

## BACKGROUND

The Plaintiff, Elizabeth Maria Basson, was the beneficiary under a life insurance policy taken out by her late husband prior to his death (the “Deceased”). The Plaintiff instituted action against the Defendant, Hollard Life Assurance Company, for the payment of the proceeds of the policy after the Defendant rejected the claim on the grounds of the Deceased’s alleged misrepresentation and non-disclosure of certain facts to the Defendant at the time when the application was made for the policy. The four grounds of non-disclosure relate to the Deceased having not disclosed that:

1. he had a heart or circulation ailment;
2. he suffered from a breathing or lung ailment;
3. he suffered from depression; and
4. that a proposal for life insurance on the Deceased’s life was previously declined.

In addition to this, the Deceased also allegedly misrepresented the truth regarding a lung mass on his lung which had come to his attention when the Deceased had an x-ray prior to making his policy application.

The above alleged non-disclosure and/or misrepresentation occurred notwithstanding that at the time of concluding the insurance policy, the Deceased signed a declaration in which he warranted that all the information provided in the application and all the documents that had been or would be signed by him in connection with the intended application were, to the best of his knowledge, true and complete.

The Plaintiff conceded to the fact that certain facts relating to the Deceased’s health were indeed not disclosed, but argued that the relevant questions were asked or phrased ambiguously which resulted in confusion. The Plaintiff argued that the Deceased acted bona fide and with the honest belief that he was answering the policy application form correctly and as such, the Plaintiff argued, the Deceased’s actions could not constitute misrepresentation.

The Deceased did disclose a potential life-threatening condition, which in his opinion was benign, acting presumably on medical advice. Thus, the mere statement of an opinion is prima facie not

wrong, even if the Deceased's opinion turns out to be wrong.

In respect of the previously declined life insurance policies, the Plaintiff admitted such but argued that there was no documentary evidence thereof, only hearsay.

The Plaintiff argued further that because the Defendant paid out the funeral benefit, for which the Defendant voluntarily considered itself liable, the Defendant should be liable to pay out the full policy payment because both payments were regulated by the same agreement.

## **HELD**

The Court held that section 59 of the Long-Term Insurance Act 52 of 1998 (the "Act") deals with misrepresentation and failure to disclose material information. In terms of the Act, an insurer has the right to avoid a contract of insurance not only if the proposer has misrepresented a material fact but also if he has failed to disclose one.

In terms of the burden of proof in relation to materiality, the party who alleges the misrepresentation or non-disclosure bears the burden. In addition to this, there is a duty ex lege to disclose in insurance contracts. In terms of section 59 of the Act, *"[t]he representation or non-disclosure shall be regarded as material if a reasonable, prudent person would consider that the particular information constituting the representation or which was not disclosed, as the case may be, should have been correctly disclosed to the insurer so that the insurer could form its own view as to the effect of such information on the assessment of the relevant risk."*

The Court found that the Defendant's policy application form, which the Plaintiff alleged to be ambiguous and misleading, was clearly worded and as such, the failure to answer the relevant questions truthfully and in whole constituted a material misrepresentation.

The Court also held that the Plaintiff's argument of hearsay evidence was misplaced because both the Plaintiff and the Deceased had knowledge of the previous refusals to insure the Deceased prior to the conclusion of the policy with the Deceased. The evidence of the other policies being rejected was indeed hearsay but it was hearsay evidence of the Plaintiff's own witness, of whom the Plaintiff was free to call upon to testify but elected not to do so.

In respect of the funeral policy, the Court rejected the Plaintiff's submissions regarding same as

the material misrepresentations and non-disclosures only came to light after the Defendant had paid said proceeds.

In light of the aforementioned, the Defendant was entitled and justified in voiding the Deceased's policy. The Plaintiff's claim was accordingly dismissed with costs.

## **VALUE**

This judgment shows how the Court grappled with insurance policy claims in relation to misrepresentations and non-disclosures. This case highlights the fact that withholding information can constitute a material misrepresentation and non-disclosure, and also highlights how to determine the materiality of misrepresentations and/or non-disclosures when concluding insurance policies.

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