

In the High Court of Fiji at Suva

Civil Jurisdiction

HBC No. 228 of 2013

Sekaia Suluka

First plaintiff

and

Tevita Ralulu

Second plaintiff

And

Fiji Police Group Welfare Scheme

First defendant

And

Chairman of Fiji Police Group Welfare Scheme

Second defendant

And

Fiji Police Group Welfare Scheme Secretary

Third defendant

And

Commissioner of Police

Fourth defendant

COUNSEL: Mr K.Maisamoa for the plaintiffs

Ms S. Pranjivan with Ms S. Taukei for the defendants

Dates of hearing : 15<sup>th</sup> and 16<sup>th</sup> March,2017

Date of Judgment : 7<sup>th</sup> July,2017

### **Judgment**

1. The first plaintiff is a retired Assistant Superintendent of Police. The second plaintiff is a retired Inspector of Police. The first defendant, the Fiji Police Group Welfare Scheme, (FPGWS) was established to introduce a compulsory in house insurance scheme for the Fiji Police Force. The second and third defendants are its Chairman and Secretary. The fourth defendant is the Commissioner of Police. The first and second plaintiffs allege that the defendants, by a contract arrangement via the FPGWS, agreed to provide them with the term life endowment cover of the insurance scheme. The defendants deducted the premium from their salaries until their retirement, and sent it to Life Insurance Corporation of India, (LICI). The plaintiffs claim damages on the ground that the defendants have negligently and fraudulently, in breach of contract and their legitimate expectations failed to pay their retirement benefits under the term life endowment cover. The defendants, in their statement of defence, agree that FPGWS was responsible for the transfer of the premium to LICI, but deny the existence of a contract or agreement and the particulars of negligence and fraud pleaded in the statement of claim. The plaintiffs entered into individual contracts of insurance with LICI. LICI breached the contract.

2. *The hearing*

a. *PW1, (the first plaintiff)*

PW1, in evidence in chief said that every week, the fourth defendant issued and circulated Force Routine Orders, (FRO) to all Police Stations.

Between 2009 and 2010, a senior group of Police Officers had come to the Western division and addressed officers on the new policy of the insurance scheme introduced by the FPGWS. FPGWS Circular no.5/2009 contained information on the term life endowment cover. It was compulsory for all officers to join the scheme. Most officers were forced to join. All did not. FRO no 34 of 2010 of 26<sup>th</sup> August, 2010, provided that those who declined to join would be disciplined.

PW1 said that he filled the FPGWS Proposal form. He became a member of the insurance scheme at the age of 52 years. A sum of \$15 was deducted from his salary every two weeks and sent to LIC. He produced documentary evidence of a deduction of \$36 in January, 2012, as premium and the other medical option he took. He was promised a sum of \$11,600 on retirement at the age of 55 years, irrespective of his period of contributions.

PW1 produced FRO no 34 of 2010, FPGWS Circular nos. 5/2009, 2 of 2009, 53 of 2009, 13 of 2010, 8 of 2010, 28 of 2010, 30 of 2010, 31 of 2010 and 34 of 2010, the Memorandum and Articles of Association of FPGWS and a booklet as regards the insurance scheme.

He produced a copy of the Minutes of the meeting of the Board of FWPGS of 20<sup>th</sup> April, 2010, which provides that the Secretary advised the Board that the FWPGS has implemented a deduction of \$ 15. He said FWPGS was not registered.

In cross-examination, PW1 said that he signed for the LIC endowment policy between 2009 and 2010. He retired at the age of 55 years in 2012. It was put to him that he did not qualify to receive the maturity value of \$11,600, as he had paid premiums for a period of three and not five years, as envisaged by the insurance scheme. He replied that FWPGS had agreed to pay the premiums to LIC for the balance two years. It was put to him that he had not produced any document in support of that proposition nor payments of premiums other than for January, 2012.

In re-examination, he confirmed that he agreed to the terms of the insurance scheme and for his salary to be deducted.

b. PW2, *(the second plaintiff)*

PW2 said that in 2009, a group of Police Officers briefed them on the insurance scheme, as set out in FPGWS Circular no.5/2009. Police Officers were told that their age and rank were immaterial. The endowment was \$ 10,000. A sum of \$15 was to be paid as premium across the board . The maturity value depended on one's age. On reading FPGWS Circular no. 5/2009 and hearing the discourse, he was convinced of the benefits of the insurance scheme. It was compulsory for everyone to join.

In cross-examination, PW2 said that he became a member of the insurance scheme in 2009, at the age of 51 years. He retired in 2013, at the age of 55 years. He agreed that he had made contributions of \$15 fortnightly for 4 and not for 5 years, as required under the insurance scheme.

In re-examination, he said that he did not oppose the scheme, as he would benefit from it.

c. PW3, *(Nacanieli Veremalua)*

PW3 said that he was an Assistant Superintendent of Police. As a board member of the FPGWS, he visited Police Stations in the country with the Asst Commissioner of Police, Legal Officer, the Manager, Mr Saula Tuilevuka, and Mr Jensen from LICl informing Police Officers of the terms of the endowment insurance scheme. Most members were reluctant to join in the first instance. After discussion, they finally agreed to join. The endowment package envisaged a lump sum payment of \$11,600 on retirement. 92 % of Police Officers agreed to join the insurance scheme because of the term endowment cover. Most officers were between the ages of 52 and 54 years, when they joined the insurance scheme. If an officer had only two years left for retirement, FPGWS would take over the policy and pay the member the sum of \$11600 on his retirement. The premiums would continue to be paid by FPGWS to LICl.

PW3 said that his salary was deducted with the premium of \$15 until he retired, but he did not receive the promised retirement benefit.

