BARBADOS
[Unreported]

IN THE SUPREME COURT OF JUDICATURE
HIGH COURT
CIVIL DIVISION

No. 1211 of 2012
BETWEEN:
PHILIP VERNON NICHOLLS **CLAIMANT**

AND

SAGICOR LIFE INC **DEFENDANT**

Before the Honourable Madam Justice Margaret A. Reifer, Judge of the High Court

Dates of Hearing: 2014 January 13th
March 24th
April 8th
November 25th

Appearances:

Mr. Errol Niles, Mr. Rudolph Greenidge, Mrs. Charmaine Delice-Hunte and Ms. Eleanor Clarke, Attorneys-at-Law for the Claimant
Mr. Patterson Cheltenham Q.C. and Ms. Natasha Greene, Attorneys-at-Law for the Defendant

DECISION

Introduction

[1] This action was filed by way of Notice of Application under Certificate of Urgency on July 16th 2012. The Claimant in said Notice of Application sought the Court's determination of his rights under clause 6 on page 4 of the provisions of Contract No. GP 3563 of the Manufacturers Life Insurance Company Pension Plan (hereinafter referred to as "the Plan"). He sought the following relief:

> "1. An Order of the Court that the Defendant be ordered to make payments in the manner as requested by the Claimant on a true construction of **section 6** of the provisions of the Plan and the Income Tax Act, Cap. 73 of the Laws of Barbados;

2. Damages for loss suffered by the Claimant in the interim;
3. Interest awarded pursuant to section 35 of the **Supreme Court of Judicature Act Cap. 117A** of the **Laws of Barbados** on the amount of $425,469.89 or what amount is now due to the Claimant;
4. Costs, and
5. Such further or other relief as the Court deems fit."

[2] The Claimant is an attorney-at-law, and former employee and partner of Cottle Catford & Co.

[3] The Defendant is a company registered under the Laws of Barbados and the operator of an insurance business.

[4] This case must be determined simply by this Court's interpretation of the provisions of a contract between the parties against the background of an extensive and complex factual matrix.

[5] It is the contract establishing the set up of a Group Pension Fund (Contract No. GP 3563) between The Manufacturers Life Insurance Company and Cottle Catford and Company entered into in 1963. It appears that there were several amendments to this Plan, the most recent of which would have taken place in 1996. These amendments, however, are not particularly significant for these purposes.

[6] The relevant contract provision is to be found at clause 6 and is reproduced hereunder for ease of reference:

> "6. Withdrawal Options - In the event of individual termination of coverage on account of termination of employment, an employee may elect either of the following withdrawal options; but if no election is made, Option 2 shall apply automatically.
>
> Option 1: The employee may elect to receive in lieu of all benefits hereunder, a cash refund of his own contributions (if any) to premiums received by the Company plus interest at 3¾% compounded annually, interest being computed separately on each contribution from the end of the contract year in which the premium containing such contribution was due to the first day of the month in which coverage terminates or, if greater, the cash value of the paid-up annuity to which he would otherwise be entitled under Option 2. Cash values are determinable from Table C hereof, as at anniversaries of the effective date.
>
> The Company reserves the right at its own option to credit such cash refund to the Employer for disbursement to the employee, or to make payment to the employee in 12 monthly instalments, each equal to 8.45% of such cash refund.
>
> Option 2: The employee may elect to receive at the normal retirement date in lieu of all benefits hereunder, the amount of paid-up annuity in respect of

which the total of his own contributions plus interest as calculated above would be the cash value of the date of termination of coverage.

In any event, however, if termination of employment occurs due to total disability as determined by the Employer; or after discontinuance of this contract and before it has been restored to full force and effect; or upon or after the bankruptcy, receivership, liquidation or dissolution of the employer; the amount of paid-up annuity payable under this option shall be the total amount of paid-up annuity described in Provision 1 hereof.

The amount payable in the event of subsequent death shall be the cash value at the date of death of the paid-up annuity to which the employee would be entitled as provided above.

Within 60 days of termination of coverage on account of termination of employment with the Employer, an employee shall have the right, upon written application and payment of the required premium to the Company, to purchase an individual deferred annuity at the rate in Table A, on an annual premium basis, for his then attained age, providing the excess of the amount of annuity for which he was eligible hereunder, over the amount of paid-up annuity to which he is entitled above."

[7] While judicial determination of the import of clause 6 is sought, this cannot be done without a review of the entire contract.

An Outline of the Relevant History of this Matter

[8] The above-mentioned contract was signed by the then law firm of Cottle Catford and Company (hereinafter referred to as Cottle Catford) in May 1963 with Manufacturers Life Insurance Co Ltd, which sold its business firstly, to Life of Barbados and latterly to the Defendant Sagicor Life Inc. (hereinafter referred to as "Sagicor").

[9] The Claimant joined Cottle Catford in 1987 as an associate attorney-at-law, and as an employee of the firm paid voluntary contributions for a number of years. The Claimant also made further voluntary contributions to the Plan in order to obtain an enhanced pension on retirement. In 1992, when he became a partner of the firm, Cottle Catford thereafter paid contributions on his behalf and he ceased making any direct contributions.

[10] From 1992 to 2003 he continued in the partnership together with others. However, from 2003 to 2009 the Claimant continued the practice as its sole "partner" or principal.

[11] To be clear, contributions were apparently made in three (3) clearly discernible time slots as follows: 1987 to 1992 by the firm and the Claimant; 1993 to 2003 by the firm on the Claimant's behalf; and thirdly, from 2003 to 2009 by the firm of which the Claimant was sole "partner" or principal.

[12] On October 30th 2009 the firm was dissolved. The Claimant in his Affidavit of July 16th 2012 deposes that he informed Sagicor of the closure (by letter dated October 30th 2009) and it can be concluded from said Affidavit that as principal he then embarked on the process of having employees' entitlements (he being one of said employees) under the

Plan defined and distributed to them. There was a significant exchange of correspondence between the Claimant and the Defendant up to the time of the filing of this action, much of which correspondence is exhibited in the various Affidavits filed and which said correspondence also evidenced an ongoing and increasingly acrimonious dialogue between the parties.

[13] It is to be noted that Stephen Robinson, Vice President of the Pensions Department of Sagicor Life Inc., stated in his affidavit at paragraph 2 filed February 7th 2014, that the Claimant is an "employee" for the purposes of the Plan. It is also noted that in its Wind-up Statement delivered to the Claimant as sole principal of Cottle Catford sometime in 2012 the Claimant was treated as an employee.

