

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)**

GRENADA

CLAIM NO.GDAHCV2014/0221

BETWEEN:

JORGE DOMINGUEZ-ELJAEK

CLAIMANT

AND

SAGICOR LIFE INC.

DEFENDANT

Appearances:

Mrs. Celia Edwards Q.C., with Ms. Celene Edwards and Mr. Zuriel Francique
for the Claimant

Mr. G. Archelaus Joseph for the Defendant

2021: February 4
April 8

JUDGMENT

[1] **GLASGOW, J.:** This claim concerns insurance policies issued to the claimant, Dr. Jorge Dominguez- Eljaiek ("Dr. Dominguez") by the defendant, Sagicor Life Inc. ("Sagicor"). On 2nd May 2014 Dr. Dominguez filed a claim seeking an order that Sagicor pay him the sum of \$140,736.00 due on the following insurance policies:

(1) Insurance policy contract number 05307893 for the life of Dr. Dominguez and made between Dr. Dominguez and Sagicor on or about the 28th December 1996;

(2) Insurance policy contract number 05307909 for the life of Ada Jalice-Ceballos and made between Dr. Dominguez and Sagicor on or about the 28th December 1996;

(3) Insurance policy contract number 05317223 for the life of Ada Jalice-Ceballos and made between Dr. Dominguez and Sagicor on or about the 14th March 2003.

And further relief for:

- (1) Interest upon the said sum due and owing to Dr. Dominguez at the projected rate of interest of 7 percent per annum from the dates of issue of the said policies to judgment;
- (2) Interest pursuant to section 27 of the West Indies Associated States Supreme Court (Grenada) Act Cap. 336 of the 2010 Revised Laws of Grenada.

Background

- [2] On 1st November 1996, Sagicor through its agent, Mr. Ian St. Bernard ("Mr. St. Bernard"), presented Dr. Dominguez with a proposal for insurance coverage. The proposal set out projections for an insurance policy styled Life Saver II. The proposal stated, among other things the sum assured of \$200,000 and the monthly premium. Further, the projection outlined projected benefits which stipulated *"if the Fund is credited interest at 7.00% per annum, the projected benefits at age 65 will be a Fund Value of 154,722.41 and either: a full monthly pension of 1,353.82 or: a lump sum of 38,681.00 plus a reduced monthly pension of 1,015.36"*. Directly below the projected benefits is a statement that *"the projected benefits above are not guaranteed"* and a further statement at the foot of the document which reads *"N.B. The above values are not guaranteed and are for illustration only."*
- [3] Mr. St. Bernard presented a letter dated 2nd November 1996 to Dr. Dominguez which reads:
- "I have enclosed in this presentation a proposal of life insurance for you and your wife in the amount of \$200,000.00 as well as a pension proposal for your perusal. These proposal are designed to take care of your situation in accordance with your decision to invest \$1,000.00 in insurance and or pension at the moment. I can think of no other plan which will enable you to will your family thousands of dollars before you have earned them."*
- [4] On the same 2nd November 1996, Mr. St. Bernard prepared another projection for Dr. Dominguez which is titled Pension Saver. The Pension Saver proposal outlines that *"if the Fund is credited at interest of 7.5% per annum, the projected benefits at age 65 will be a Fund Value of 178,264.34 and either: a monthly pension of \$1,595.46 or: a lump sum of 44,566.00 plus a reduced monthly pension of: 1,196.59"*. The projection also contains a statement that *"the projected benefits above are not guaranteed"* and a further statement at the foot of the document which states: *"N.B. The above values are not guaranteed and are for illustration only."*

