IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. 1979/M059

BETWEEN	K. Churchill Meita Executor Estate Stephen O.B. McLean, (deceased)	PLAINTIFF
AND	Life of Jamaica Limited	DEFENDANT

Carl Rattray, Q.C. Clinton Hines and Janet Morgan
for Plaintiff

Berthan MacCaulay and A. Deans
for Defendant

Heard: 30th April and 30th July, 1986

JUDGMENT

MORGAN J:

Mr. Stephen McLean on the 18th December 1975 entered into two proposals with the Life of Jamaica Limited (hereinafter called the Company)for Life insurance coverages in the amount of $166,300 being Policy No. 040845, and $100,000.00 being Policy No. 040846. Four months after, that is on the 17th April 1976 he died. The plaintiff as Executor of his Estate made a demand on the defendant Company for payments of the said sum. The defendant have however repudiated the claim on the ground that there was no contract of insurance entered into between the deceased and the Company.

The plaintiff has now sued to recover these sums.

On the first day of hearing there was a concurrence between the parties, and acquiesed in by the Court, that they would set out the facts as agreed, pose the question of law, then make their submissions on those facts for the Court to answer the question posed. It was in pursuance of the agreement that a document "Statement of Agreed Facts" was produced to the Court, the contents of which I now set out in its entirety.

STATEMENT OF AGREED FACTS

1. The deceased, STEPHEN OSCAR BERESFORD McLEAN, made two proposals on 18th December 1975 bearing Policy No. 040845 and No. 040846 for life insurance coverage in the sums of One Hundred and Sixty-Six Thousand Three Hundred dollars ($166,300.00) and One Hundred Thousand Dollars ($100,000.00) Whole Life Policies respectively.

2. On each Proposal there was a month's premium paid and thereafter three more payments were made - copy proposals attached and copy statements of payment of premium attached.

3. The premiums were paid by the pre-authorisation payment system (PAP) which is the authorisation by the deceased to his bank to pay to his Insurance Company on a monthly basis on Vouchers presented by the Insurance Company to his bank.

4. On 13th April 1976 a Medical Examination was done by Dr. Sahoy and an E.C.G. done by Dr. James Levy. The Reports are exhibited hereto. Chest X-ray was done on the same day 13th April 1976. A copy of the Report on the Chest X-ray attached. The Report was received by the Defendant Company after the date of death of the deceased.

5. The deceased died on 17th April 1976. Probate of his Will was granted to the Plaintiff, the sole surviving Executor named therein on 6th December, 1976.

6. No Contingency Receipts were ever delivered to the deceased and no Policies were ever issued to him.

7. The Plaintiff claims payment of the sums of One Hundred and Sixty-Six Thousand Three Hundred Dollars ($166,300.00) and One Hundred Thousand Dollars ($100,000.00) and the amount of any bonus accrued and interest on the above sums.

8. The question of law to be determined by the Court is whether on the facts stated and the documents attached there was in existence on 17th April 1976 contracts of insurance on the life of the said STEPHEN OSCAR BERESFORD McLEAN.

The proposal forms are set out in two documents Part 1 and Part 2. Part 1 deals with the application for Insurance and Part 2 with the health of the applicant in the form of a Questionnaire and Medical Examiner's Report. Both

proposal forms are signed by the deceased. Above his signature in Part 1 appears what is a declaration and agreement in four parts. It was conceeded that having signed, the deceased was bound by all conditions which appeared above his signature. Below his signature appears what is headed "Contingency Insurance Receipt". In the body of this receipt the Company acknowledges the receipt of a sum of money in respect of the application and set out the conditions by which the Company agree to be bound. This is signed by the representative of the Company

It states in part :

> "The Company agrees that any policy of insurance in respect of which any such foregoing payment is made shall take effect subject to the limitations below and the terms and conditions of the policy applied for from the Effective Date which is defined as the date of completion of Part II of the application of the latest Part II if more than one or of Part I if later, provided."
>
> (i) not relevant; and
>
> (ii) that the Effective Date the life to be insured is in the opinion of the authorised officers of the Company after such investigations and special examinations as they may require, (completion of such requirements and acceptance of the risk being conditions precedent to any insurance taking effect) without restriction an acceptable risk for such policy at the rate of premium specified in said application.
>
> (iii) that such insurance .....
> and that any Insurance not becoming effective on the Effective Date shall not take effect unless and until a Policy is delivered to and accepted by the Owner during the lifetime and continued acceptability of the life to be insured.