[14] It is instructive also to look at the Affidavit of Loraine Gopee, Assistant Vice-President of the Pensions Department of Sagicor Life Inc., filed November 29th 2012, where she deposes at paragraph 3:

> "3. By letter dated 30th October, 2009 from the Claimant to the Defendant, the Claimant informed the Defendant of the closure of Cottle Catford & Co. and requested that the Plan be ended at that date and also asked that the present members of the Plan be notified in respect of their entitlements. A copy of the letter dated 30th October, 2009 is now produced and shown to me and marked Exhibit "LGI"."

[15] It can be gleaned from clause 6 of the said Affidavit that the Claimant first sought payment of his entitlement or alternatively, the exercise of his rights under Option 1 of the Plan formally on July 1st 2010 (see Exhibit PVN 1 to Affidavit of July 16th 2012 the full text of which is set out hereunder).

> "Our Ref: PVN/mb
> 1 July 2010
>
> Sagicor Life Inc.
> Sagicor Corporate Centre
> Wildey
> ST MICHAEL BB15096
>
> Attention: Mrs. Althea C. Hazzard – Vice President, Legal and Compliance
>
> Dear Sirs,
>
> Re: Pension Plan – Cottle Catford & Co.
>
> I refer to recent discussions by phone and email with respect to my pension entitlement held by Sagicor Life Inc. as a result of the closure of Cottle

Catford & Co., and my request for consideration of allowing me to use the amount as a Cash Security for a Loan to finance debts owed by Cottle Catford & Co. to clients which are past due for repayment.

Discussions with you had lead to the suggestion that as the Plan was a registered Retirement Plan this was not possible and it was also not possible to withdraw the amount of the Pension, or if it was it would be subject to taxation of 25% at least. I was referred to Section 25 of the Income Tax Act.

Having examined same it is my opinion that this Section deals with what is needed to allow the Commissioner to register a superannuation plan, which the Cottle Catford Plan clearly is.

As you are aware, however, the Plan came to a close at the end of October 2009 and, as such, it would appear that according to Rule 6 on page 4 of the Plan under the Option of Withdrawal I would be entitled, upon giving notice, to purchase as an individual deferred annuity Plan from the Company.

The Plan states that it must be done within sixty [60] days of termination but, as you are aware, only within the last thirty [30] days were the Members given formal notice from Sagicor Life Inc. of what their entitlement is.

My enquiry therefore was, assuming that this is correct, if is it possible for me to purchase such an Annuity that I then could borrow against to get the cash liquidity I need to settle some of the debts for Cottle Catford.

As you would appreciate this matter is proving very stressful for me and I would appreciate whether you could request your most urgent consideration.

Yours faithfully,

Philip V. Nicholls

cc Sir Henry Forde Q.C.
Sir Neville Nicholls"

[16] Stated differently, the Claimant formally (the said letter reveals several discussions between the parties prior to the issue of this letter) exercised his Withdrawal Option under clause 6 of the Plan by this letter. The only issue between the parties appeared to

be how this entitlement was to be applied and whether the Claimant could use these funds as security for his borrowing.

[17] By letter dated April 30th 2012 Sagicor Life Inc to Philip Nicholls, the Claimant was informed of the value of his entitlement in the sum of $425,469.88 as of that date. Attached thereto was a document titled Direction and Release Statement (DRS) outlining three Options and the Claimant was invited to indicate his preference. The three (3) options outlined in the said Direction and Release Statement are as follows:

> ☐ OPTION 1 I elect to purchase a Paid-up Deferred Pension payable for life only, from Sagicor Life Inc, which will commence on your normal retirement date.
>
> I also understand that I may subsequently elect to receive an actuarially adjusted pension commencing not earlier that age 55 and not later than age 70.
>
> ☐ OPTION 2 I hereby authorize Sagicor Life Inc to transfer the cash value of any pension benefits standing to my credit under the above-named Group Pension Plan to my Individual Registered Annuity Contract No. _____ with _____
>
> ☐OPTION 3 I hereby authorize Sagicor Life Inc to transfer the cash value of any pension benefits standing to my credit under the above-named Group Pension Plan to my present Employer:
> (i.e.: _____) registered Staff Pension Plan No. _____ with _____
>
> In consideration of the Options 2 and 3 above, I hereby release and discharge The Group Policyholder from all liability and obligation to me, my successors and assigns, arising out of or in connection with the above-named Group Pension Plan. In the event that the funds are transferred to another company, I also hereby release and discharge Sagicor Life Inc from such liability.

[18] It is to be noted that the three Options therein do not mirror the Options outlined in Clause 6 of the Plan.

[19] What proves interesting is that in 2012 the Claimant requested his pension from Sagicor (exercising Option 2 under this document namely a transfer to Fortress Insurance Co.) (hereinafter referred to as "Fortress") and pursuant to his 'request' by letter dated May 7th 2012 and executed Direction and Release Statement (hereinafter referred to as DRS), Sagicor wrote a cheque which was sent to Fortress (where the Claimant's personal registered retirement plan was held) under cover of letter dated May 10th 2012, on the

instructions of the Claimant. This cheque was in the amount of $425,469.88, representing the Claimant's pension benefits under the Contract.

[20] It is significant that in the executed DRS form of May 7th 2012, a line was drawn through the words: "The above benefits are only payable upon death or retirement". No explanation of this has been provided by either party.

[21] Following a change of instruction by the Claimant (he apparently explored arrangements with Fortress and later Royal Fidelity), the cheque was returned to Sagicor with a further direction to Sagicor to purchase bonds from the Central Bank of Barbados on his behalf (see letter dated May 24th 2012 Philip Nicholls to Sagicor Life Inc. and also Affidavit of Loraine Gopee filed November 29th 2012). The Claimant deposes that he "received advice to the effect that pursuant to section 47 of the Income Tax Act that [he] could either purchase Government bonds or receive the actual cash and be subject to an imposition of 25% tax for the income received". (see para. 12 of the Affidavit of the Claimant filed January 4th 2013).

[22] By letter dated June 8th 2012, Sagicor has refused to so do and has also refused to return the cheque/funds to the Claimant. Sagicor further advised that it was bound by law to offer the Claimant the options outlined in its letter of April 30th 2012 and that it would comply with his request to disburse the funds to purchase government bonds once it received formal written instructions from the Financial Services Commission, Inland Revenue or appropriate regulatory body. There is correspondence showing that this process was initiated by the Defendant, but no response received.

