.P.I. By contrast, CLICO has maintained their position throughout.

[16] The most serious bit of evidence against Mr. Alexander is his signature, as Agency Manager, on a resolution signed by other Agency Managers on or about 29th October, 1993. These managers had obtained information that their counterparts in Barbados had received or were about to receive financial packages that were more favourable than those which they presently enjoyed. Accordingly they met in emergency session and solemnly

resolved, inter alia, that each of them should "be granted a basic minimum of \$1,500.00 monthly effective April of 1992....."

[17] By his signature on this resolution, Mr. Alexander gives the impression that he recognizes that he had never been receiving a salary of \$5,000.00 at all. When he was cross-examined on this, his explanation that he had signed the resolution as a gesture of support for his colleagues appeared to me to be incredible.

[18] It is to be conceded that at the time the resolution was drawn up, Mr. Alexander was already in dispute with CLICO about his "salary draw". However, in a case like this where there is a premium on documentation that supports or runs counter to a party's case, the evidence contained in this resolution is very damaging to Mr. Alexander.

[19] Looking at the evidence as a whole I am satisfied on a balance of probabilities that Mr. Alexander was always aware that as Agency manager, his draw was increased from \$2,000.00 to \$5,000.00 monthly. It is my view that his contract made no provision for a fixed salary. I would give judgment for the plaintiff in the sum of \$28,253.97 with costs in the sum of \$8,475.00.

**Adrian D. Saunders
High Court Judge**