- [5] On 2nd November 1996, Mr. St. Bernard prepared and presented to Dr. Dominguez, under the Pension Saver plan, a table containing projected benefits from age 52 to 65 including columns labelled age, duration, accumulated premiums, total charges, and fund. Like the previous projections there is a statement stating that the above values are not guaranteed.
- [6] The record shows that on 28th December 1996 Dr. Dominguez was issued with a life saver II policy for the sum of \$200,000.00 payable by monthly instalment of \$862.93. Data Schedule Section Three of the policy gave a breakdown of the guaranteed rate of interest at 4% per annum in the calculation of the cash value charges, including surrender charges, administration expense charges, premium charges and stamp duty, if applicable.
- [7] On 11th February 1997, Sagicor and Dr. Dominguez executed a policy summary in his favour which outlines policy number, insured amount of \$200,000.00 and monthly premiums of \$295.42 and \$862.93 among other things. On even date another policy summary in favour of Dr. Dominguez's wife Ada Esperanza Jalice-Ceballos was issued with an insured amount of \$200,000.00 and a monthly premium of \$124.98.
- [8] Dr. Dominguez's wife, Ada Esperanza Jalice-Ceballos, was issued with a life saver II policy on 14th March 2003 with an insured amount of \$50,000.00 at a monthly premium of \$500.00. The policy provided the guaranteed interest rate of 4% and charges including surrender charges, administration expense charges, premium charges and stamp duties where applicable.

Dr. Dominguez's case

- [9] Dr. Dominguez contends that he had three insurance policies with Sagicor. Two of the policies took effect on 28th December 1996 and the third policy took effect on 14th March 2003. He paid the sum of \$372,920.01 in premiums towards his policies and the sum of \$52,524.00 in premiums towards his wife's policy. Upon the surrender of both policies he received \$247,688.00 and \$37,070.00. He is owed the sum of \$140,736.00 together with interest at a rate of seven percent (7%) per annum.

Sagicor's case

- [10] Sagicor contends that the contract of insurance for both policies expressly state that the guaranteed interest rate applied in the calculation of the cash value is four percent (4%) per annum. Dr. Dominguez paid the total sum of \$345,946.13 as premiums under his policy and

\$52,540.00 under his wife's policy. Prior to Dr. Dominguez's surrender of both policies he withdrew the sum of \$274,587.00 and \$37,040.00 from the policies. When Dr. Dominguez surrendered the subsisting policy in his name he received the sum of \$35,385.00. When he surrendered the policy in his wife's name, he received the sum of \$10,963.75. A third policy in his name lapsed in 2003 and it was terminated.

Dr. Dominguez's closing submissions

[11] On 2nd March 2021 Dr. Dominguez filed closing submissions and says:

- (1) He is a Cuban Medical Doctor whose first language is Spanish.
- (2) He worked in Cuba for over 30 years and in October 1994, at age 51, he migrated to Grenada to work. While in Grenada he worked as a medical practitioner for over 18 years and rose to the position of surgeon general at the General Hospital.
- (3) He left Cuba with nothing and came to Grenada at an age which would not entitle him to retirement benefits. Therefore, he wanted to make arrangements for the welfare of himself and his family.
- (4) Towards the later months of 1994, he met on a number of occasions with Sagicor's representative, Mr. Ian St. Bernard
- (5) He avers that Sagicor clearly understood what he wanted or expected and relies on the life saver and pension saver projections.
- (6) Further, he states that he was not given a copy of the policy before he contracted and was not told of the specific terms or charges. He states that Sagicor gave him a letter that they were prepared to provide an insurance and pension proposal for a monthly premium of \$1,000.00.
- (7) He states that in order to increase his retirement benefits he kept increasing the monthly premiums from \$862.93 and \$124.98 to \$2,538.09 and \$618.00 on his and his wife's policy respectively. He states that Mr. Austin, a witness for Sagicor, admitted that "the life saver policy was not a dual policy." Mr. Austin states that it was a life

insurance policy and at its expiry he would then have to purchase a separate pension plan.

(8) The issued policy contained no retirement package and by him increasing his premiums he was in fact throwing money into a dark hole. He states that based on the policy he would never break even much more to realise return on his money.

(9) That he was guaranteed that if he made a certain amount of payments under his policy he would be entitled to certain retirement benefits.

(10) He relies on Halsbury's Laws of England¹, where it states:

"Insurers' duties". "The duty of good faith is incumbent on insurers just as much as on the proposer although the occasion for its being invoked against the insurers are rare and the field within which it can be invoked is necessary limited. However examples occur where in a prospectus or similar invitation to take out insurance statements are made as to the nature or effect of an insurance; any such statements must be accurate. A misstatement on such a point will enable the proposer in an appropriate case to obtain any necessary rectification of the policy and so enforce a claim on the basis on the insurers' statement or will preclude the insurers from a defence to a claim which, but for the misstatement, would have been open to them. When such a statement is fraudulent the proposer may elect to avoid the contract on that ground and he can recover any premium which he may have paid."

