

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

SAINT LUCIA

SLUHCMAP2023/0004

BETWEEN:

EGHAN MODESTE

Appellant

and

NAGICO (ST. LUCIA) LIMITED

Respondent

Before:

The Hon. Mde. Margaret Price Findlay

Justice of Appeal

The Hon. Mr. Trevor M. Ward

Justice of Appeal

The Hon. Mr. Gerard St. C Farara

Justice of Appeal [Ag.]

Appearances:

The Appellant in person

Mr. Duane Jean Baptiste for the Respondent

2024: July 5;
August 20.

Commercial appeal – Summary Judgment – Medical insurance policy – Termination of a policy before expiry date – Increase of policy premium – Whether the judge erred in interpreting clause 3 of the policy as meaning that there was no automatic right of renewal of the policy, nor was the policy intended to be insulated from non-renewal until 2048 since it was open to NAGICO, once adequate notice was given, not to renew the policy – Whether the judge erred in interpreting clause 10 as demonstrating that there is provision for periodic renewal of the policy and that payment must accord with NAGICO's rates in effect at the date of each renewal, and that such payment must be accepted by NAGICO for there to be a renewal or continuation of the policy – Whether the judge erred in holding that the expiry date of 28th October 2048 is simply the date beyond which the policy could no longer be renewable on each anniversary of the policy date

In 2008, the appellant purchased from CLICO International Life Insurance Limited ("CLICO") an insurance policy which provided for individual comprehensive medical health insurance protection for himself and covered dependents, if any ("the policy"). The policy date was stated to be 28th October 2008, with a stated expiry date of 28th October 2048. Under the policy the appellant was covered for major medical events up to a maximum limit of \$1,000,000.00. The monthly premium was set at \$81.31.

NAGICO, the respondent and a provider of insurance products itself, subsequently acquired the policy under a Scheme of Transfer of Insurance Business Agreement between CLICO and NAGICO. On 19th April 2021 NAGICO wrote to the appellant via email informing him that they had 'assumed' CLICO's Medical, Life and Pension portfolios. By email dated 10th August 2021 NAGICO informed the appellant that upon the policy's anniversary date of 1st November 2021, 'NAGICO would not offer renewal terms on his plan, initially issued by CLICO. However, NAGICO would offer the appellant the option of upgrading his policy to one offering better coverage closest to his current budget'. The email went on to offer the appellant a variety of coverage options.

The appellant rejected NAGICO's offer in a series of emails. His position was that he held the policy for a fixed period, expiring in 2048, with a fixed premium of \$81.31 until the expiration of the policy, and NAGICO was not entitled to unilaterally alter its terms. The appellant informed NAGICO that he would continue to remit the monthly premium of \$81.31 and subsequently followed through with his stated intention. By letter dated 10th February 2022, NAGICO informed the appellant that his policy had expired on 1st November and noted that he had not accepted the coverage options offered by NAGICO. The letter further informed him that coverage had been extended in good faith throughout December, with a waiver of premium, to allow time for the appellant to seek alternative coverage prior to termination of the policy which was effected on 2nd January 2022. NAGICO therefore remitted to the appellant the premiums he had paid for November 2021, December 2021 and January 2022. On 25th March 2022, the appellant attempted to deliver the sum of \$410.00 to NAGICO's office representing payment of premiums from November 2021 to March 2022 but NAGICO refused to accept the payment.

This impasse led the appellant to institute proceedings against NAGICO in the High Court on 6th April 2022 for breach of contract. The appellant averred that the respondent, by virtue of its assertion that the policy expired in November 2021, its termination of the policy, and its refusal to accept the premiums, had breached the policy. The respondent, in their defence agreed that the policy was set to expire on 28th October 2048 but argued that the policy did not compel NAGICO to provide coverage to the appellant at a monthly premium of \$81.31 from 28th October 2008 until 28th October 2048.

On 31st May 2022, the appellant filed an application to strike out the defence and for summary judgment. NAGICO countered by filing its own application for summary judgment on 5th October 2022. The learned judge in the court below heard both sets of applications together. In her judgment delivered on 3rd October 2023, the learned judge held that while the policy contained no express termination clause, on a proper construction of clause 3 of the policy, NAGICO could provide written notice to the appellant of its intention not to renew the policy 30 days prior to the premium due date. The learned judge concluded that there was no automatic right of renewal, nor was the policy intended to be insulated from non-renewal until 2048 since it was open to NAGICO not to renew the policy on its current terms. The judge further held that clause 10 of the policy demonstrated that there is provision for periodic renewal of the policy and that payment must accord with NAGICO's rates in effect at each renewal. With respect to the 2048 expiry date, the judge found that the expiry date was simply the

date beyond which the policy could no longer be renewable on each anniversary of the policy date. As a result, the judge dismissed the appellant's application for summary judgment, granted NAGICO's application for summary judgment and awarded costs in the sum of \$3,500.00.

On appeal, the appellant challenged the judge's findings of law and fact, identifying 12 grounds of appeal in his notice of appeal. The gravamen of the appellant's grounds was that the judge erred in her interpretation of clauses 3 and 10 of the policy. Indeed, at the hearing the appellant focused exclusively on the construction of these clauses and the terms of the policy in general. The respondent's oral submissions were similarly focused.