[23] What is also apparent, is that as a result of urgent unrelated circumstances, the Claimant felt compelled on May 7th 2012 to sign an Option Form presented by the Defendant to effect the payment of his entitlement into a Registered Retirement Plan in an effort to bring this matter to an end (that is to have his entitlement converted to some form of instrument against which he could borrow). See letter of June 13th 2012, Philip Nicholls to Sagicor Life Inc.

[24] This document was however vitiated by subsequent changed instructions, the final position of the Defendant in this matter being stated by Ms. Loraine Gopee in her Affidavit (supra) where she deposed as follows:

> "17. By letter dated 8th June, 2012 from the Defendant to the Claimant, the Defendant advised that it was unable to comply with the Claimant's request to purchase Government Securities. It was emphasized that this request represented new instructions to the Defendant following compliance with the Claimant's original request and moreover, was not an option available to the Claimant under the Cottle Catford & Co. Pension Plan. A copy of the letter dated 8th June, 2012 is now produced and shown to me and marked Exhibit "LG13".

> 19… the only options legally available to the Claimant upon the winding-up of the Cottle Catford & Co Pension Plan are those which are contemplated by the contract entered into between Manulife Insurance Company and Cottle Catford & Co. A return of contributions was however, not an option available to him upon the dissolution of his employer."

[25] It is however of note, that the position taken by the Defendant by the letter of June 8th 2012, and the position taken by the Defendant in this action as to why it cannot act on the instructions of the Claimant, differ. See Claimant's letter dated June 27th 2012 to the Executive Vice-President of the Defendant.

The Issues Outlined

[26] The issue(s) as outlined by the Claimant's Notice and Supporting Affidavits differ materially from the issue(s) as outlined by the Defendant's submissions (both written and oral). The preliminary issue as revealed in the early Affidavits and Exhibits thereto (see letters of June 13th and 29th 2013 Philip Nicholls to Sagicor Life Inc in response to letter dated June 8th 2012 Sagicor Life Inc. to Philip Nicholls) reveal a reluctance/refusal by Sagicor to purchase bonds/securities in compliance with the instructions of the Claimant. At paragraph 8 of the Claimant's Submissions filed January 31st 2013 it is stated: "The issue at hand is the entitlement of the Claimant to seek either a cash payout or for payment of his entitlement as accrued in the Plan to the Central Bank of Barbados for the purchase of Government securities."

[27] See also letter of June 27th 2012, Philip Nicholls to Ms. Sandra Osborne (Sagicor Life Inc.) as follows:

> "…having had a further opportunity to examine the Plan that was first put in existence in 1963, and I refer in particular to Section 6 of the Plan, it is arguable that all benefits due to me under the Plan could be paid to me in cash were I to so elect. If this is done then the question becomes one for the Inland Revenue as to what is my Assessable Income for the year in which the payment was made."

[28] See also Affidavit of Ms. Loraine Gopee filed on behalf of the Defendant on November 29th 2012, specifically at para 18 of which she states:

> "I am informed by PKH Cheltenham, QC and verily believe that contrary to the Claimant's assertions at paragraph 7 of his Affidavit in Support, **sections 8(g), 9** and **17** of the **Income Tax Act, Cap. 73** of the **Laws of Barbados** have no bearing on the instant matter".

[29] The core submission of the Defendant relates to a construction of the contract generally, and clause 6 specifically, the effect of which is, that option 2 operates in these circumstances, and an objective interpretation of Option 2 reveals that entitlements are

not payable until the Claimant reaches "retirement age" under the Plan, which inconveniently and perhaps catastrophically, is age 65.

[30] The significance of this is, that this Court is not required to rule on whether the course of action proposed by the Claimant is allowable in law, but merely to rule on whether, on an interpretation of option 2, the Plan allows a disbursement of the Claimant's entitlements before the retirement age of 65. This in the opinion of this Court also impacts on the relief sought in the Application of July 2012.

The Case for the Claimant

[31] The Claimant, *inter alia*, made the following points/submissions:

1. That the Claimant as beneficiary of the Plan, in his position as sole surviving partner at Cottle Catford, had the right to demand that the pension scheme be administered in accordance with the terms of the policy and he also had the right to payment on the winding-up of Cottle Catford; he should not have to wait 10 years to receive his money.
2. In interpreting the policy, the Court must act in the best interest of the beneficiaries where there is ambiguity or lack of clarity since it was for the beneficiaries' benefit that the scheme was set up. Any ambiguity must be construed in favour of the Claimant.
3. The Claimant had an overriding right to direct that Sagicor purchase bonds with his funds, and if Sagicor was unable or unwilling to purchase these bonds, then they should have given the Claimant the funds and let him deal with the Inland Revenue himself should any issues arise from this course of action.
4. That there is a case for estoppel by representation. The Defendant cannot now say that they were prepared to give the money a few months ago, but not now.

The Case for the Defendant

[32] The Defendant's oral submissions were succinct, (see also his more expansive Written Submissions). He submitted, *inter alia*, that the central issue in this matter arises out of the interpretation of Clause 6 of the Plan, in particular Options 1 and 2. There is, in his submission, no issue of quantum, merely an issue as to when that quantum is to be paid.

[33] In other words, when is the Claimant entitled to receive his money?

[34] He submits that the relevant provision is option 2 which deals with the triggering event, namely, the cessation of business of Cottle Catford.

[35] Ultimately, it is his submission that the claimant is only entitled to his money at age 65, the normal retirement date.

[36] Counsel for the Defendant argues the applicability of Option 2 to the Claimant as follows: the policy/contract contemplated two forms of departure from employment: firstly, Option 1 gives one option of departure and is relevant to the departure of N. Bennett and K. Roett (see Affidavit of Phillip Nicholls of March 11th 2013) where the employee leaves voluntarily or as a result of termination of employment. He submits that in those circumstances an employee can elect to receive a cash refund *in lieu* of all

benefits under the policy/contract. It is his submission that all employees (with the exception of the Claimant) left before the triggering event.

[37] Option 2, he argues, reflects the benefits of the remaining persons. This option gives illustrations of scenarios in which a business may terminate, and in this case, he argues, it is the dissolution of the employer. Counsel argues that once dissolution of the employer occurs, the amount of paid-up annuity payable under this option becomes the amount of paid-up annuity described in provision 1 of page 2 of the contract.