(11) There was no meeting of the minds. Sagicor knew what Dr. Dominguez was contracting for but the policy as issued was different. Dr. Dominguez asserts that having not been provided with a copy of the policy before signing or not being informed of its terms, he could not and would not have contracted for the policy as issued.

(12) That from 2011 he knew something was wrong but was not given the information requested until 2015 pursuant to a court order. He states that under cross examination at trial Mr. Austin admitted that the policy as issued did not contain a pension benefit which is contrary to his intention and expectation. Counsel, Ms. Edwards, relies on the learning from the Halsbury's Laws of England ² and submits that Sagicor has had the

¹ Vol 25. 4th Edition at para. 378, and see also paras. 392, 398-400

² Halsbury's Law of England – Vol. 60 (2018) Insurance – General Principles of Insurance – The Policy: (ii) Interpretation of the Policy: para 82. Contra proferentem rule.

use of Dr. Dominguez's funds under false representation, mistake or otherwise from 1997. The sum of \$284,708.00 was returned to him and the sum of \$140,736.01 is outstanding. Counsel prays that the monies be returned to Dr. Dominguez with interest thereon in the court's discretion and costs.

Sagicor's closing submissions

[12] On 2nd March 2021, Sagicor filed closing submissions which vigorously opposed the claim and says that:

- (1) Dr. Dominguez seeks to rely on the following allegations at trial even though they were not pleaded by him:
 - (a) Breach of contract by Sagicor in relation to the insurance policies referred to in the defence.
 - (b) Non-disclosure of all the terms of the insurance policies prior to execution of the contract.
 - (c) Failure by Sagicor to ensure that Dr. Dominguez fully understood the terms of the insurance policies and the implications thereof.
- (2) It is not open to the court to consider the above allegations raised by Dr. Dominguez and it relies on the Privy Council case of **Lawrence v Poorah**³, where the court found that it was inappropriate to allow counsel on appeal to raise issues or topics that were not part of the subject matter of the proceedings.
- (3) In relation to Dr. Dominguez's assertion that he entered into the policies based on the projections shown to him, Sagicor states that the projections clearly and unambiguously stated that benefits were "*not guaranteed*" and are for "*illustration only*". With respect to the accumulated fund under the policies, Sagicor notes that Dr. Dominguez did not state that its agent indicated to him that he will receive less than what he contributed.

Whether Sagicor paid Dr. Dominguez all the monies to which he was entitled

- (4) Sagicor applied no less than the guaranteed 4% per annum interest rate in calculating the cash value in respect of each applicable policy of insurance. Dr. Dominguez was

³ [2008] UKPC 21 at paras. 18-20

paid all the monies that were due to him on the surrender of his respective policies having regard to his withdrawals from the accumulated cash value. On cross-examination of Sagicor's witness, Dr. Dominguez did not challenge Sagicor's contention that the life saver policies were administered according to the stated terms.

Whether Sagicor adequately disclosed the terms of the policies prior to their signing

- (5) It was not capable of adducing evidence in relation to the allegation of non-disclosure. However, in the absence of such evidence Sagicor relies on its policy and the practice of its officers, agents and other personnel who interact with clients to clearly and adequately disclose and explain the terms of the insurance contract or policy to the intended insured prior to the signing and executing of the same.

Whether the claimant ratified or acquiesced to the undisclosed terms of the policies

- (6) Dr. Dominguez benefitted from the insurance policies from 1996 to 2011, being covered for life insurance for the duration of the policies as well as making several cash withdrawals from the policies. Sagicor contends that Dr. Dominguez having benefitted from the insurance policies for approximately 14 years to the date of surrender of the policies, cannot subsequently allege that the terms of the contract were not adequately disclosed to him prior to the entering of the contract of insurance. It would be unconscionable for Dr. Dominguez to be permitted at this stage to deny all the terms of the contract of insurance in an attempt to set it aside to the detriment of Sagicor, having had the full benefit of the insurance policies. Dr. Dominguez by his clear and unequivocal conduct availed himself of the benefits of the insurance policies. This conduct demonstrated that he had accepted the terms of the contracts of insurance he entered into with Sagicor.
- (7) Sagicor submits that Dr. Dominguez is not entitled to any remedies prayed for and his claim ought to be dismissed with costs to it.