The broad question for this Court was therefore whether the judge was wrong to conclude that the appellant had no real prospect of succeeding on his claim. This gave rise to the following issues: (a) Whether the judge erred in interpreting clause 3 of the policy as meaning that there was no automatic right of renewal of the policy, nor was the policy intended to be insulated from non-renewal until 2048 since it was open to NAGICO, once adequate notice was given, not to renew the policy; (b) Whether the judge erred in interpreting clause 10, as demonstrating that there is provision for periodic renewal of the policy and that payment must accord with NAGICO's rates in effect at the date of each renewal, and that such payment must be accepted by NAGICO for there to be a renewal or continuation of the policy; and (c) Whether the judge erred in holding that the expiry date of 28th October 2048 is simply the date beyond which the policy could no longer be renewable on each anniversary of the policy date, and that it would have been renewable on each anniversary, from October 2009 up until October 2048 when it would come to an end and be no longer renewable.

Held: dismissing the appeal and affirming the decision and orders of the learned judge with costs to be paid by the appellant to the respondent, such costs to be assessed if not agreed within 21 days of the delivery of this judgment, that:

1. A claimant's properly pleaded case may be exposed as hopeless when viewed in the light of the defence or a defence, when pitted against the claimant's pleaded case, may be seen as holding out no real prospect of successfully defending the claim or issue. Either scenario would justify the entry of summary judgment. However, cases where the disputed issues of material fact or where material facts need to be ascertained by the court which cannot be resolved on the affidavits or where judgment can only properly be rendered after a full consideration of the evidence, are ill-suited and inappropriate for the summary judgment procedure.

Dr. Martin Didier et al v Royal Caribbean Cruises Ltd.
SLUHCVP2014/0024 (delivered 6th June 2016, unreported) followed.

2. Generally, an insurer has the right to terminate a policy of insurance where the express terms of the policy so provide. A contract of insurance normally contains provisions relating to the renewal of the policy, usually by mutual consent. Save where in some special forms of insurance there is an express condition of the policy that the insured and the insurer are obliged to renew, the insurer is not bound to accede to an application by the insured for renewal

or to accept a premium tendered by the insured for renewal. The insurer may issue a notice of renewal, though it is not obliged to. If the insurer does send a renewal notice and it stipulates a higher rate of premium, and the insured refuses to pay it, the offer has lapsed and cannot be revived later. Where the policy is renewed each renewal is in law a fresh contract.

3. Clause 3 of the policy provides that the appellant had a grace period of 31 days beyond the premium due date to make payment, except where written notice of intention not to renew beyond the period for which he has already paid has been served on him 30 days prior to the next premium due date. If no such notice has been given, the presumption is that the policy will continue so that when the due date for the payment of the premium arrives the appellant will have a grace period of 31 days to make payment of the premium. The difficulty with the appellant's interpretation of clause 3 as meaning that NAGICO could only serve notice of intention not to renew if the premium is still not paid at the end of the grace period, is that, to yield the construction urged one would have to read the words 'for failure to pay the premium' into the clause to limit NAGICO's entitlement to serve notice of intention not to renew to circumstances where the premium is unpaid. No such limitation is expressed in clause 3. In fact, clause 3 contemplates that the premium has been paid as it makes plain that what the notice conveys to the appellant is that NAGICO does not intend to renew the policy beyond the period for which premium had been accepted. Clause 3 therefore expressly gave a right to NAGICO not to renew, effectively terminating, the policy for reasons other than non-payment of premium. The fact that this provision is not under the section of the policy captioned 'Eligibility For and Termination of Coverage' does not alter its plain meaning. For this and the additional reasons summarised below, it follows that the appellant's argument that NAGICO could not terminate the policy before its expiry date of 28th October 2048, other than for non-payment of premium must be rejected.
4. In relation to the expiry date, the policy page of the policy bears the endorsement: Expiry date: 10.28.2048. While this endorsement might suggest that the life of the policy extended to that date, to understand the meaning of that term it is necessary to examine the policy terms and not merely look at what is stated on the face of the policy. Under the rubric 'Eligibility For and Termination of Coverage' the policy provides that this policy shall not be renewable beyond the anniversary date on or after the Insured's 65th birthday, on which date it will expire. What it does not say is that the policy shall remain in force until 28th October 2048 as suggested by the appellant. Indeed, there exist several references within the policy that are inconsistent with the appellant's suggested interpretation. For example, clause 10 states that 'All premiums are payable in advance to the Company, in accordance with the Company's premium rates in effect on the date of each renewal...'. The renewal here cannot mean some time in 2048, by which time the policy was not renewable in any event. The renewal date must therefore refer to each occasion on the policy anniversary when premiums are paid by the appellant and accepted by NAGICO. Each such occasion continues the policy in force. Thus, NAGICO was not obliged to accept the appellant's premiums of \$81.31 as there is no term in the policy to that effect either expressly or impliedly. The

expiry date was simply the date when the policy automatically lapsed and beyond which the policy could not automatically renew upon payment and acceptance of the premium. The judge was therefore correct in her interpretation of the policy and did not err when she held that the appellant had no real prospect of succeeding on the claim based on the filed defence.

5. Grounds (iii), (v) and (vi) of the appeal lack merit and have little bearing on whether the judge was right to hold that the appellant had no real prospect of succeeding on the claim. Similarly, ground (xii) is devoid of merit as it was patently obvious from the judgment that the judge had carefully examined the respondent's defence.