[38] This provision provides that "Paid-up Annuity is the amount of annuity payable at the normal retirement date actually purchased by premiums received by the Company." He notes further that page 1 of the contract gives the retirement age as 65 for males and 60 for females.

Discussion

A Review of the Law

[39] Our Court of Appeal in the recently decided case of **System Sales Ltd v Arletta Brown-Oxley et al, Civil Appeal No. 10 of 2006** delivered on May 15th 2014, outlined and analyzed the fundamental principles that should guide inquiry into the meaning of contractual language: see also **E. Phil & Sons A/S (Denmark) v BrØndum A/S (Denmark) Civil Appeal No. 24 of 2012 (unreported); Investors Compensation Scheme Ltd v West Bromwich Building Society [1998] WLR 896; Sirius International Insurance Co. (publ) v FAI General Insurance Ltd [2005] 1 All ER 191; Sea Haven Inc v Dyrud (2011) 79 WIR.**

[40] In that case the Court of Appeal stated conclusively at para. 27 of their judgment that "the basic principles which should guide our courts in the interpretation of contracts are those enunciated by **Lord Hoffman** in **Investors Compensation Scheme**, namely, the contextual approach.

[41] In the **Investors Compensation Scheme Case, Lord Hoffman** declared that almost all the old intellectual baggage of "legal" interpretation has been discarded, and he enumerated the current principles as follows:

> "(1) Interpretation is the ascertainment of the meaning which the document would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract.
>
> (2) The background was famously referred to by Lord Wilberforce as the "matrix of fact," but the phrase is, if anything, an understated description of what the background may include. Subject to the requirement that it should have been reasonably available to the parties and to the exception to be mentioned next, it includes absolutely anything which would have affected the way in which the language of the document would have been understood by a reasonable man.

(3) The law excludes from the admissible background the previous negotiations of the parties and their declarations of subjective intent. They are admissible only in an action for rectification. The law makes this distinction for reasons of practical policy and, in this respect only, legal interpretation differs from the way we would interpret utterances in ordinary life. The boundaries of this exception are in some respects unclear. But this is not the occasion on which to explore them.

(4) The meaning which a document (or any other utterance) would convey to a reasonable man is not the same thing as the meaning of its words. The meaning of words is a matter of dictionaries and grammars; the meaning of the document is what the parties using those words against the relevant background would reasonably have been understood to mean. The background may not merely enable the reasonable man to choose between the possible meanings of words which are ambiguous but even (as occasionally happens in ordinary life) to conclude that the parties must, for whatever reason, have used the wrong words or syntax. (see **Mannai Investments Co. Ltd v Eagle Star Life Assurance Co. Ltd. [1997] 2WLR 945**).

(5) The "rule" that words should be given their "natural and ordinary meaning" reflects the common sense proposition that we do not easily accept that people have made linguistic mistakes, particularly in formal documents. On the other hand, if one would nevertheless conclude from the background that something must have gone wrong with the language, the law does not require judges to attribute to the parties an intention which they plainly could not have had. Lord Diplock made this point more vigorously when he said in **The Antaios Compania Neviera S. A. v Salen Rederierna A.B. [1985] 1 AC 191, 201**:

> "… if detailed semantic and syntactical analysis of words in a commercial contract is going to lead to a conclusion that flouts business commonsense, it must be made to yield to business commonsense."

[42] **Burgess JA** spoke to this Contextual Approach when he adopted the principles enunciated in the **Investors Compensation Scheme Case** in **E. Phil & Sons A/S (Denmark) v BrØndum A/S (Denmark) Civil Appeal No. 24 of 2012 (decision of October 23rd 2013) (E. Phil).** His words are instructive where he states as follows:

"First, that case heralds an unmistakable shift in approach to contractual interpretation, namely, a shift to ascertaining the contextual meaning of the relevant contractual language and away from literalism in the interpretative process: see per Lord Steyn in Sirius at p. 200. Second, ambiguity is not a pre-requisite of an investigation of the background or factual matrix in which a contract had been concluded. Third, such an investigation is an indispensible part of the process of understanding what a contract means in all cases. The background, which may include the legal, regulatory and factual matrix constituting the background, enables the interpreter to determine the intended meaning of the contractual language. Finally, the actual words used do not necessarily govern the meaning to be given to the contract; the background can let the judge decide that the parties used the wrong words, or mis-ordered their words, and to ascribe to the parties' words the meanings they must have intended, in the light of the background. The last point was made by Lord Hoffman in **Chartbrook** where he said at **p 1113-1114**:

> "When the language used in an instrument gives rise to difficulties of construction, the process of interpretation does not require one to formulate some alternative form of words which approximates as closely as possible to that of the parties. It is to decide what a reasonable person would have understood the parties to have meant by using the language which they did.""

[43] **MacGillivray on Insurance Law, 11th Ed at p. 293** states the following on the interpretation of insurance contracts (such as this one):

> "Insurance policies are to be construed according to the principles of construction generally applicable to commercial and consumer contracts… Their intention is, however, to be gathered from the wording chosen to express their agreement in the policy itself and from the wording of any other documents incorporated in it, so that, the methodology is not to probe the real intentions of the parties, but to ascertain the contractual meaning of the relevant contractual language."

[44] **Lewison** in **The Interpretation of Contracts (2nd ed.)** has this to say at **p 36**:

> "In addition to the words of the instrument, and the particular facts proved by evidence admitted in aid of construction, the court may also be assisted by a consideration of the commercial purpose of the contract, and in considering that purpose may rely on its own experience of contracts of a similar character to that under examination."

[45] At page 37, **Lewison** also makes reference to the case of **Mannai Investment Co Ltd v Eagle Star Life Assurance Co. Ltd [1997] 749 at 771** where **Lord Steyn** stated as follows:

> "In determining the meaning of the language of a commercial contract, and unilateral contractual notices, the law therefore generally favours a commercially sensible construction. The reason for this approach is that a commercial construction is more likely to give effect to the intention of the parties. Words are therefore interpreted in the way in which a reasonable commercial person would construe them."

[46] In summary, what is outlined above clearly indicates that the current approach of a court of law in a task such as this, **is to ascertain the contextual meaning of the relevant contractual language**.

[47] In such an exercise, an investigation of the factual background/factual matrix is an indispensible part of the process of understanding what a contract means, since the background enables the interpreter to determine the intended meaning of the contractual language. One must always be wary, in this context, of the dangers of a purely 'semantic and syntactical analysis' of the words in a commercial contract.