Issues

[13] A fair reading of the statement of claim does not reveal a clear cause of action. However, the claim is for payment of a specific sum of \$140,736.00 together with accrued interest against Sagicor upon surrender of insurance policies. This demand for payment suggests a possible cause of action in breach of contract. Counsel for Dr. Dominguez, Mrs. Celia Edwards QC, at the trial of the claim and in written submissions, raised allegations of misrepresentation. These allegations were vigorously opposed by Counsel for Sagicor, Mr. G. Archelaus Joseph, who objected at the trial and in his written submissions to the introduction of new complaints. I am of the view that the above issues or cause of actions could possibly arise on the pleaded case. Therefore I will consider whether Dr. Dominguez can maintain or establish cause of actions for breach of contract and misrepresentation (possibly negligent misrepresentation) by Sagicor. Dr. Dominguez alludes to false representation in his submissions but it will be recalled that fraud must be specifically pleaded, particularised and proved⁴. There are no pleadings or particulars regarding fraud. In any event, the pleadings presented by Dr. Dominguez point to an obligation on Sagicor to adequately advise him of the proposed policy and a duty to issue a policy based on his stated preference. It would seem to me that those assertions may expose a claim for possible negligent conduct on Sagicor's part.

[14] Accordingly, the first issue is whether Sagicor adequately disclosed the terms of the proposed insurance agreements or whether it negligently misrepresented the nature and terms of the policies. The second issue concerns whether Sagicor breached its contract by failing to issue the contract chosen by Dr. Dominguez and to pay the sum of \$140,736.00 together with accrued interest upon surrender of the policies.

Whether Sagicor negligently misrepresented the nature and terms of the policies to Dr. Dominguez

[15] At the trial, Dr. Dominguez made the following allegations:

- (1) "English is not his first language, but numbers are the same in English and Spanish."
- (2) "Yes, he always guaranteed I would get more he didn't guarantee I would get triple or double but always I would get more".

⁴ The Castries Constituency Council v Lambert Nelson SLUHCVP2014/0016 at para. 23

- (3) “I understood it was going to be more or else I would have put my money in the bank or bought jewellery or shares”.
- (4) “I did not understand it was just a life insurance but a retirement package where I could recover my funds”.
- (5) “If I had understood what he is explaining to me now I would never had taken out the policy.”

[16] The law on misrepresentation is settled. In the leading authority of **Esso Petroleum Co Ltd. v Mardon**⁵. Lord Denning MR stated:

It seems to me that Hedley Byrne, properly understood, covers this particular proposition: **if a man, who has or professes to have special knowledge or skill, makes a representation by virtue thereof to another—be it advice, information or opinion—with the intention of inducing him to enter into a contract with him, he is under a duty to use reasonable care to see that the representation is correct, and that the advice, information or opinion is reliable. If he negligently gives unsound advice or misleading information or expresses an erroneous opinion, and thereby induces the other side into a contract with him, he is liable in damages.** This proposition is in line with what I said in *Candler v Crane Christmas & Co* ([1951] 1 All ER 426 at 433, 434, [1951] 2 KB 164 at 179, 180), which was approved by the majority of the Privy Council in *Mutual Life & Citizens' Assurance Ltd v Evatt*. And the judges of the Commonwealth have shown themselves quite ready to apply Hedley Byrne between contracting parties: see, in Canada, *Sealand of the Pacific Ltd v Ocean Cement Ltd* and, in New Zealand, *Capital Motors Ltd v Beecham*⁶. (Bold emphasis mine)

[17] Further, in **Mc Cullagh v Lane Fox & Partners Ltd**. Hobhouse LJ stated:

In *Caparo*, where the House of Lords was primarily concerned with whether there was a sufficient connection between the maker of the statement and the person who said he had relied on it, Lord Oliver said, at p638:

What can be deduced from the Hedley Byrne case, therefore, is that the necessary relationship between the maker of a statement or giver of advice (“the adviser”) and the recipient who acts in reliance upon it (“the advisee”) may typically be held to exist where (1) **the advice is required for a purpose, whether particularly specified or generally described, which is made known, either actually or inferentially, to the adviser at the time when the advice is given;** (2) **the adviser knows, either actually or inferentially, that**

⁵ [1976] 2 All ER 5

⁶ *Esso Petroleum Co Ltd. v Mardon* [1976] 2 All ER 5

his advice will be communicated to the advisee, either specifically or as a member of an ascertainable class, in order that it should be used by the advisee for that purpose; (3) **it is known either actually or inferentially, that the advice so communicated is likely to be acted upon by the advisee for that purpose without independent inquiry**, and (4) **it is so acted upon by the advisee to his detriment**. That is not, of course, to suggest that these conditions are either conclusive or exclusive, but merely that the actual decision in the case does not warrant any broader propositions.

In the same case Lord Bridge said, at pp620–1:

The salient feature of all these cases is that **the defendant giving advice or information was fully aware of the nature of the transaction which the plaintiff had in contemplation, knew that the advice or information would be communicated to him directly or indirectly and knew that it was very likely that the plaintiff would rely on that advice or information in deciding whether or not to engage in the transaction in contemplation**⁷.
(Bold emphasis mine)

[18] Dr. Dominguez's statement of claim essentially demands payment of the sum of \$140,736.00 pursuant to three insurance policy contracts. The pleadings are somewhat imprecise in identifying :

- (1) any assertion or allegation that he received improper or inaccurate or incomplete advice or information from Sagicor concerning the nature and terms of the insurance policies. It seems to me that any claims of this sort would, in any event, be fully rebutted by the fact that the terms of the proposals were quite clear in their terms and possible outcomes. Instructively, Dr. Dominguez not only chose the life saver option in 1996. He went to choose that very option when he embarked on another policy for his wife in 2003;
- (2) any allegation in the pleadings that he misunderstood or was not fully aware of the nature of the insurance policies at the time of entering into the same;
- (3) any allegation in the statement of claim that the terms of the policies were not adequately disclosed to him nor that he received advice or information from the Defendant or its agent which was misleading or erroneous.

⁷ Esso Petroleum Co Ltd. v Mardon [1976] 2 All ER 5 at page 41

[19] The above list is not conclusive or exhaustive, but in my view must be sufficiently pleaded in order to establish a cause of action for misrepresentation in this case. The documentary evidence relied on by Dr. Dominguez before this court does not assist him further. In Dr. Dominguez's list of documents he relies on a letter dated 2nd November 1996⁸, where Mr. St. Bernard, as the Life Underwriter for the Barbados Mutual Life Assurance Society now Sagicor, wrote to him enclosing proposals dated 1st and 2nd November 1996 for life saver and pension saver policies for his perusal. I have already commented on the fact that these proposals were not opaque but were quite straightforward in their terms.

[20] Additionally, the proposals contain disclaimers indicating that the projected values were merely illustrative and were not guaranteed. This clearly ought to have put any proposer on notice that they should not rely on the values therein set out. In the English Court of Appeal case of **Mc Cullagh v Lane Fox & Partners Ltd**⁹, the question was whether a vendor's estate agent owed a duty of care to a purchaser for a negligent misstatement regarding a property listed for sale. In **Mc Cullagh**, the contract for sale contained a standard disclaimer. Hobhouse LJ stated as follows:

Thus the relevance of the disclaimer is to negative one of the essential elements for the existence of the duty of care. **It negatives the assumption of responsibility for the statement. It implicitly tells the recipient of the representation that if he chooses to rely upon it he must realise that the maker is not accepting responsibility for the accuracy of the representation.** The disclaimer is part of the factual situation which the court has to take into account in deciding whether or not the defendants owed a duty of care to the plaintiff. Put another way, **the question is whether the plaintiff was entitled to treat the representation as one for which the defendants were accepting responsibility.** This is primarily a factual question¹⁰. (Bold emphasis mine)

