

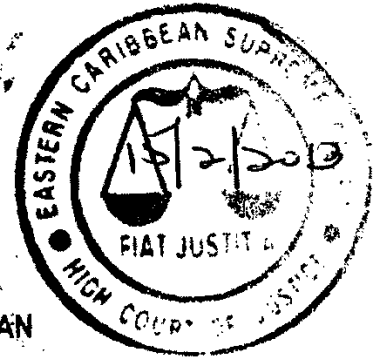
SAINT VINCENT AND THE GRENADINES

HIGH COURT OF JUSTICE

Claim No: SVGHCV2010/0380

Between:

- 1. HANSRAJ MATADIAL RAMSARAN**
- 2. MIKASHA RAMSARAN**



Claimant

and

CLICO INTERNATIONAL LIFE INSURANCE LIMITED

Defendant

Appearances:

Dr.Linton Lewis with him Simone Churaman of Counsel for the Claimant

Annique Cummings of Counsel for the Defendant

2011: December 13th

2012: February 8th

2013: February 8th

DECISION

V. GEORGIS TAYLOR-ALEXANDER, M

Introduction

- [1] The defendant CLICO International Life Limited is an insurance company incorporated in Barbados with satellite operations in the OECS countries. It is registered in Saint Vincent

and the Grenadines as a foreign company and was carrying on insurance business on the island.

- [2] The first named claimant is a barrister at law and solicitor of the Eastern Caribbean Supreme Court. The second named claimant is the daughter of the first named claimant and the beneficiary under a policy of insurance with the defendant.
- [3] The first named claimant is and was at all material times a policy holder of the defendant and the purchaser of an Executive Flexible Premium Annuity Policy (EFPA) number IVP0120165 from the defendant and issued on the 26th February 2008 and with a maturity date of the 26th February 2011. Under the policy the first named claimant paid over to the defendant the sum of \$500,000.00 for which he was guaranteed an interest rate of 8% per annum for the first two years, with subsequent rates to be determined. This entitled the second named claimant as beneficiary to the sum of \$3115.00 monthly. On the maturity date the claimants were entitled to the return of the sum of \$500,000.00.
- [4] The defendant consistent with the policy paid interest on the premium from the 26th February 2008 until the 26th February 2010 when the payments suddenly stopped.
- [5] The defendant company is regulated under the Insurance Act CAP 310 of Barbados and the branch operations of the defendant in Saint Vincent and the Grenadines is further regulated by The Insurance Act Number 45 of 2003.
- [6] The claimants commenced proceedings against the defendant on the 18th October 2010, and obtained judgment in default of acknowledgement of service on the 18th of November 2010, for the sum of \$531,463.70, being the sum of \$500,000.00, interest at the daily rate of \$109.58 from 26th February 2010 to 10th November 2010 and continuing and fixed costs of \$2500.00. By agreement made between the parties between the 18th November 2010 and 31st June 2011, the defendant agreed to settle the judgment debt by instalment payments of \$30,000.00 monthly. Monthly payments were made for three months being January, February and March 2011,
- [7] On the 13th April 2011 the defendant was by order of the High Court of Barbados placed under judicial management pursuant to section 57(1) (b) of the Insurance Act Cap 310, of

the Laws of Barbados. That order was not registered in Saint Vincent and the Grenadines. On the 2nd of June 2011 the High Court in St. Vincent and the Grenadines made an order for the judicial management of the branch operation.

- [8] On the 15th of September 2011 the claimants filed a request for the issuance of a writ of execution to recover the judgment debt outstanding. On the 7th October 2011 the judicial manager of the branch operations in Saint Vincent and the Grenadines applied for permission to suspend the payment of the judgment debt due to the claimants.
- [9] On the 31st October 2011, the claimants filed a cross application for leave to proceed against the defendant with the execution of their judgment dated the 18th November 2010.

ISSUES FOR DETERMINATION

- [10] The main issue for determination is whether the defendant/applicant is entitled to have the payment of the judgment debt suspended.

THE SUBMISSIONS

- [11] The judicial manager's simple submission is that, acting in the proper exercise of its duties and responsibilities conferred upon them by order of the High Court of Saint Vincent and the Grenadines, it took a policy decision to suspend payments to the claimants.
- [12] The claimants/respondents submit that they are secured creditor by virtue of Section 23 of the Civil Procedure Code, Chapter 81 of the laws of Saint Vincent and the Grenadines and the judgment of the claimants being a money judgment attaches to any land tenements and hereditaments of the judgment debtor, and they are entitled to have their judgment executed. They submit that the order of the court placing the defendant in judicial management did not operate to stay the execution of the judgment debt and that they are capable of proceeding with the writ of execution.
- [13] In response to the application of the judicial manager to suspend the EFPA payment, and the payment due to the claimants on the maturity date of the policy, the claimants submit that the appointment of a judicial manager is statutory and the order appointing the judicial manager went beyond its legislative mandate such that the powers provided at paragraphs

3,4,7,8,9,10,11,12, and 13 of the order of the court are defective and a nullity, as it purported to confer powers on the judicial manager that the court under the legislation did not have the power to confer.