What are the Permissible Options under the Contract?

[48] The full text of Clause 6 Withdrawal Options is set out above.

[49] We know that by letter dated April 30th 2012 and referenced above, the Defendant advised that there were 3 Options under the Contract, and that the Plaintiff selected Option 2 of the same directing a transfer of the cash value to his registered retirement plan at Fortress Insurance Co. (see Direction and Release Statement).

[50] It can be gleaned from the Affidavit of Loraine Gopee, that the Direction and Release Statement containing four (4) Options was never responded to by the Commissioner of Inland Revenue and was consequently never formally offered to the Claimant. She states at Para. 9 as follows:

> "9. Approval of the option to purchase Government Securities was never communicated to the Defendant by the Commissioner of Inland Revenue.
>
> 10. By letter dated 30th April, 2012, the originally approved Direction and Release containing the regular wind-up options was forwarded to the Claimant by the Defendant…"

[51] It is also clear that subsequent events vitiated that exercise of Option by the Claimant.

[52] The Defendant seeks to draw a distinction, under the Contract, between Termination of Employment (individual) and Winding-up of the Plan. The Defendant relies on the argument (as seen at Paragraph 36 of its Written Submissions) that "there is nothing to

suggest that the Claimant's tenure with the firm determined prior to the winding-up of the firm. Rather, as evidenced by correspondence addressed to the Defendant dated 30th October 2009 under the caption "RE Pension Scheme for Cottle Catford and Co.", it is apparent that the Claimant's right to entitlements under the plan was triggered instead by the dissolution of the Firm."

[53] The above submission prompts the converse question: what is the evidence that the entitlements of the other employees in employment on October 30th 2009 (who have been treated differently to the Claimant) were triggered by something other than the dissolution of the Firm.

[54] The Claimant's letter of October 30th 2009 (to the Defendant) which is purportedly the 'triggering' event makes no such distinction and we know from the Affidavit of Stephen Robinson, filed February 7th 2014 that the Claimant was an "employee" for the purposes of the policy. Stated differently, there is nothing to suggest that the termination of the employment of the other employees occurred prior to October 30th, and the Claimant's post-dissolution. The Supplemental Affidavit of Philip Nicholls filed January 31st 2013 exhibiting the Wind-Up Statement prepared by the Defendant shows that there were at least eight (8) employees at the date of termination/dissolution as follows: S. G. Goddard, F. Cyrus, A. G. Brewster, M. D. Bishop, M. Y. Babb, J. N. K. Harris and P. Nicholls.

[55] The Defendant goes on to argue that "based on the fact that in the instant matter an "individual termination of coverage on account of termination of employment" did not occur, withdrawal option one is wholly inapplicable. Consequently, a return of contributions consisting of a cash refund of his own contribution plus interest is not an option available to the Claimant under the plan." Further the Defendant argues that since the Claimant's termination of employment occurred "upon or after the … dissolution of the Employer" as provision 6 provides, what he is entitled to in accordance with this provision is his paid-up annuity calculated to be "the total amount of paid-up annuity described in provision 1…", namely, "the amount of annuity payable at the normal retirement date actually purchased by premiums received by the Company".

[56] While accepting the Claimant's argument that **section 8(1)(g)(iii)** of the **Income Tax Act, Cap. 73** does contemplate and moreover, permits the utilization of a return of contributions under a registered retirement plan for investment in Government bonds, the Defendant argued/submitted that on the facts of the instant case, there is no recourse to these sections. In other words, the **Income Tax Act** permits it, but the Plan does not.

[57] I do not accept the several arguments outlined above.

[58] The several questions set out below are thrown up by these several submissions.

Which Option was Exercised by the Claimant: did the Claimant exercise his Withdrawal Options or did he exercise his options on a termination/wind-up of the Plan. Is there a difference between the two? How does the cash payout option operate? Can the dissolution trigger an exercise of the Cash Option?

[59] This Court makes the observation that there appears to be a real and significant confusion among the parties as to which Option was exercised by the Claimant. There is frequent reference by the parties to an exercise of Option 2. The facts and documents reveal two Option 2s: Option 2 under the Contract and Option 2 under the Direction and Release Statement referenced in paragraph 18 above.

[60] This Court also makes the observation that with increasing intensity the Claimant's actions were motivated by the desperate need to have access to the funds in the Plan in order to use them as security for his intended borrowing. This at all times fueled his choices as he relied on the Defendant to show him how best he could achieve this objective. See the Claimant's Affidavit of January 4th 2013.

[61] It is also apparent that while initially prepared to work with the Claimant, there was circa April 2012, a marked 'sea-change' or changed approach. Since this changed position, the Defendant has taken two largely different positions. Position one was to the effect that the Claimant's entitlement under the Plan **had** to be paid to a Registered Retirement Plan. This position was later abandoned. Position 2 is the matter presently to be determined by the Court, namely, the Defendant's submission that the Contract pursuant to Option 2 does not permit the purchase of government securities with the Claimant's pension entitlements (that is their refusal to pay the Claimant his entitlements in cash or to purchase government securities) and only permits the payment of the Claimant's entitlements at age 65.

What are the Withdrawal Options?

[62] Under Clause 5 of the Contract, individual terminations are subject to the withdrawal options (under provision 6) and an employee's coverage ceases automatically on termination of employment.

[63] Under Clause 6 of the Contract there are two options (supra) available to an employee whose employment was terminated: Option 1 is principally an election to receive a cash refund or the cash value of the paid-up annuity, whichever is the greater. If no option is selected Option 2 automatically applies. A reasonable interpretation of this Option is that it can be exercised at any time or age and unlike Option 2, it does not provide any specific circumstances of termination of employment. In my considered opinion, this option can be exercised individually or on behalf of a group.

[64] Option 2 is an election **at the "normal retirement date"** of the benefits of the Plan or cash value of entitlements (being the paid-up annuity) at the date of termination of coverage.

[65] Option 2 carries a proviso which in the opinion of this Court speaks solely to "how" the cash value of the Paid-Up Annuity is to be determined in the event of termination before the normal retirement date. For ease of reference it reads as follows:

> "In any event, however, if termination of employment occurs due to total disability as determined by the Employer; or after discontinuance of this contract and before it has been restored to full force and effect; or upon

bankruptcy, receivership, liquidation, or dissolution of the employer; the amount of paid-up annuity payable under this option shall be the total amount of paid-up annuity described in Provision 1 hereof."