JUDGMENT

- [1] **WARD JA:** With the steady rise in the cost of health care services, medical health insurance coverage forms a common part of effective financial planning. It is a contract between an insured and an insurance provider which covers a range of medical expenses incurred by the insured occasioned by illness, injury, or accident. These include hospital costs and major medical expenses. In return the insured pays a monthly sum referred to as a premium. Having such a policy in place ensures a generous measure of peace of mind as an insured person is spared the burden of having to personally bear the full costs of medical care which potentially could deplete savings should illness set in. The current appeal stems from a dispute arising between the appellant and his insurance company with whom he held a policy of health insurance.

Background

- [2] The appellant, an attorney at law, at age 25 purchased from CLICO International Life Insurance Limited ("CLICO") an insurance policy which provided for individual comprehensive medical health insurance protection for himself and covered dependents, if any ("the policy"). The policy date was stated to be 28th October 2008, with a stated expiry date of 28th October 2048. Under the policy the appellant was covered for major medical events up to a maximum limit of \$1,000,000.00. The monthly premium was set at \$81.31.
- [3] NAGICO ("the respondent" or "NAGICO"), itself a provider of insurance products, subsequently acquired the policy under a Scheme of Transfer of Insurance Business Agreement Between CLICO and NAGICO. On 19th April

2021, NAGICO wrote to the appellant via email informing him that it had 'assumed' CLICO's Medical, Life and Pension portfolios. The email, among other things, invited the appellant to provide certain personal details to update his client information, and provided its bank account details to facilitate the appellant's payment of his monthly premiums. The appellant dutifully continued to pay his monthly premiums as he had done under the CLICO policy.

- [4] By email dated 10th August 2021 NAGICO informed the appellant that upon the policy's anniversary date of 1st November 2021, 'NAGICO will not offer renewal terms on your current plan, initially issued by CLICO. However, NAGICO will offer you the option of upgrading your policy which offers a better coverage closest to your current budget'. The email went on to offer the appellant a variety of coverage options, namely (i) Nagicare EC\$ Turquoise Plan; (ii) Nagicare EC\$ Emerald Plan; and (iii) Nagicare EC\$ Gold Plan. All of these attracted a premium above the premium the appellant paid under the CLICO-issued policy. In particular, for equivalent coverage of \$1,000,000.00 which the appellant then enjoyed, the minimum tentative premium quoted was \$145.68.
- [5] The appellant rejected NAGICO's offer in a series of emails and written correspondence. His position in summary was that he held the policy for a fixed period, expiring in 2048, with a fixed premium of \$81.31 until the expiration of the policy and NAGICO was not entitled to unilaterally alter its terms. Accordingly, the appellant informed NAGICO that after 1st November 2021 he would continue to remit the monthly premium of \$81.31. The appellant followed through with his stated intention and forwarded his monthly premium to NAGICO's bank account. By letter dated 10th February 2022, NAGICO informed the appellant that his policy had expired on 1st November 2021 and noted that he had not accepted the coverage options offered by NAGICO. The letter further informed him that coverage had been further extended in good faith throughout December, with a waiver of premium, to allow time for the appellant to seek alternative coverage prior to termination of the policy which was effected on 2nd January 2022. NAGICO therefore remitted to the appellant

the premiums he had paid for November 2021, December 2021 and January 2022.

- [6] On 25th March 2022 the appellant delivered the sum of \$410.00 to NAGICO's office representing payment of premiums for November 2021 to March 2022. NAGICO refused to accept the payment.

Procedural History

- [7] This stalemate led the appellant to institute proceedings against NAGICO in the High Court on 6th April 2022 for breach of contract. The statement of claim averred, among other things, that 'the defendant by virtue of its assertion that the policy expired in November of 2021, its termination of the policy and its refusal to accept the premiums from the claimant, has breached the policy'. The appellant therefore sought: (a) an order that the policy remains in effect and will expire on 28th October 2048; (b) an order that the monthly premium for the policy is the sum of \$81.31 and remains fixed until the expiration of the policy on 28th October 2048; (c) exemplary damages in the sum of \$100,000.00; fixed costs, service fees and court fees.
- [8] NAGICO duly filed its defence on 3rd May 2022. NAGICO agreed that the policy was set to expire on 28th October 2048 but averred, among other things, that the policy did not compel NAGICO to provide coverage to the appellant at a monthly premium of \$81.31 from 28th October 2008 until 28th October 2048; the policy contractually bound the appellant to pay the premium monthly in advance in accordance with the premium rates in effect on the date of each renewal; the policy provided for its expiration by effluxion of time on 28th October 2048, beyond which time the policy was not renewable; NAGICO was not required by the policy to provide coverage to the appellant beyond the date when the next premium was due and payable; and the appellant's unequivocal rejection of NAGICO's proposed new terms and NAGICO's non-acceptance of the appellant's monthly premiums meant that there was no contract of insurance in existence between the parties post 27th October, 2021. NAGICO therefore denied that it had breached the policy.

- [9] The appellant filed a reply to the defence on 11th May 2022 maintaining that the parties did not agree, and the policy did not authorise NAGICO to express an intention not to renew beyond the anniversary date and the only date upon which the policy could end was 28th October 2048. Further, the appellant asserted that he was under no obligation to accept NAGICO's alternative offers, and his failure to do so could not entitle them to terminate the policy.
- [10] The appellant quickly followed this up with an application to strike out the defence and for summary judgment pursuant to rule 15.2 of the **Civil Procedure Rules 2000** ("the CPR") on 31st May 2022. Not to be outdone, NAGICO countered by filing its own application for summary judgment on 5th October 2022.

