

EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV2014/0060

BETWEEN:

[1] CLEMENT SAMUEL

[2] MEGAN SAMUEL-FIELDS

(As Executors of the Estate of CHARLESWORTH T. SAMUEL, deceased)

Claimants

and

[1] SAGICOR LIFE INC

Defendant

Appearances:

Ms. Kamilla Roberts of Roberts & Co for the Claimants

Mr. Septimus Rhudd of Rhudd & Associates for the Defendant

2018: February 23

JUDGMENT

[1] **HENRY, J.:** The Claimants' claim is for Damages for breach of a contract of life insurance in the amount of EC\$110,000.00, interest pursuant to section 27 of the **Eastern Caribbean Supreme Court Act**, Cap 142 and Costs.

[2] The claimants are the executors of the estate of Charlesworth T. Samuel, deceased who died on the 31st January 2008. At all material times the defendant ('Sagicor') was an insurance company duly registered under the Companies Act and licenced to carry on business. It is accepted that by

a contract of life insurance made between Charlesworth T. Samuel, deceased ('the insured') and Sagicor, Sagicor agreed to insure the life of the insured under the terms of a policy with a sum assured of EC\$110,000.00. The policy was issued on the 7th May 1998 with premiums payable annually on the 7th day of May.

- [3] The claimants ('the Executors') plead that it was an express term of the contract that upon proof of the insured's death, Sagicor would pay the sum of EC\$110,000.00 to the insured's executors, administrators or assigns. They aver that on the 31st day of January 2008, the insured died while the contract between the insured and Sagicor was still in force. The Executors duly notified Sagicor of the insured's death on or around 8th March, 2008. Wrongfully and in breach of the contract, Sagicor has refused to pay the Executors the said sum.
- [4] The Executors further plead that Sagicor has asserted that the insured's policy lapsed due to the late payment of the premium as due and further that the policy had not been reinstated as at the date of the insured's death. The premium due on 7th May 2007 was paid on the 13th July 2007. Sagicor retained the premium and required the insured to complete and sign a form titled "Application for Reinstatement" which was submitted to Sagicor on the 19th day of September 2007. As of the date of the insured's death, the premium paid on the 13th July 2007 had not been reimbursed by Sagicor and there had been no notice from Sagicor that the policy had not been reinstated. Therefore Sagicor is deemed to have accepted the offer in regard to the reinstatement.
- [5] The Executors assert that as a result of Sagicor's breach of contract and non-payment of the amount due under the insurance policy, the Executors have suffered loss and damage in the amount of EC\$110,000.00.
- [6] Sagicor's pleaded position is that at the time of his death, the insured was no longer the holder of a valid policy of insurance with Sagicor. The policy of insurance previously issued had lapsed on the 7th day of June as a result of the insured's failure to pay the premium within or on the due date of 7th May, 2007 or during the 30 day grace period following. Sagicor therefore denies that it is in breach of the said contract of insurance.
- [7] Sagicor contends that the insured, having recognized that the policy had lapsed, made application for its reinstatement on or around 19th September, 2007. The payment of \$2,441.10,

which would have been deemed as a premium only upon the reinstatement of the lapsed policy, was received from the insured on 13th July 2007.

[8] Further, prior to the receipt of the said payment, the insured had been duly informed that the said policy had lapsed and as a result, the contract of insurance was no longer in force unless and until it had been reinstated.

[9] The application for reinstatement was forwarded to Sagicor's Head Office for consideration. On or around 10th day of October 2007 a request was received by Sagicor from its Underwriters for the insured to undergo the following additional tests:

- a) a current medical examination including 3 blood pressure readings;
- b) a micro urinalysis; and
- c) current lipids, cholesterol, HDL, LDL, Triglycerides and Cardiac risk.

[10] The information relating to the request was forwarded to the insured by his Advisor. Despite several reminders by the said Advisor, the insured failed to provide the information prior to his death and the lapsed policy was never reinstated.

[11] Sagicor admits that as of the date of the insured's death, 31st January 2008, the payment made on 13th July, 2007 had not been reimbursed. However, Sagicor maintains that at the date of the death of the insured:

- a) the reinstatement application although having been submitted remained incomplete due to the absence of the additional information requested
- b) No additional premium had been calculated or quoted to the insured
- c) No certificate of reinstatement had been issued by the defendant such as would constitute acceptance of the insured's application.

Sagicor also pleads that the action is statute barred.

[12] Sagicor's case is that its liability, if any, to the Executors is EC\$2,441.10 and no more.

[13] In their Reply, the Executors reiterate that as of the date of the insured's death, the insurance premium had not been refunded and was still being retained by the defendant. Further, as of the date of the insured's death, there had been no communication from Sagicor that the

reinstatement application had been rejected. The Executors therefore contend that Sagicor's retention of the insurance premium for an extended period of time along with Sagicor's conduct in failing to communicate a rejection of the insured's reinstatement application, either together or individually, constitute acceptance of the offer as contained in the reinstatement application.