[66] It is at this point that counsel for the Defendant argues that the reference to Provision 1 is a reference to the "normal retirement date" which would in the case of a male employee be age 65.

[67] This argument I do not accept, as I consider it to be imbued with the "literalism" referred to and rejected by **Burgess JA** in **E. Phil**, (supra) or alternatively, the "semantic and syntactical analysis of words" referred to by Lord Diplock at paragraph 41 above, the application of which, contradicts the background or Matrix of Fact in the subject case.

[68] Additionally, under Option 2 (paragraph 4) employees **have a right upon** (my emphasis) application and payment of the required premium to purchase an individual deferred annuity (this option is available within 60 days of termination of coverage). This option is not mandatory, it is an option available to the employee at his discretion or election.

Which Option was exercised by the Claimant?

[69] It seems patently clear to me that the Claimant was exercising Option 1 under the Contract, but was initially of the mistaken belief that this cash fund had to be paid into a Registered Retirement fund (hence his selection of Option 2 of the Direction and Release Statement). (See Claimant's letter to Defendant of August 1st 2010). In my interpretation of the Contract, I differ from counsel for the Defendant in my understanding of this Option. There are no restrictions on Option 1, in other words, under Option 1, there is no triggering event as it relates to the termination of employment. The Defendant was advised and ultimately took the position that Option 2 applied to the Claimant.

[70] Option 1 can be exercised whether an employee's employment was terminated in the event of individual termination or termination by bankruptcy, liquidation or dissolution of the employer. Option 1 clearly provides that a cash refund of contributions plus interest or the cash value of the annuity is available to an employee. This option is available to the Claimant as an employee. (see Affidavit of Stephen Robinson).

The Direction and Release Statement (DRS)

[71] It is also clear that the Direction and Release Statement represents the Defendant's interpretation of the options available under the contract and in the opinion of this Court does not accord with the Withdrawal Options provided by the Contract.

[72] However, the fluidity of the Defendant's interpretation is evident in its dealings both with the Claimant and with the other employees. Thus the Defendant submitted to the Claimant the document indentified as SR4 in the Affidavit of Stephen Robinson, namely a Direction and Release Statement with 4 Options. The full text of that document is reproduced hereunder:

Name:_____CERT. NO.:_____N.I.S.:_____

ADDRESS:_____

_____

I understand that I have certain guaranteed benefits under the terms **of Cottle Catford & Company** Pension Plan No. GP3563.

I also understand that the said Group Pension Plan has been discontinued with effect from October 31, 2009 and as a result, I hereby make the below election with respect to my benefits:-

☐ **OPTION 1** I elect to purchase a Paid-up Deferred Pension payable for ten (10) years certain and life, from Sagicor Life Inc, which will commence on your normal retirement date.

I understand that I may subsequently elect to receive an actuarially adjusted pension commencing not earlier than age 55 and not later than age 70.

☐ **OPTION 2** I hereby authorize Sagicor Life Inc to transfer the cash value of any pension benefits standing to my credit under the above-named Group Pension Plan to my Individual Registered Annuity Contract No. _____with_____

_____

☐ **OPTION3** I hereby authorize Sagicor Life Inc to transfer the cash value of any pension benefits standing to my credit under the above-named Group Pension Plan to my present Employer (i.e._____) registered Staff Pension Plan No. _____ with _____

In consideration of the Options 2 and 3 above, I hereby release and discharge The Group Policyholder from all liability and obligation to me, my successors and assigns, arising out of or in connection with the above-named Group Pension Plan. In the event that the funds are transferred to another company, I also hereby release and discharge Sagicor Life Inc from such liability.

The above benefits are only payable upon death or retirement

☐ **OPTION 4** I elect to purchase Government Bonds, Debentures or Treasury Notes, which mature in no less than five years. If this option is elected, a copy of the completed application form showing the amounts allocated to you **must** be obtained from the Central Bank and

forwarded to Sagicor Life Inc together with your completed copy of this form.

I HEREBY CERTIFY THAT I HAVE BEEN ADVISED OF AND UNDERSTAND THE IMPLICATIONS OF THE FOREGOING.

Dated at _____this _____ day of _____2010.

_____ _____

Witness Member's Signature

[73] Again, as seen in the Claimant's Supplemental Affidavit filed March 11th 2013, it is apparent that the Defendant offered the option of a cash refund to purchase government securities to at least two former Cottle Catford employees, while subsequently stating that this was not an option available under the Plan. (see documentation pertaining to K. Roett and G. Bennett.) (see also Claimant's Affidavit of January 7th 2014 exhibiting Defendant's payment of money to the Central Bank to purchase savings bonds on behalf of G. Wall.)

[74] Option 1 of the DRS afforded the Claimant the option of purchasing a deferred annuity. This option was the only withdrawal option in accordance with the Contract.

[75] Option 2 of the DRS authorized Sagicor to transfer the cash value to an individualized registered annuity.

[76] Option 3 of the DRS authorized Sagicor to transfer the cash value of the pension benefits to another employer.

[77] Option 4 of the DRS authorized Sagicor to purchase Government securities on behalf of the Claimant.

[78] When one looks at the withdrawal terms of the Contract, it is clear that the essential factor/common theme is **that the policyholder receives the cash value of any pension benefits under the group pension** (my emphasis). Whether it is that the cash value is transferred to a new employer's policy, used to purchase government securities or the policy holder simply elects to receive cash, it seems clear to this Court that the chosen application of the cash received is simply a determination for the policyholder.

[79] In my estimation and opinion, this speaks powerfully to the intention of the parties and aids in the construction of this contract.

How can the Cash Option be exercised? Can the dissolution exclude the exercise of the Cash Option? Is the Claimant entitled to the Cash Surrender Value?

[80] The Contract is a Group Pension Plan made between the employer, (Cottle Catford) and the insurer (presently Sagicor Life Inc.) The Claimant was an employee of the firm and

therefore a member under the Group Pension Plan. Cottle Catford closed its operation on October 30th 2009 and as a result the Group Pension Plan was discontinued.