The judgment in the court below

- [11] The learned judge heard both sets of applications together. She delivered her decision on 3rd October 2023. In short, the judge held at paragraph 51 that while the policy contained no express termination clause, on a proper construction of clause 3 of the policy, NAGICO could provide written notice to the appellant of its intention not to renew the policy 30 days prior to the premium due date. Accordingly, the judge concluded that there was no automatic right of renewal, nor was the policy intended to be insulated from non-renewal until 2048, since it was open to NAGICO, once adequate notice was given to the appellant, not to renew the policy. The judge found that NAGICO served notice of its intention not to renew the policy on its current terms and offered alternative plans at an increased premium, which were rejected by the appellant. The judge further held at paragraph 54 that clause 10 of the policy, which provided that 'all premiums are payable in advance to the Company in accordance with the Company's premium rates in effect on the date of each renewal', demonstrated that there is provision for periodic renewal of the policy and that payment must accord with NAGICO's rates in effect at the date of each renewal, and such payment must be accepted by NAGICO for there to be a renewal or continuation of the policy. When read with clause 3, the judge concluded that there was no automatic right of renewal since it was open to NAGICO, once adequate notice was given, not to

renew the policy and reinforces the notion that there is no automatic renewal of the policy.

[12] With respect to the expiry date of 28th October 2048 stated on the face of the policy, the judge concluded at paragraph 56 that 'the expiry date is simply the date beyond which the policy could no longer be renewable on each anniversary of the policy date, and that it would have been renewable on each anniversary, from October 2009 up until October 2048 when it would come to an end and be no longer renewable. Thus, the expiry date served only to indicate the date upon which the policy would automatically expire, and would no longer be renewable, once it remained active up to that time'. The judge reasoned that clauses 3 and 10 would serve no purpose if the policy had only one renewable date after the appellant's 65th birthday in 2048, when if still active, it could be extended until the appellant attained the age of 70. Thus, taken together, clauses 3 and 10 'demonstrate that there was an avenue for exiting the policy once adequate notice was given, and the parties were unable to reach consensus on the premium rate for renewal on the anniversary of the Policy date in 2021'.

[13] For those reasons, the judge dismissed the appellant's application for summary judgment, granted NAGICO's application for summary judgment and awarded costs in the sum of \$3, 500.00.

The appeal

[14] On this appeal the appellant challenges the judge's findings of fact and law. While the notice of appeal lists 12 grounds, there is considerable overlap among them. The nub of the complaints under grounds (i), (ii), (iv), (vii), (viii), (ix), (x) and (xi) is that the judge erred in her interpretation of clauses 3 and 10.

[15] Grounds (iii), (v) and (vi) in substance complain that the judge misconstrued the evidence when she stated at paragraphs 52 and 59 of the judgement that NAGICO's email of 10th August 2021 informed the appellant that the policy had been reviewed and found to be commercially impracticable and further erred when at paragraph 59 she found that the policy 'could have' become

commercially impracticable with the passage of time, age, increases in the cost of health care – dramatically so with the onslaught of the global pandemic since 2019, and the overall performance of the policy. Ground (xii) alleges that the judge erred when she failed to examine the content of the respondent's defence and to consider whether within the defence there were sufficient pleadings to establish any prospect of successfully defending the claim.

- [16] At the hearing of the appeal, the appellant's oral submissions focused exclusively on the construction of clauses 3 and 10 in particular and the terms of the policy in general. The respondent's oral submissions were similarly focused. Neither party addressed the Court on the remaining grounds. In my view, both parties were correct to focus on the grounds related to the interpretation of the policy as the outcome of the appeal turns entirely on the proper construction of the policy. In any event I would hold that grounds (iii), (v) and (vi) lack merit and have little bearing on whether the judge was right to hold that the appellant had no real prospect of succeeding on the claim. As to ground (xii), that too is devoid of merit as it is patently obvious from the judgment that the judge had carefully examined the content of the respondent's defence.

The appellant's submissions

- [17] The appellant introduced his submissions by drawing particular attention to the policy page which on its face stated that the premium was \$81.31 and the expiry date 28th October 2028. He also drew attention to clause 1, which provided that '[t]his policy, including the endorsements and attached papers, if any, constitutes the entire contract of insurance. No change in this policy shall be valid until approved by an Executive Officer of the Company and unless such approval be endorsed hereon or attached hereto. No agent has authority to change to change this Policy or to waive any of its provisions'.¹ From that launch pad, the appellant mounted his submission that he held the policy at a fixed premium of \$81.31 until 28th October 2048 when the policy would expire.

¹ Page 20 of the Electronic Hearing Bundle.

Thus, NAGICO could not unilaterally alter the premium and could only terminate the policy for non-payment of the premium.