[14] The Executors deny that Sagicor forwarded a request and several reminders to the Insured to undergo the additional tests as alleged. Further the Executors deny that the reinstatement application remained incomplete at the date of the insured's death. They state that even in the absence of a certificate of reinstatement, Sagicor's conduct constituted acceptance of the reinstatement.

[15] While the Executors admit that by virtue of the insured signing the application for reinstatement, the insured acknowledged that the policy had been treated as lapsed by Sagicor, they deny that the insured continued to treat the Policy as lapsed after submitting the reinstatement application form, having previously paid the insurance premium on 13th July, 2007. The Executors do not challenge Sagicor's original decision to treat the policy as lapsed. The Executors accept that a certificate of reinstatement was not issued. However, they submit that even in the absence of a certificate of reinstatement, Sagicor can be found to have accepted the offer by their course of conduct in relation to the reinstatement application.

[16] The Executors deny that the claim is statute barred by virtue of the Limitation Act 1997. They state that the cause of action would have arisen on or about March 2008, that being the date when the Sagicor first refused to pay the amount due under the insurance policy.

Issues

[17] The issues for the court's determination are:

1. Is the claim statute barred?
2. Was the policy of Insurance reinstated by Sagicor prior to the insured's death?
3. If so, has Sagicor breached the contract of insurance by failing to pay the Executors?
4. If the contract of life insurance was not reinstated, are the Executors entitled to any other remedy?

Is the Claim Statute Barred?

- [18] Sagicor contends that the claim is statute barred under the provisions of the **Limitation Act 1997** in that the claim was commenced after the expiration of six years from the date the cause of action arose. The cause of action, if any, they contend would have arisen on 7th June 2007 when the policy of insurance lapsed.
- [19] The court agrees with the submission of the Executors that a contract of life insurance is a contract under which the insurers undertake, in consideration of the payment of specified premiums throughout the life of a particular person, to pay a specified sum of money upon the death of that person. The event which gives rise to the insurer's obligation to pay is therefore the death of the insured during the currency of the policy.
- [20] The Executors have made a claim for breach of that obligation to pay. The cause of action would accrue on the date the insurers refused to pay upon the death of the insured. The insured died on the 31st January 2008. Mr. Vigo's evidence is that he received a letter from the Executors dated 9th March 2008 in regard to benefits under the lapsed policy. He responded to them by letter dated 27th March 2008 setting out Sagicor's position that at the date of the announcement of the insured's death, the information requested remained outstanding. The earliest the cause of action can be said to have arisen was on the date of Mr. Vigo's letter. The claim was commenced within six years of that date. Accordingly, the claim is not statute barred.

Reinstatement of the lapsed Policy

- [21] On the 10th September 2007 the insured completed an application for reinstatement of his lapsed policy of insurance. It is accepted that on 13th July 2007, after the policy lapsed, the insured paid a sum of EC\$2,441.10. The evidence of Trevor Vigo, the Branch Manager, is that the sum was placed in a "suspense account," while the application was being processed. The following Declaration is contained in the application:

"Declaration – The undersigned hereby declares that the statements and answers contained in this application and in the original application for the above policy are full, complete and true as of the date hereof and expressly agrees that this application, and the statements and answers contained in any statement of health or questionnaire completed in connection with this application, (1) shall be the basis of the reinstatement and/or policy

change and/or addition of benefits (2) shall not take effect until a certificate of reinstatement and/or acceptance has been issued by the Company and any overdue or additional premium paid . . .

If premiums are paid to an Agent of the Company prior to a certificate of reinstatement and/or acceptance being issued then such payments shall not create a binding contract between the undersigned and the Company; and in the event of this application not being accepted such payments shall be refunded to the undersigned.

It is suggested that the undersigned contact the Company if any official communication is not received within 20 days of the application being submitted to the Company.”

[22] The insured affixed his signature below the Declaration and it was witnessed by Faye Morgan who, at the time, was a Senior Life Underwriter at Sagicor. Ms. Morgan’s evidence is that the application was sent on to Sagicor’s head office in Barbados for consideration and processing. On or around 10th October, 2007 she received a request from the Head Office to provide certain additional information, to assist the Underwriters in their assessment of the risk. Her evidence is that she contacted the insured and informed him of the additional information required. He promised to get the information and tests done and return to her. He did not do so. Her evidence is that she contacted him by phone on several occasions to remind him to do so. He would promise to do so but complained about not having time to make the appointment to get the tests done because of his parliamentary duties. Ms. Morgan’s evidence is that communication between herself and the insured was either in person or by phone and she utilized both these methods in requesting the additional information. She admitted that she never wrote to him in regard to the matter.