On behalf of the Plaintiff Mr. Rattray pitched his arguments in this way:

On the date the Proposals were made documents were issued to the deceased which showed the payment of the first premium. Since then, payments of other premiums were made on the pre-authorisation payment system. The Company had sent four of these cheques to the Bank. This action on its part amounted to a demand for payment of the premiums. They were paid, and the proceeds of all these cheques were retained by the Company. These demands and retention of the sums were indicative of an acceptance of the offer and so a contract came into existence. For this proposition he cited Ivamy on General Principles of Insurance Law 4th Ed. p. 120 which says that if no policy has been

issued to the proposer before death, if the insurers receive the premium and retain it, it raises a presumption that the insurers have accepted the proposal and they are not entitled to refuse to issue a policy to him and are liable in the event of his death. This presumption however is by no means conclusive as there may be circumstances leading to a contrary conclusion. He contended that once the contract was in being even though the Policy had not yet been issued the deceased was entitled to the protection of the contract. The Contingency Insurance receipt he says did not form a part of the contract because it was not signed by the deceased neither did the deceased agree to it which meant that all the limitations and conditions enunciated therein were conditions subsequent which bound only the Company, did not affect the contract coming into being, but only entitled the Company to cancel the contract already made, during the lifetime of the deceased. So if a Health Certificate was found inacceptable to the Company, the Policy would not be affected though it gave the Company the right to cancel the contract during the lifetime of the deceased. He further contended that at the time of the applicant's death i.e. 17.4.76 a Medical Examiner's Report had already been completed by Dr. Sahoy i.e. 13.4.76. In terms of the Receipt therefore, since premium payments had been made, the Effective Date of the commencement of the Policy would be the 13.4.76. The deceased was not alive on the 21.4.86 when the Company received the last report. If he had been alive the contract could have been cancelled by the company, but having died the right to the benefit of the contract would enure to the benefit of his Estate.

Counsel for the defendant in his brief presentation did not touch on most aspects of the plaintiff's submission. He said that there was no acceptance of the offer, so retention of the premium raised only a presumption of acceptance which, in this case, was displaced as medical tests were still required. The company needed more information and therefore no contract came into existence.

He relied on the declaration and agreement which was signed by the deceased and bound him and which said in part that liability of the company would only occur in two circumstances:

1. if a policy was issued and delivered to him in his lifetime.

2. a Contingency Insurance receipt was properly issued to him.

He adverted to the clause on the proposal that the acceptance of policies issued to the applicant constituted an agreement to their terms and satisfaction of any changes made by the Company. He contended that the company had done nothing to indicate it was accepting the proposal. The applicant, he concluded, had delayed taking the medical test, he had made his last premium payment in March, he took his test in April, there was no delay on the part of the company and nothing in the action of the company to indicate that the company had accepted his proposal.

This submission is based on the agreement on the proposal form and signed by the deceased which says in part

Life to be insured .....hereby declares and agrees

1. not relevant

2. That the company shall incur no liability in respect of this application unless and until a policy or policies based hereon have been issued and delivered to me during the lifetime and continued insurability of the life to be insured except as may be otherwise provided in a properly issued contingent insurance receipt.

3. not relevant

4. not relevant

5. not relevant

6. that acceptance of any policy or policies issued as a result of this application shall constitute agreement to its or their terms and conditions and shall constitute ratification of any changes by the company specified in the policy or policies.

What I interpret paragraph 2 as purporting to say is that the proposer agrees that the company incurs no liability

(a) unless a policy based on his application is issued and delivered to the proposer during his lifetime,

(b) until a Contingency Insurance receipt on which the terms of the company's liability is set out is properly issued to the proposer.

To answer the question whether there was in existence on the 17th April 1976, contracts of Insurance on the life of Stephen McLean, a comment taken from Life Insurance Law in the Commonwealth Caribbean by Claude H. Denbow p. 27 may well put the matter in its proper perspective.

> "The point in time at which a legally binding contract of Insurance is concluded between the assured and the Insurance Company is one of the more difficult questions in Life Insurance Law. The essential problem is that the various steps in negotiating the contract of life insurance are not easily reconcilable with the basic rules of offer and acceptance in the law of contract.
>
> The conclusion of a contract requires an unconditional offer by one party and the unconditional acceptance of that offer by the other party. However the negotiations between the proposer and the Insurance company do not really fit into that traditional mould."

The present case is an instance. The plaintiff asserts that there are contracts in being and the defendant equally asserts that there are none.

There is no real challenge that the proposal form as completed and signed represents an application for a policy and constitutes an offer.