- [18] The appellant submitted that the judge's interpretation of clause 3 as giving NAGICO the option not to renew the policy, subject to service of written notice within the requisite period, was erroneous. In oral submissions, the appellant submitted that the fact that clause 3 commences with the words 'Grace Period' eliminates any possibility that this clause gives NAGICO an outright entitlement to terminate the policy. According to the appellant clause 3 is merely concerned with providing a grace period for the payment of the monthly premium and does not govern termination of the policy. Properly construed, the only meaning to be given to clause 3 is that NAGICO could only serve notice of intention not to renew if the premium remains outstanding at the end of the grace period. It cannot be construed in a way that gives NAGICO any wider license to serve notice of intention not to renew once the premium is paid, and, further, there is no express or implied provision in clause 3 or elsewhere in the policy that gives NAGICO the right to unilaterally increase the premium or to terminate the policy, save for non-payment of premiums.
- [19] The appellant further contended that provisions for termination of the policy are dealt with in the section of the policy captioned 'Eligibility for and Termination of Coverage'.² However, this section, and the policy as a whole, does not provide expressly or impliedly that NAGICO may terminate the policy without cause.
- [20] In relation to the judge's interpretation of clause 10, the appellant submitted that the clause simply means that payment of the premium for one month did not convey coverage for the subsequent month or months. There is nothing in the language of that clause that entitles NAGICO to terminate the policy for reasons other than non-payment of the premium.

² Page 19 of the Electronic Hearing Bundle.

The respondent's submissions

[21] On behalf of the respondent, Mr. Duane Jean Baptiste submitted that a proper understanding of general insurance principles in relation to 'renewal' of a policy of insurance is critical to the proper construction of the policy. In this regard, Mr. Jean Baptiste relied on excerpts from the texts of **McGee: The Modern Law of Insurance**³ and **MacGillivray on Insurance Law**⁴ for the proposition that apart from life insurance policies, the insured is not given an absolute right of renewal, the continuance of the policy being conditional not only upon the payment of the premium by the insured but also upon acceptance of it by the insurer. Mr. Jean Baptiste submitted that this was the 'elephant in the room' that the appellant had failed to confront. It was further submitted that the multiple references to the term 'renewal' within the policy belies any notion that the policy was for a fixed period expiring on 28th October 2048. According to Mr. Jean Baptiste, the expiry date of 28th October 2048 was simply the date beyond which the policy could not be renewed.

[22] In relation to clause 10, Mr. Jean Baptiste urged this Court to read it as implying that the premium rate was susceptible to change and would thereby enable NAGICO to increase the premium or offer different options for a higher period.

Summary judgment procedure

[23] The judge's decision to dismiss the appellant's application for summary judgment but to grant the defendant summary judgment means that she must have found that the appellant had no real prospect of succeeding on his claim. Part 15 of the CPR governs the summary judgment procedure.

[24] CPR rule 15.2 provides:

"15.2 The court may give summary judgment on the claim or on a particular issue if it considers that the –
(a) claimant has no real prospect of succeeding on the claim or the issue; or

³ McGee, A. (2001). *The Modern Law of Insurance*. Butterworth-Heinemann Ltd.

⁴ Birds, J., Lynch, B., & Milnes, S. (2012). *MacGillivray on Insurance Law: relating to all risks other than marine* (Sweet & Maxwell).

(b) defendant has no real prospect of successfully defending the claim or the issue.”

[25] By rule 15.4 (1) and (2), either a claimant or a defendant may apply for summary judgment, supported by affidavit evidence. The court considers the affidavit evidence and applies the relevant test contained in rule 15.2(a) or (b), as the case may be, to determine whether to enter summary judgment. A claimant’s properly pleaded case may be exposed as hopeless when viewed in the light of the defence; or a defence, when pitted against the claimant’s pleaded case may be seen as holding out no real prospect of successfully defending the claim or issue. Either scenario would justify the entry of summary judgment.

[26] It is important to state, however, that cases where there are disputed issues of material fact or where material facts need to be ascertained by the court which cannot be resolved on the affidavits or where judgment can only properly be rendered after a full consideration of the evidence are ill-suited and inappropriate for the summary judgment procedure: **Dr. Martin Didier et al v Royal Caribbean Cruises Ltd.**⁵

[27] In the **Didier** case, the Court of Appeal lucidly explained at paragraph [23] the approach to be taken by the judge who must treat with an application for summary judgment:

“In disposing of a claim summarily, the court would essentially consider the legal issues in the case, determine, on a balance of probabilities and in light of the affidavit evidence adduced by the parties, whether one party or the other has no real prospect of succeeding on the claim and enter judgment accordingly. This will be a judgment on the merits.”

[28] Most, if not all, of the material facts were admitted by NAGICO. Indeed, paragraphs 6 and 7 of the appellant’s grounds of the application for summary judgment asserted that ‘...all facts upon which the parties can rely are sufficiently exposed at this stage of the proceedings and accordingly, there are no disputed issues of material fact. Further, the evidence in respect of the only

⁵ SLUHCVP2014/0024 (delivered 6th June 2016, unreported).

issues remaining in dispute is complete at this stage of the proceedings, namely, (i) the interpretation of the express terms of the policy contract; such evidence is the policy contract itself and (ii) the availability of exemplary damages to the claimant; such evidence is exhaustively contained in the exhibits to the Statement of Claim’.

[29] Both parties seemed to agree that the claim turned on a proper construction of the terms of the policy, in particular clauses 3 and 10, thus the issues in the claim were suitable to be dealt with using the summary procedure.

[30] The judge, having properly directed herself on the law relating to summary judgment by reference to the **Didier** case, which she quoted, set about the task of interrogating the issues based on the pleadings and affidavit evidence before her. Based on her interpretation of the policy, the judge determined the application in NAGICO’s favour.