[81] In the Claimant's Supplemental Affidavit of January 31st 2013 the Claimant exhibited at "PVN1" wind-up statements of the pension plan benefits for seven (7) employees of Cottle Catford. (see Exhibits at "PVN1"). The Claimant's Wind-Up Statement of Pension Plan Benefits is reproduced below:

> "Group Policyholder: Cottle Catford & Company
> Group Policy Number: GP3563
> Policy Anniversary: 01-May-2009
> Plan Wind-Up date: 31-October-2009
> Member Name: Nicholls, Philip V.
> Certificate Number: 56
> Pension Commencement Date: 01-May-2025
> Benefits Bought By normal required contributions
> Your monthly pension purchased at Plan Wind-Up date and payable at N.R.D.: $4,464.49
> **Your cash surrender value at Plan Wind-Up Date: $358,364.61**
> Benefits bought by additional voluntary contributions:
> Your monthly pension purchased at Plan Wind-Up date and payable at N.R.D.: $109.72
> **Your cash surrender value at Plan Wind-Up Date: $8,807.22" (emphasis mine)**

[82] By letter dated April 30th 2012, the Defendant advised the Claimant that his pension entitlements were in the amount of $425,469.88.

[83] Interestingly, the Vice-President of the Defendant's Pension Department, Stephen Robinson, stated in the Supplemental Affidavit of February 7th 2014:

> "4. **The sum of $425,469.88** referred to by the Defendant in paragraph 13 of its affidavit in response filed 29th November, 2012 **represents the Claimant's combined contributions as a regular employee and as a partner, as well as the cash surrender value** of his proportion of the Employer's Withdrawal Credit under the plan."

[84] It appears clear therefore, from the emerging correspondence from the Defendant to the Claimant, that the Defendant appeared at certain time periods to hold the view that the Claimant was entitled to the cash surrender value of the Plan, and that the closure of the firm/dissolution of the Plan was NOT a hindrance to the Claimant's exercise of the Cash Option.

An Insured's right of cancellation/surrender of an insurance policy and the legal application and effect of the Insurance Act, Cap. 310

[85] It is the view of this Court, using the words of **Lord Steyn** in **Mannai Investment Co. Ltd. v Eagle Star Life Assurance Co. Ltd.** (supra), that the 'commercially sensible construction' of this Plan favours the interpretation that an insured is entitled, without more, to cancel or surrender an insurance policy for cash.

[86] In this regard, this Court directs its attention to the Cash Option to be found at page 7 of the Amendment #3, effective May 1st 1993. I am also guided in this regard by the exhibits found in the Claimant's Affidavit of January 2014 showing how the Defendant dealt with former employee/partner, J. Griffith in 2004.

[87] These things suggest to me that it was always intended/understood that a Cash Pay-out can be made, the only issue being whether such pay-out is subject to Income Tax, if paid before the normal retirement date.

[88] **Section 130** of the **Insurance Act, Cap. 310** makes provision for the surrender of insurance policies. It provides:

> "Notwithstanding the terms of a particular policy, **where the policy has a cash surrender value** or contains provisions enabling the exercise of certain options *in lieu* of forfeiture of the policy, **the owner of that policy shall, on application to the company be entitled to surrender the policy and to receive not less than the cash surrender value of the policy or non-forfeiture value,** as the case may be, less the amount of any debt owing to the company under, or secured by the policy." (Emphasis mine)

[89] This section clearly provides that a policyholder **shall be entitled to surrender an insurance policy and receive its cash surrender value** notwithstanding the terms of a particular policy. An insurer's refusal to pay the cash surrender value to a policyholder is contrary to commercial practice. The commercial purpose of a policy which has a cash surrender value is to enable the policyholder to receive the value of the policy at any point during the currency of the policy in exchange for its surrender.

[90] In sum, the effect of **section 130** is that the law affords to the Claimant the right to receive the cash surrender value under the Group Pension Plan.

[91] While the Insurance Act was passed in 1997, after the parties entered into the Contract, this provision speaks to the 'commercially sensible construction/interpretation' referred to by **Lord Steyn** in **Mannai Investment Co. Ltd. v Eagle Star Life Assurance Co. Ltd.** referenced above at paragraph 45.

[92] Of interest and significance, is the fact that the Claimant appeared to delete the line in the DRS stating that his pension benefits were only payable upon his death or retirement. This serves as evidence (or reinforcement) of the Claimant's intention that his pension benefits were not to be paid only upon his death or retirement (a contrary position to the Defendant). Moreover, the correspondence exchanged between the parties clearly illustrates that the Claimant urgently required liquidity to settle the firm's outstanding

debts so that any money payable at 65 (retirement) was certainly outside the scope of the contemplation of the parties. (See: exhibit "LG5" of Defendant's Affidavit in Response filed 29 November 2012).

The Estoppel Argument

[93] In his oral argument to the Court, counsel for the Claimant argued what he called, "a case for estoppels by representation". In short, he argues the Defendant having been prepared in 2012 to release the funds, it cannot now refuse to do so. No legal authority was advanced in support of this argument, nor was it pleaded.

[94] **Halsbury's Laws of England Vol. 16(2) 4th ed,** describes 'Estoppel',

> "as a principle of justice and equity which prevents a person who has led another to believe in a particular state of affairs from going back on the words or conduct which led to that belief when it would be unjust or inequitable for him to do so." : see paragraph 951.

[95] The claimant failed to develop this argument sufficiently to enable this Court to determine whether he was making an argument for Promissory Estoppel.

[96] There is to be found in **Snell's Equity, 31st ed** some reference to 'estoppel by representation' in its exposition of the historical development of the doctrine of Estoppel as a procedural individual principle as opposed to a cause of action. At page 254 of Chap 10-01 the learned author states as follows:-

> "By the nineteenth century the common law had developed a rule that there would be an estoppel where by words or conduct there had been a representation of existing fact."

[97] Alternatively, the Claimant may have been alleging Unconscionable Conduct on the part of the Defendant. If this is indeed his intended conclusion, the law does not support this contention.

[98] In **Ward v Walsh**, **Civil Appeal No. 20 of 2005 (decision of November 28th, 2012)**, the Court of Appeal framed the principle on unconscionable behavior in a case of Proprietary Estoppel. At **paragraph [105] Burgess JA** stated:

> "In **Capron v Government of Turks & Caicos Islands [2010] UKPC 2, Lord Kerr** framed the principle in **Yeoman's Row** on unconscionable behaviour as follows at para [39]:
>
> > "In advancing the claim under this head, the appellant made much of the alleged unconscionable behaviour of the government in 'resiling from its promises' to him. As is clear from the decision in **Yeoman's Row**, however, unconscionable behaviour cannot stand alone as the basis for a finding of proprietary estoppel. Where there is no ground for

> a belief that the claimant was entitled to acquire a certain interest in land, the fact that the behaviour of the person against whom proprietary estoppels is sought to be established was unconscionable cannot fill the gap that exists in the essential proofs required for the doctrine to come into play."