As to acceptance of the offer, this may be signified by the insurers in one or other of the following ways -

1. By a formal acceptance
2. By issue of a policy
3. By acceptance of the premium
4. By the conduct of the insurers

Ivamy 4th Ed. op. cit p. 120.

There has been no formal acceptance by the company neither has any policy been issued so niether (1) nor (2) above applies.

The first premium was paid at the completion of the proposal forms for which Contingency Insurance receipts were completed. These receipts are described as -

> "a sales device instituted by the life insurance industry whereby a life insurance company grants immediate coverage upon payment of the initial life insurance premium at the time of application and the satisfaction of various conditions precedent to coverage."
>
> Denbow op. cit. 29

Premiums for four months January to April were paid by a system whereby the deceased authorized his bank to pay money to the insurance company

on a monthly basis on cheques/vouchers presented by the company to the Bank. These moneys the company retained. Mr. Rattray argued that having made a demand on the Bank and thereafter retaining the money received, raised a presumption that the insurers had definitely accepted the proposal.

It is my view that sending the vouchers to the Bank is not a demand but the use of an authority given to the company to collect moneys from the Bank, conditionally as payment for premiums on a proposal for an Insurance policy which if accepted would relate back to the date of the proposal. I am fortified in this view by finding that no receipts were ever issued or delivered to the proposer for these sums.

Both sides disagree as to whether or not the receipts were "issued." I quote from Halsbury 3rd Ed. Vol.33 p.324.

> "Broadly speaking a security is "issued" when it is first delivered to a person who thereby acquires a right of action on it."

So even if the receipts for the sums were written but not posted, they would be regarded as unissued. The presumption therefore of acceptance by demand and retention of premium is rebutted. I find that there was no acceptance of the premium by the defendant's company.

A look at the agreement on the proposal form signed by the deceased reveals that what it has effectively done by the words "except as may be otherwise provided in a properly issued contingent insurance receipt" is to incorporate the conditions and limitations listed on the Contingency insurance receipt into the proposer's agreement. These conditions include in part - and I will paraphrase -

1. The Effective date is the date of completion of the Medical Examination (Part II)

2. This effective date is subject to the following conditions (before the policy takes effect).

   (a) the payment of the first premium or 25% of the annual premium;

   (b) that the insured is an acceptable risk in the opinion of the Insurers for the premium offered. That the completion of the examination and the acceptance of the risk are conditions precedent to the effective date.

> 3. Coverage of Insured on all insurance taken with the company must not exceed retention limit and any insurance which is not effective on the Effective Date is not effective unless the policy is delivered to and accepted by the Owner in his lifetime and as long as he continues to be accepted by the company during his lifetime .....

The plaintiff submitted the Effective Date as the date of completion of Dr. Sahoy's report. That would normally be so but paragraph (2) of the company's liability (supra) subjects that date to further conditions namely, that the assured is an acceptable risk for the premium offered in the opinion of the company, and makes it a condition precedent to coverage. So until the risk is accepted by the Insurers and the appropriate premium offered, the contract of Insurance is not complete. Unfortunately, the company had not yet given an opinion as to risk, and delay in dealing with a proposal (if there was such) does not constitute acceptance unless it is the duty of the insurers to intimate their rejection. Ivamy op. cit. p.121. I have detected no such duty, so even though the effective date is fixed the conditions precedent to their being put into effect, and with it the company's liability, have not been met.

As to the conduct of the insurers, what facts constitute acceptance depends on the circumstances of each case/Ivamy p. 121 I can find no facts from which I can conclude that they acted in any manner which signified acceptance.

In the final analysis, therefore the position is that the contractual relationship was inchoate. The stipulated conditions were not yet met in order to bring the contracts into being as -

(a) no policies were issued;

(b) no contingency receipt was issued;

(c) The company had not yet decided whether or not the proposer was an acceptable risk for the premium offered.

These are all conditions upon which the proposer had agreed when he signed the proposal form.

In the circumstances of this case if the plaintiff were able to go a step further and satisfy the Court that the proposer was an acceptable risk, that is, that he was insurable at standard premium rates for the plan and amount of insurance applied for on the basis of all medical reports, and the company's standard underwriting practices even though the company would not have yet given

an opinion or issued a policy before death, the Court would have been in a position to adjudicate. Denbow op, cit. p. 31.

The point is not an easy one but on the whole I have come to the conculsion that there is, in my opinion, no contract of insurance which has come into existence.

In the event there will be judgment for the defendants with costs to be agreed or taxed.