- [14] They further allege that the defendant employed trickery to delay the agreed payments in settlement of the judgment debt anticipating an order for judicial management would be made.
- [15] The claimants aver that the defendant had made a commitment after judgment was entered on the 18th November 2010 to settle the judgment debt by monthly payments of \$30,000.00 and that those payments were made until March 2011 when they were cancelled. Even after the payments stopped and in April 2011, commitments were made by agents and employees of the defendant to continue the promised payments. This was done despite knowledge of the order made in Barbados and in anticipation of an order being made in Saint Vincent and the Grenadines.
- [16] This conduct and trickery employed, the claimants submit, was only to frustrate them and to stop proceedings on the writ of execution. For those reasons, the claimants aver the defendant is not entitled to the relief sought.

THE APPLICATIONS

- [17] The objective of Judicial Management is to rehabilitate financially troubled but viable companies in an attempt to ensure the continuity of operations, and to stave off winding off. It is a usual application in such proceedings for of a judicial manager to request a moratorium on the execution of legal process and/or of the judgments against the company except with prior leave of the court.
- [18] The branch operations in Saint Vincent of CLICO a Barbadian registered company was by order of the High Court of Saint Vincent and the Grenadines dated 2nd June 2011 placed under Judicial Management. Paragraphs 6 of the order of the court provides as follows:-

"6. All actions and the execution of all writs, summonses and other processes against the company are hereby stayed and no person, which shall include a body

corporate, shall bring or continue with a claim or proceedings against the company without leave of this Honourable Court."

11. *The Judicial Manager in carrying out its duties and responsibilities may apply for directions from this Honourable Court from time to time including any application as may be required for the amendment of this order."*

[19] It is pursuant to paragraph 11 that the judicial manager has proposed its application and similarly the claimants have sought permission to continue with their legal process.

[20] For reasons stated hereunder I am obligated to refer the two applications to a judge for determination. It is important as well to document that the applications were canvassed and argued partly orally and partly in writing and the decision reserved before the publication of the reissued decision of the Court of Appeal in Civil Appeal HCVAP2010/010 Marlon Ho-Tack v (1) British American Insurance Company Limited (In Judicial Management) (2) Cleveland Seaforth (Judicial Manager) consolidated with Civil Appeal HCVAP2010/013 (1) British American Insurance Company Limited (In Judicial Management) (2) Cleveland Seaforth (Judicial Manager) v Marlon Ho-Tack and Alice Ho-Tack.

Reasons for Referral

[21] The claimants challenge the authority of the court to have granted the judicial manager the extensive powers contained in the order of the 2nd of June 2011, on the basis that the court's order went beyond the scope of the statute from which it derived its authority, namely sections 52, 53, 54, 56, and 57 of the Insurance Act Chapter 306.

[22] Although the claimants in their submissions acknowledge that the court order is valid until set aside, no application has been filed to challenge the validity of the order and I can only assume that this ground of the application was adduced for commentary and not as a basis for consideration of the current application.

[23] As regards the submission of the claimants that the defendant employed trickery so as to delay the agreed payments in settlement of the judgment debt until an order was made in Saint Vincent and the Grenadines to place the defendant in Judicial Management, I had

earlier suggested to the parties that this issue would require the consideration of the effect of the order of the High Court of Barbados made on the 29th of April 2011, in relation to the defendant which order would have had the effect of placing the defendant and its branch operations in judicial management ahead of the order specific to the branch office in Saint Vincent.

- [24] In relation to the above submissions and to the claimant's submission that as a secured creditor it is entitled to execution on the judgment, I can do no more than to refer the parties to the decision of the Court of Appeal in Civil Appeal HCVAP2010/010 Civil Appeal HCVAP2010/013 reissued on the 16th April 2012 (ante) which I am satisfied is applicable to the jurisdiction of the High Court of Saint Vincent and the Grenadines and by which I am guided. The germane part of judgment of Edwards JA says thus:-

"The Jurisdiction of the Master

[28] The jurisdiction of the High Court in Antigua and Barbuda in Insolvency Proceedings is exercised only by a judge who may hear insolvency matters (i) in public or where directed in private; or (ii) in chambers, depending on the nature of the matter or application. Since the master exercises the authority and jurisdiction of a judge of the High Court sitting in chambers, the master has the authority to hear only those insolvency matters which may be heard by a judge in chambers. Having regard to the practice and procedure in England for administration in insolvency proceedings, it appears that the master has no jurisdiction to hear applications for judicial management orders, and applications arising from such orders relating to the judicial management proceedings."

- [25] For those reasons the applications before me and submissions advanced being beyond the jurisdiction of this court are hereby referred to the next sitting of judge in open court scheduled for the 6th March 2013.

V. Georgis Taylor-Alexander
High Court Master