Issues

[31] The broad question for this Court is whether the judge was wrong to conclude that the appellant had no real prospect of succeeding on his claim. This in turn gives rise to the following issues:

- (a) whether the judge erred in interpreting clause 3 of the policy as meaning that there was no automatic right of renewal of the policy, nor was the policy intended to be insulated from non-renewal until 2048 since it was open to NAGICO, once adequate notice was given, not to renew the policy;
- (b) Whether the judge erred in interpreting clause 10, as demonstrating that there is provision for periodic renewal of the policy and that payment must accord with NAGICO’s rates in effect at the date of each renewal, and that such payment must be accepted by NAGICO for there to be a renewal or continuation of the policy;
- (c) Whether the judge erred in holding that the expiry date of 28th October 2048 is simply the date beyond which the Policy could no

longer be renewable on each anniversary of the policy date, and that it would have been renewable on each anniversary, from October 2009 up until October 2048 when it would come to an end and be no longer renewable.

- [32] Central to the resolution of these issues are clauses 3 and 10 of the policy which fall under the caption '**GENERAL PROVISIONS**'. They are set out in full below:

"3. **Grace Period.** Unless not less than thirty days prior to the premium due date the Company has delivered to the Insured or has mailed to his last address as shown by the records of the Company written notice of its intention not to renew this Policy beyond the period for which premium had been accepted, a grace period of thirty-one days will be granted for the payment of each premium falling due after the first premium, during which grace period benefits will be suspended...

10. **Payment of Premiums.** All premiums are payable in advance to the Company, in accordance with the Company's premium rates in effect on the date of each renewal. The payment of any premium shall not continue this Policy in force beyond the date when the next premium is due and payable, except as may be herein provided."

- [33] The parties disagree as to whether clause 3 gave NAGICO the power to terminate the policy. The appellant contends that it does not provide for termination of the policy, which expires on 28th October 2048, nor does it provide for NAGICO to unilaterally increase the premium which the policy fixed at \$81.31 monthly until the expiration of the policy in 2048.

- [34] I should note at the outset that while the appellant repeatedly asserts that NAGICO sought to unilaterally alter the premiums under his existing policy, this is not accurate, as a proper reading of NAGICO's email to the appellant dated 10th August 2021 demonstrates. That letter stated in part:

"Rest assured that your transition from CLICO to NAGICO will be seamless. In this regard, please note that upon your policy's anniversary date of 1st November 2021, NAGICO will not offer renewal terms on your current plan, initially offered by CLICO. However, NAGICO will offer you the option of upgrading your policy which offers a better coverage closest to your current budget."

[35] The email continued by offering the appellant alternative coverage options, namely (i) Nagicare EC\$ Turquoise Plan; (ii) Nagicare EC\$ Emerald Plan; and (iii) Nagicare EC\$ Gold Plan. These were entirely different plans from the appellant's plan, which was the CLICO Health Advantage Platinum Plan. It is therefore not factually accurate to say that NAGICO sought to unilaterally alter the terms of the appellant's existing policy by increasing the premium. NAGICO clearly stated its intention not to renew that policy and offered different coverage options to the appellant.

[36] That said, I turn to address whether the terms of the policy authorised NAGICO to adopt this position and to eventually terminate the policy when the appellant refused its alternative coverage options. In my view, the proper construction of the policy must be aided by consideration of some general insurance principles related to the expiry and renewal of a policy of insurance.

[37] The learning in **Halsbury's Laws of England**⁶, relied on by the judge, is pertinent to this discourse. At paragraph 154 under the rubric "Termination of policy by cancellation by insurers the learned authors state:

"The express terms of a policy may give the insurer power to determine the insurance on giving a stipulated notice. If such a power is exercisable at will, the insurers are not bound to give any reasons for exercising it. However, the insurance will not in any case expire until after expiration of the notice and repayment of the appropriate portion of the premium, if that is provided in the condition."

[38] This extract recognises an insurer's right to terminate a policy of insurance where the express terms of the policy so provide.

[39] On the issue of renewal, the judge guided herself by reference to the learning derived from **Halsbury's Laws of England** which instructs:

"162. Conditions in policy as to renewal.

Most non-continuing policy of insurance contain conditions providing for the renewal of the insurance, but these are normally framed on the basis of mutual consent being required. A condition to this effect does not mean that the insurers are bound to acceded to an application by the insured for renewal or to accept a premium tendered by the

⁶ Volume 60 (2018).

insured for renewal. An offer of renewal may come from the insurers, such as where they send out a renewal notice, and then payment of the appropriate premium amounts to acceptance of their offer so as to create a binding contract and there is no room for refusing to take the premium. If the renewal notice stipulates a higher rate of premium and the insured refuses to pay it, the offer has lapsed and cannot be revived later by the insured tendering the increased premium. In any case there is no obligation on the insured to send out a renewal notice.

163. Conditions obliging the insured to renew.

In some rather special forms of insurance it may be made an express condition of the policy that the insured, no less than the insurers, is obliged to renew. In such a case there is no question of any bargaining or resiling at the renewal date; the insured is then and there legally liable to pay the premium which has fallen due. The obligation to renew in such a case may extend over a fixed number of years or it may attach indefinitely in the absence of notice to determine the insurance.