[1] I would say the same reasoning applies to the facts in this case. Dr. Dominguez ought to have been put on notice that the projected values set out in the proposals could not be relied as essential terms which could be enforced in a subsequent contract. I find also that the statements in the letter and proposals show that Sagicor fully understood that Dr. Dominguez was interested in proposals that included pension benefits. I will elaborate on this issue below in this judgment but both proposals plainly encapsulate pension benefits which was precisely the sort of investment being sought by Dr. Dominguez. My understanding of Sagicor's case is that they presented both schemes to Dr. Dominguez to permit him the opportunity to choose

⁸ Trial Bundle at page 55

⁹ [1996] 1 EGLR 35

¹⁰ *Mc Cullagh v Lane Fox & Partners Ltd* [1996] 1 EGLR 35 at page 41

which plan would offer him the best outcomes. There is no evidence that Sagicor failed in its obligation to clearly inform Dr. Dominguez of his options. I have concluded therefore that he fails in his reliance on these materials to demonstrate that Sagicor and/or its agent, Mr. St. Bernard, misrepresented the nature and term of the policies to him.

Whether there is a claim for breach of contract

- [2] Dr. Dominguez complains that he was not given a copy of the policy before he contracted. He relies on the pension saver proposal to claim that Sagicor acknowledged that he was looking for a pension plan. It was on that basis that he contracted and continued to pay an increased premium. His case is that Sagicor issued the life saver policy when they knew that he wished to contract for the pension saver. Dr. Dominguez says that there was no meeting of the minds.
- [3] The difficulty with this argument is that it is not supported by the facts as exposed on the claim and at trial. Dr. Dominguez was presented with two proposals. I have already indicated that the proposals do not appear to be obfuscated or imprecise or opaque. Rather, the terms are specific and unambiguous. Sagicor went as far as indicating that the values stated were not to be taken by Dr. Dominguez as guaranteed but rather they were solely illustrative. Dr. Dominguez laments the fact that there is no pension scheme in the life saver proposal that was eventually turned into a policy with Sagicor. He complains that he could not have chosen this option since he was looking to secure a pension. But the evidence rebuts this assertion. The life saver proposal noticeably sets out various scenarios whereby either Sagicor would pay Dr. Dominguez (1) a full monthly pension of \$1,353.82 or (2) a reduced monthly pension of \$1,015.36 after paying a lump sum of \$38,681.00. The life saver proposal also included minimum pension benefits. The proposal again cautioned that the values stated were merely illustrative. Accordingly, I do not agree with Dr. Dominguez when he argues that the life saver proposal did not include a pension option.
- [4] There is no evidence that he did not understand the terms of either proposal. On his pleadings, at trial and in his submissions, references are made to the fact that Spanish is his first language. However, he has not led evidence to show that he did not comprehend the terms of these proposals or that he was incapable of so comprehending them. There is, further, no evidence that Sagicor was aware of or ought to have been aware of any language incapacity or impediment on his part or that he brought any such limitation to their attention. Indeed Dr.

Dominguez refers effusively to his many years of successful medical practice in Grenada, an English-speaking country.

- [5] I have therefore concluded that Sagicor fulsomely and adequately presented Dr. Dominguez with the 2 proposals and that he chose the life saver option which then became the basis for the policies of insurance issued by Sagicor. There was no agreement to enter into a Pension Saver Plan and therefore no breach of an agreement when Sagicor issued the Life Saver Plan.

Cash value of the insurance policies upon surrender

- [6] The main issue is whether Sagicor breached its life insurance contracts by failing to pay Dr. Dominguez the sum of \$140,736.00 together with accrued interest upon the surrender of his policies. I observe that Dr. Dominguez has not particularised or specifically pleaded how he calculated the sum of \$140,736.00 that he wishes the court to award to him.
- [7] Dr. Dominguez asserts that he paid the sum of \$372,920.01 as premiums towards his policy and the sum of \$52,524.13 towards his wife's policy. Sagicor denies Dr. Dominguez's total premium figure of \$372,920.01 and avers that Dr. Dominguez paid the sum of \$345,946.13 as premiums towards his policy. Sagicor does not dispute the total premiums paid under the wife's policy.
- [8] Dr. Dominguez disputes the sum received upon the surrender of the policies. Sagicor asserts that Dr. Dominguez withdrew the sum of \$274,587.00 from the accumulated cash value of his policy and the sum of \$37,040.00 from the accumulated cash value of his wife's policy. Dr. Dominguez does not deny that those withdrawals were made and in his reply simply puts Sagicor to strict proof on its calculation¹¹.
- [9] What is noteworthy is that in their list of documents both parties rely on two statements and/or reports which were prepared by Sagicor outlining the transactions under the policies including premium payments, deductions, charges and withdrawals by Dr. Dominguez. These statements clearly show all of the activity in relation to the policies from effective date to the date of surrender. At the foot of the statements it clearly shows that Dr. Dominguez was only entitled to \$35,385.10¹² under his policy and \$10,963.75 under his wife's policy¹³. I can only