[23] The Executors challenge the veracity of Ms. Morgan’s evidence that she had requested additional information repeatedly, which was never provided. They ask the court to reject this evidence. They point to the absence of any written communication between Sagicor and the insured and the absence of any internal memorandum or written record of the alleged telephone conversations. Further, there was no corroborating evidence from any other witness as the only other witness on behalf of Sagicor had no direct knowledge of the communication between Ms. Morgan and the insured. Counsel for the Executors asserts that it is difficult to believe and contrary to ordinary business practice that after several oral requests that Sagicor would have failed to place the

request in writing or give a deadline for completion of the tests. They point out the importance of written communication in Sagicor's business. Several transactions are required to be in writing, including the application for reinstatement. It would be therefore inconsistent and unconscionable, they contend, for Sagicor to take a position of reliance on oral communication.

- [24] Further, the reinstatement application form suggested that the insured contact Sagicor if an official communication is not received within 20 days of the application being submitted. Counsel submits that the statement suggests that Sagicor views 20 days as a reasonable time period for the processing of the application and for forwarding of official communication to the customer. Firstly, "official communication" reinforces the expectation of written communication. Secondly, Sagicor has set out a 31 day grace period for payment of a premium and a 20 day period for the processing of a reinstatement application, but retains a premium for approximately four months after the submission of a reinstatement application without any formal written communication to the customer. The inevitable conclusion, they say, is that there was acceptance by Sagicor.

Decision and Conclusion

- [25] Firstly, the effect of the insured signing the Declaration, which clearly indicated that the reinstatement shall not take effect until a certificate of reinstatement and/or acceptance has been issued, is that he accepted those terms. He specifically accepted that mere acceptance of premium without the requisite certificate or acceptance could not amount to reinstatement. The payment of the sum of \$2, 441.10, even if regarded as premium payment, was tendered prior to the application for reinstatement. The insured had not been informed of the premium payable under any reinstated policy.
- [26] Secondly, the 20 day period mentioned in the declaration, in the court's view, did not create an exception to the terms already set out that a certificate of reinstatement and/or acceptance was required in order to effect reinstatement. It did not set a binding minimum period for Sagicor to respond in the absence of which an inference of reinstatement could be drawn. Rather, it reinforced the position that non-communication does not give rise to an inference of acceptance. Further, it unequivocally placed the onus on the applicant to contact the company if the applicant had not received official communication within that period. No record was put before the court that

the insured initiated contact with Sagicor at any time during the four months after the application was submitted and his death.

[27] Much is made of Ms. Morgan's evidence as to her method of communication with the insured in regard to the request for further tests. While it may have been prudent for Ms. Morgan to communicate in writing with the insured, the Court accepts Ms. Morgan's evidence that her usual method of communication with the insured was to visit him in his office or speak with him via telephone. She employed both those methods in regard to the requests for further tests. The absence of written communication combined with the retention of the sum paid cannot in light of the Declaration give rise to an inference of acceptance of the application for reinstatement of the policy.

[28] The case of **Hemmings v Sceptre Life Association, Limited**¹ cited by the Executors is distinguishable. There a policy of life assurance was granted upon the basis of a proposal which concluded with a declaration that (1) the answers given in the proposal were true to the best of the proposer's knowledge and belief; (2) an agreement that the proposal and declaration should be the basis of the contract and (3) that if it should thereafter appear that the proposer had made any untrue statement therein, the policy would be void and the premiums forfeited. In the proposal the assured made a mistake as to her age and stated that she was three years younger than she was. The policy contained a proviso for avoidance of the policy and forfeiture of the premiums in the event of the policy having been obtained by wilful misrepresentation. After discovery of the mistake as to the age of the assured, the company accepted two annual premiums. It was held that by accepting premiums after knowledge of the facts they must be taken to have affirmed the policy as it stood, and that consequently they were bound to pay the policy moneys upon the assured actually attaining the age of sixty years. The court found that there was an innocent misrepresentation. That being so, the company could not avoid the policy and forfeit the premiums on the ground of a misrepresentation which the company admits was not wilful. Secondly, the company accepted two premiums after full knowledge of the facts, and it is impossible for them to say that they did not affirm the policy as it stood.

[29] In the case before the court, there is no doubt that the premium was paid after the lapse of the policy and before the application for reinstatement. At the time of the application for reinstatement,

¹ [1905] 1 Ch. 365

the insured accepted that the payment of premiums prior to certification shall not create a binding contract. Based on the facts of this case there is no conduct on the part of Sagicor that can be said to constitute acceptance of the reinstatement.

[30] The Court finds that at the time of the insured's death, the application for reinstatement remained incomplete and the previous policy remained lapsed. There was therefore no policy of insurance in effect on the date of the insured's death. It follows that Sagicor is not in breach of a contract of insurance.

[31] Since the application for reinstatement was never completed, the Executors are entitled to the return of the sum paid of \$2,441.10. The evidence of Mr. Vigo is that the sum was placed in a 'suspense account'. The Executors are entitled to the return of the sum plus accrued interest.

[32] Accordingly,

- 1) Judgment is granted in favour of the defendant dismissing the claim with costs.
- 2) The Executors are entitled to their return of the sum of \$2,441.10 with accrued interest.

Clare Henry
High Court Judge

By the Court

Registrar