164. Renewal as fresh contract.

Where the policy is renewable only by mutual consent, each renewal constitutes a fresh contract. Consequently, on each renewal the duty of fair presentation of the risk (in a non-consumer insurance contract⁷) reattaches, and the insured must disclose any facts which have become material during the preceding period of insurance. In practice, a fresh proposal is not used, but the original proposal is treated as if it were repealed on each renewal, and it is therefore the duty of the insured to correct any statements in the proposal which have since become inaccurate. On the other hand, as on each renewal there is a fresh contract, it follows that a renewed policy is not liable to be avoided by a misstatement which would have avoided the original if it has in fact become correct before the renewal. A renewal takes effect on the same terms as the original policy unless there has been an express agreement between the parties to vary those terms."

[40] Further assistance is derived from **Birds' Modern Law of Insurance**⁸ which states:

"5.7 Duration and Renewal of Insurance Policies

The question of the length of an insurance contract is a matter for the policy itself to provide. There are no rules of law. However, it is safe to state as a general rule that the life contract is quite different from other insurance policies. There must be at least a presumption that a life contract is entire, is one contract, existing until the death of the life assured, or a specified fixed date in the case of an endowment or term

⁷ Generally this refers to an insurance contract entered into for purposes wholly or significantly related to the insured's trade, business or profession or one where the policy holder is not an individual.

⁸ Birds, J & Hird, NJ. (2004) Bird's modern insurance law 8th edition. Sweet & Maxwell.

policy. So, provided that the premiums due are properly paid, the insurer cannot refuse to renew a life policy...

In contrast most other policies are of limited duration, normally of one year, though, of course, there is no bar to the agreement of a policy for a shorter or longer term. But upon inquiry of such policy, if the parties choose to renew the contract, the renewal in law is a fresh contract and thus, for example, the duty of disclosure arises again."

[41] The general principles to be deduced from all these academic authorities in summary are that an insurer has the right to terminate a policy of insurance where the express terms of the policy so provide. A contract of insurance normally contains provisions relating to renewal of the policy, usually by mutual consent. Save where in some special forms of insurance there is an express condition of the policy that the insured and the insurer are obliged to renew, the insurer is not bound to accede to an application by the insured for renewal or to accept a premium tendered by the insured for renewal. The insurer may issue a notice of renewal, though not obliged to. If the insurer does send a renewal notice and it stipulates a higher rate of premium, and the insured refuses to pay it, the offer has lapsed and cannot be revived later. Where the policy is renewed each renewal is in law a fresh contract.

[42] The construction to be placed on the policy must therefore be informed by these general principles. I deal first with the interpretation of clause 3 captioned 'Grace Period'. It is common practice in the insurance industry for a policy of insurance to provide a grace period for the payment of the premium, in default of which the premium lapses. In this case, clause 3 does provide for a 31-day grace period during which benefits will be suspended.

[43] The appellant contends that clause 3 does not govern termination of the policy either expressly or impliedly. Had it been intended to include a provision for termination, it would have been included under the section captioned 'Eligibility For and Termination of Coverage'. Furthermore, says the appellant, clause 3 does not authorise NAGICO to unilaterally alter the premium. Properly construed, clause 3 is to be interpreted as meaning that NAGICO could only

serve notice of intention not to renew if the premium remains outstanding at the end of the grace period.

[44] To my mind the 'grace period' offered is applicable to the date on which the premium is to be paid. If the appellant does not pay the premium on that date, then he enjoys a 31-day grace period within which to do so. Simply put, clause 3 provides that the appellant had a grace period of 31 days beyond the premium due date to make payment, except where written notice of intention not to renew beyond the period for which he has already paid has been served on him 30 days prior to the next premium due date. If no such notice has been given, the presumption is that the policy will continue so that when the due date for the payment of the premium arrives the appellant will have a grace period of 31 days to make payment of the premium.

[45] The difficulty with the appellant's interpretation of clause 3 as meaning that NAGICO could only serve notice of intention not to renew if the premium is still not paid at the end of the grace period is that to yield the construction urged, one would have to read the words 'for failure to pay the premium' into clause 3 to limit NAGICO's entitlement to serve notice of intention not to renew to circumstances where the premium is unpaid. However, no such limitation is expressed in clause 3. On the contrary, clause 3 contemplates that the premium has been paid; it says so specifically. Clause 3 makes it plain that what the notice conveys to the appellant is that NAGICO does not intend to renew the policy beyond the period for which premium had been accepted. For instance, if NAGICO intended not to renew the policy beyond November 2021, clause 3 mandated that it should serve notice of its intention not less than 30 days prior to 28th November when the premium for December coverage would be due. This deadline would fall on 28th October 2021. Assuming that NAGICO did serve the appellant with the notice on 28th October and assume further that by that date the appellant had already paid November's premium on 27th October 2021, although current with his premium payment when the notice was served, the notice of intention not to renew would still be effective to bring an end to the policy after the coverage period for which the premium had been paid, i.e. November 2021. This rebuts the argument that clause 3 must be

read as meaning that the notice may only be served where the premium has not been paid.

[46] While it is true that clause 3 also provides for a grace period for the payment of the premium, clause 3 expressly provides that such a grace period is not available where, thirty days prior to the premium due date, NAGICO serves notice of intention not to renew. This time frame reinforces the point that service of the notice is not contingent on non-payment of the premium because the notice must be served a full 30 days before the premium due date for the subsequent coverage period.