[99] See also **Nelson Enonchong's text** titled **Duress, Undue Influence and Unconscionable Dealing at paragraph 29-016.**

[100] The above principle, espoused by **Burgess JA,** is applicable to these circumstances. The factual circumstances of this case fail to support an argument of Estoppel; it fails to meet the requirements to establish Estoppel, namely there is no evidence of a clear and unequivocal representation, nor is there evidence that the Claimant relied on said representation to his detriment in some way which would make it inequitable or unconscionable to allow the Defendant to go back on his representation.

[101] While this Court does not accept the Estoppel argument, argued but not pleaded by the Claimant, it does take note of the fact alleged by the Claimant and not disputed by the Defendants that: "… that during that time various payments were made from the plan and more pertinently were done outside the four corners of the contract effected as of May 1st 1963 which would appear to be contrary to the arguments of the Defendant that the said contract must be strictly and restrictively construed within its four corners." (see paragraph 4 of the Claimant's Affidavit of January 7th 2014).

The Claim for Damages

[102] The Claimant in this action has made a claim for damages consequent on the Defendant's failure to settle this claim. No evidence was led or affidavits filed addressing this issue.

[103] In view of this failure on the part of the Claimant to prove loss, no award is made under this head.

The Issue of the Return of Voluntary Contributions

[104] It appears to this Court, on an interpretation of the Contract that it is at all times possible for a party to recover his/her voluntary contributions. This interpretation can be drawn primarily from Special Requirement 7 of 1963 Application which reads as follows:

> "7. SPECIAL REQUIREMENTS: Employees are to be permitted to make voluntary contributions to increase their pension benefits. Such contributions will be refunded on termination plus interest of 3¾% compounded annually."

[105] And also at 5 as follows:

> "At termination of service prior to retirement for any other reason, the employee will be entitled to a return of his own contributions or a paid-up deferred annuity."

[106] I am confirmed in this view not just by a reading of the Plan, but also by the position taken by the Defendant in its dealing with former partner Joyce Griffith. This is set out in the Affidavit filed in this matter by the Claimant on January 7th 2014, particularly as seen at paragraphs 3 and 4 in the letter dated February 20th 2004 by Life of Barbados Ltd to Cottle Catford appended thereto.

[107] This course of dealings supports the construction/interpretation, which I share, that voluntary premiums belong to the payee, be it the employer or employee; hence in the case of former partner J. Griffith the Defendant placed a Cash Surrender value on Ms. Griffith's personal contributions in contra-distinction to the contributions made on her behalf by Cottle Catford. That correspondence shows the Defendant calculating voluntary pension benefits separately. See also the Early Retirement Options made by G. Maynard under cover of letter dated June 4th 2004.

Summary and Disposal

[108] In view of the foregoing discussion, this Court has given primary consideration to the following matters as aids to construction:

1. **The Intention of the Parties**

   Lewison in his text **The Interpretation of Contracts, 2nd ed.,** lists as the most important object of contractual interpretation the ascertainment of the intention of the parties. He states as follows at page 2 thereof:

   > "the object sought to be achieved in construing any contract is to ascertain what the mutual intentions of the parties were as to the legal obligations each assumed by the contractual words in which they sought to express them."

   This is to be understood in a loose or objective sense. Stated differently, the court must ascertain the presumed intention of the parties, on the assumption that both parties are reasonable. The intention of the parties must be ascertained from the language they have used, considered in the light of the surrounding circumstances and the object of the contract, in so far as they have been agreed or proved: **Lewison** at page 7.

2. **The Matrix of Fact**

   In **BCCI v Ali [2002] 1 AC 251 Lord Hoffman** clarified this principle as enunciated in **Investors Compensation Scheme** when he stated the following:

   > "I said that the admissible background included 'absolutely anything which would have affected the way in which the language of the document would have been understood by a reasonable man',

> I do not think it necessary to emphasise that I meant anything which a reasonable man would have regarded as relevant. I was merely saying that there is no conceptual limit to what can be regarded as background."

The *Contra Proferentem* Rule

[109] This Rule, quite simply provides that where there are contradictory claims, ambiguities or uncertainties as to what parties mean in a contract of insurance, (or contracts generally), the rule is that the policy must be construed more strongly against the insurers. The rationale is that the policy, being drafted in language chosen by the insurers, must be taken most strongly against them; it is construed *contra proferentes*, against those who offer it: see **Houghton v Trafalgar Insurance Co. Ltd. [1954] 1 QB 247: Burton v English [1883] 12 QBD 218**.

[110] While giving consideration to the above policy, it is specifically noted however, that this Court's determination of this matter, does not turn on an application of this Rule.

Disposal

[111] In keeping with the foregoing discussion, I have concluded an inquiry/investigation into the contractual language and have determined what, in my considered view, a reasonable person, having all the background knowledge, would construe the Plan to mean.

[112] In conclusion, this Court finds **and** declares:

1. That on a construction of Clause 6 of the Group Pension Plan, employees, inclusive of the Claimant, have been provided with the following options:
    (1) To receive a cash refund of contributions plus interest; or if greater,
    (2) To receive the cash value of the paid up annuity;
    (3) To receive the amount of paid up annuity at normal retirement age (65); or
    (4) To purchase an individual deferred annuity on an annual premium basis (within 60 days of termination of coverage) for the employee's then age.

    This is without reference to the Claimant's liability to tax under the **Income Tax Act, Cap. 73** of the **Laws of Barbados.**
2. In short, this Plan does allow disbursement of the Claimant's entitlements before the retirement age of 65.
3. This Court declines to make an Order in the terms applied for by the Claimant, namely that the Defendant should purchase government securities with the Claimant's pension entitlements.
4. No award is made under the head "Damages for loss suffered by the Claimant in the interim".
5. The Claimant is awarded interest pursuant to **sec. 35 of the Supreme Court of Judicature, Cap. 117A** of the **Laws of Barbados** on the sum of $425,469.89, or if greater, the cash value of the paid-up annuity from July 2012 at the rate of 6% until payment.

6. The Claimant is awarded costs to be assessed, if not agreed.
7. On the application of counsel for the Defendant, this order is stayed for six (6) weeks.

MARGARET A. REIFER
Judge of the High Court