¹¹ Claimant's Reply at page 25 of the Trial Bundle

¹² Page 93 of the Trial Bundle

see this as a simple arithmetical assessment that should have obviated the present dispute between the parties.

[10] However, it appears that the \$140,736.00 figure that Dr. Dominguez claims he is owed by Sagicor is a calculation of the total premiums paid in the sum of \$425,444.01 under both policies less the withdrawals of \$284,708.00.¹⁴ With respect, this is not what the contracts stated. The policy documents clearly state that the guaranteed interest referred to under section 3 of the policies are applied in the calculation of the cash value compounded yearly and any interest in excess of the guaranteed interest rate may be increased in such manner as determined by the society, (Sagicor)¹⁵.

[11] The cash value of the policy was clearly stated as \$35,835.93¹⁶ with monthly premium payments of \$862.93 (which Dr. Dominguez gradually increased up to \$2,608.00 in July 2005¹⁷) at a compounded annual interest rate of 4% per annum. In arriving at his claimed figure Dr. Dominguez appears to have failed to factor the monthly charges, deductions and other expenses associated with the policies.

Reliance on projected interest rates

[12] Further, Dr. Dominguez claims the sum of \$140,736.00 at the projected rate of 7% per annum. This figure is extracted from the projected interest rates of 7% and 7.5% per annum set out in the proposals dated 1st and 2nd November 1996 and presented by Mr. St. Bernard to Dr. Dominguez. As stated above in this judgment both documents were stated to proposals with projections that included the disclaimer “NB: *The above values are not guaranteed and are for illustration only.*”

[13] I have also found that the Data Schedule, Section Three of the life saver policy eventually contracted by Dr. Dominguez expressly stated under the heading titled “rate of interest”, that the guaranteed annual interest rate to be applied in the calculation of the cash value is 4%. Dr. Dominguez’s policy, his wife’s policies and the projections did not contain an annual interest rate of 7% per annum.

¹³ Page 95 of the Trial Bundle

¹⁴ Page 61 of the Trial Bundle

¹⁵ Back of page 77 of the Trial Bundle under the heading Interest Rate

¹⁶ Page 73 of the Trial Bundle

¹⁷ Page 92 of the Trial Bundle

[14]Based on the learning recited above from **Mc Cullagh**, I do not see how Dr. Dominguez can factually assert that he was induced or relied on the projections prepared by Mr. St. Bernard as agent of Sagicor. A projection given its ordinary meaning signifies a forecast or an estimate. The evidence before me indicates that Dr. Dominguez was given a projection as to the benefits he may receive. An estimate or proposal cannot be said to be a binding contract unless it was intended to be agreed upon and accepted by the offeree. As I have repeatedly stated throughout this discourse, the evidence before the court clearly shows that the disclaimers in the projections state that the projections were not guaranteed and were included for illustration purposes only. Thus the projections were not intended to be accepted as a representation or binding term of a contract between the parties. The annual interest rate of seven percent per annum was not made a term of the policies. There is no evidence that either party intended that it should be included as a term of the policies and as such it was not binding on the parties.

Conclusion

[15]In light of above, Dr. Dominguez has not proven on this claim that he is owed the sum of \$140,736.00 and interest at the rate of 7% as claimed at the date of surrender of his policies. The claim is therefore dismissed with costs to Sagicor.

[16]I order as follows:

- (1) The claim dated 2nd January 2014 is dismissed and accordingly the reliefs claimed are refused.
- (2) The claimant is to pay costs to the defendant in the sum of \$2,000.00.

Raulston L.A. Glasgow
High Court Judge

By the Court

Registrar