[47] In my view, Clause 3 therefore expressly gave a right to NAGICO not to renew, effectively terminating the policy for reasons other than non-payment of premium. The fact that this provision is not under the section of the policy captioned 'Eligibility For and Termination of Coverage' does not alter its plain meaning. In this case, the reasons given to the appellant by NAGICO for its decision not to renew the policy were that with the successful assumption of CLICO's portfolio, CLICO ceased to exist so that 'NAGICO will no longer be issuing or maintaining CLICO's policy terms and conditions with numerous coverage gaps and non-equitable premium rate structures'. NAGICO further informed that medical insurers reserved the right to adjust policy terms and ratings based on portfolio analysis giving reasonable due notice to the insured. However, as previously pointed out this is not a case where NAGICO was seeking to adjust the CLICO policy terms and rates; it was terminating that policy and offering instead NAGICO coverage options. Having served its notice of intention not to renew on the appellant within the prescribed time, that notice was effective.

[48] NAGICO's refusal to accept premium payments from the appellant thereafter meant that the CLICO policy did not continue in force, consistent with the learning that non-renewal is a very common method by which an insurer terminates a policy. For reasons explained below, it follows that I would reject the appellant's argument that NAGICO could not terminate the policy before its expiry date of 28th October 2048, other than for non-payment of premium.

Expiry date and Renewal

- [49] In relation to the expiry date, the policy page of the policy bears the endorsement: EXPIRY DATE: 10.28.2048. The policy page is also endorsed with the maximum coverage provided (\$1,000,000.00), the premium (\$81.31) and its mode of payment (monthly), the policy date (28th October 2008), the policy number, the name of the insured, the issue age of the insured, and the beneficiary.
- [50] While 28th October 2048 is endorsed as the expiry date, which might suggest that the life of the policy extended to that date, to understand what that term means it is necessary to examine the policy terms and not merely look at what is stated on the face of the policy. Under the rubric 'Eligibility For and Termination of Coverage' the policy provides:
- "This policy shall not be renewable beyond the anniversary date on or after the Insured's 65th birthday, on which date it will expire.... Notwithstanding the above clause, if this policy is active after the age of sixty (60) coverage will be extended to the age of seventy (7)."
- [51] It is to be noted that the policy was issued on 28th October 2008 when the appellant was aged 25. The anniversary date on or after the appellant's 65th birthday would be in the year 2048. The above provision, which deals with the expiry of the policy, delineates the date beyond which the policy shall not be renewable, save that where the policy was still active after the appellant turned 60 coverage would be extended until age 70. What it does not say however, is that the policy shall remain in force until 28th October 2048, which seemingly is the meaning the appellant seeks to ascribe to 'expiry date'.
- [52] In my view, there are clear indicators within the policy that are inconsistent with such an interpretation. In the first place, there are several references to the 'renewal date' of the policy throughout the document which obviously refer to a time well before 2048. A couple of examples can be seen under the section of the policy dealing with 'Eligibility For and Termination of Coverage'.
- [53] The policy defines 'covered person' as meaning the insured or covered dependents. It is then provided further that:

“Insurance with respect to any Covered Person shall automatically terminate on the termination date of this policy. And with respect to

- (a) The spouse of the Insured Person, shall automatically terminate on the **renewal date** of this policy next following the date such spouse ceases to be the spouse of the Insured and
- (b) Any child who is a Covered Person shall automatically terminate on the **renewal date** of this Policy next following the date which they ceased to be a Covered Dependent...

On termination of coverage for any Covered Person any **renewal premium** paid after that date in respect of such persons shall be refundable, and the Company shall not be held liable for providing any coverage beyond the termination date of any Covered Person.”

[54] To these examples must be added the terms of clause 10 set out at paragraph [32] above which speaks of premium rates in effect **at the date of each renewal**. Certainly, the reference to ‘renewal date’ in the context of clause (a) and (b) above cannot mean some time in 2048 - by which time the policy was not renewable in any event. The question, therefore, is what then is meant by renewal date and renewal premium? Since these terms are not defined in the policy, general insurance principles discussed above must be prayed in aid.

[55] Applying those principles, renewal and renewal date must refer to each occasion on the policy anniversary when premiums are paid by the appellant and accepted by NAGICO. Each such occasion continues the policy in force. This is subject to the term of the policy which provides that ‘[t]his policy shall not be renewable beyond the anniversary date on or after the Insured’s 65th birthday, on which date it will expire’. These provisions, when read with clause 3, fatally undermine the appellant’s argument that NAGICO was obliged by the terms of the policy to provide him with insurance coverage until 28th October 2048, provided that he paid the monthly premium of \$81.31. NAGICO was not obliged to accept his premiums as there is no term in the policy to that effect either expressly or impliedly. The expiry date was simply the date when the policy automatically lapsed and beyond which the policy could not automatically renew upon payment and acceptance of the premium.

[56] The judge was therefore correct in her interpretation of the policy and did not err when she held that the appellant had no real prospect of succeeding on the claim, based on the filed defence.

Disposition

[57] I would therefore dismiss the appeal and affirm the decision and orders of the learned judge. The appellant shall pay the respondent's costs of the appeal to be assessed if not agreed within 21 days of delivery of this judgment.

I concur.
Margaret Price Findlay
Justice of Appeal

I concur.
Gerard St. C Farara
Justice of Appeal (Ag.)

By the Court

Deputy Chief Registrar