In cross-examination, PW3 said that FPGWS and LICl entered into a written contract for the term endowment policy. It was put to him that there is a difference between the insurance scheme of the FPGWS and the individual policies of insurance of the plaintiffs with LICl. He said that it was a joint contract He did not have any documentary evidence in support.

In re-examination, he said that FPGWS had a contract with LICl and a contract with members of the insurance scheme. FPGWS sent the premiums to LICl.

d. PW4,(*Saula Tuilevuka*)

PW4 said that he was the Manager of FPGWS from 25<sup>th</sup> July,2009. The Chairman of the Board of FPGWS asked him to draw a insurance scheme and make a presentation to the fourth defendant and the Deputy Commissioner of Police. The fourth defendant instructed him to go to every Police Station with a team and inform officers of the terms of the insurance scheme. He was required to get 70% of members to join the insurance scheme. The Chairman, Deputy Commissioner and Legal officer accompanied him.

The witness said that he recommended that the contract be given to an insurance company, since FPGWS was not a licensed insurance company and officers were not happy with the earlier insurers. FWGWS chose LICL.

The terms of the insurance scheme were contained in FPGWS Circular no 5 of 2009. It was a compulsory insurance scheme that applied across the board to all Police Officers, irrespective of rank. The maturity value depended on the age of the officer. The term endowment cover provides retirement and medical benefits. FPGWS had a contract with LICL.

He explained that under the term endowment cover, an officer had to pay premiums for a minimum period of five years. If he was above the age of 50 years, for example 52 years, he has to pay for three years and on retirement, assign his policy to FPGWS. FPGWS would then give him his retirement benefit and pay premiums to LICL for the balance two years. LICL would pay the maturity value to FPGWS.

In cross-examination, PW4 said that the insurance scheme addressed the expectations and grievances of the officers. It was the best option, as Police Officers would receive an endowment on retirement. He was Manager of FPGWS for a year.

He reiterated that a member who joined after the age of 50 years was required to assign their policy of insurance to FWPGS. He could not recall if any member had assigned his policy to the FPGWS, as he had left by then.

e. DW1,(*Rishi Deo*)

DW1 said that he was a Police Officer based at Headquarters and later, Staff Officer, Chief Intelligence Investigator & Prosecutions. He was Liaison Officer of the FWPGS since May, 1997. He assisted the Manager and Board of the FWPGS. FWPGS was registered as the "*Fiji Police Welfare Society Limited*" under the Companies Act.

LICI offered a term endowment policy. By FPGWS Circular no 5 of 2009, members were informed of the benefits of the term endowment policy. It was compulsory. A standard form was circulated. Members could chose the benefits they desired.

All members were required to collectively contribute \$15 each across the board for medical and life insurance benefits via the FWPGS to LICI. Members of FWPGS filled the forms given by LICI for the term endowment and death cover. No separate deduction was made for the death cover.

LICI was engaged by FPGWS in 2009, to provide the term endowment cover. LICI and FWPGS agreed on a group premium of \$15 to be paid by each member across the board. It was decided to pay premiums collectively as a group, as then a lesser amount would have to be paid than if paid individually, particularly since some members were over the age of 50 years.

DW1 produced the Minutes of the Board meetings of the FPGWS of 4th March,2010, and 21<sup>st</sup> December,2010. The Minutes of 21<sup>st</sup>December,2010,provides that there was no signed agreement as regards the term life endowment cover.

In answer to Ms Taukei, counsel for the defendants DW1 said that FPGWS terminated its services with LICI, as LICI unfortunately, claimed the group premium from the date of operation of the insurance scheme. At that point of time, FPGWS could not pay the group premium to LICI, as all officers had not filled and sent their forms to FPGWS. LICI then implemented individual premium cover on the “age band ” and claimed premiums. FPGWS terminated its services with LICI from September,2010, as confirmed by its letter dated 7<sup>th</sup> March,2011, to LICI. The letter was produced. When FPWGS terminated its services with LICI, a member had the right to continue with LICI, since he had an individual policy of insurance.

The first plaintiff's policy of insurance was for a period of 5 years, commencing from 15<sup>th</sup> April,2010, to 15<sup>th</sup> April,2015. He became a member of the insurance scheme at the age of 52 years. The first unpaid premium fell due on his 18<sup>th</sup> pay in 2010. The first plaintiff was not entitled to \$11600, as he had not paid premiums for five years.

The second plaintiff's policy was for a period of 5 years, commencing from 7<sup>th</sup> July, 2010, to 7<sup>th</sup> July, 2015. He became a member of the insurance scheme at the age of 53 years. His policy was for five years. He was not entitled to the maturity value of \$ 11600.

DW1 produced the Policy Status Reports issued by LICl to the first and second plaintiffs. Their policies had lapsed, as they had not paid their premiums. He also produced copies of remittance advices and receipts of premiums which FPWGS had paid to LICl for 2010.

In cross-examination, DW1 said that in 2009, he accompanied PW3 and made presentations on the insurance scheme. The insurance scheme introduced the term endowment and death cover. A sum of \$15 was deducted as premium every fortnight from the salaries of Police Officers who joined the insurance scheme and paid by FPGWS to LICl. FPGWS's role was to remit the premium to LICl. FPGWS had a contract with its members to deduct the premiums from their salaries. FPGWS had an agreement with LICl to remit the premiums.

DW1 said that FPGWS was a facilitator. He agreed that FPGWS's role was to pay premiums to LICl, though the contract of insurance was signed with LICl. FPGWS had an agreement with the members to deduct monies from their salaries. The Ministry of Finance was advised by FPGWS to implement the deduction of \$ 15 from the salaries of Police Officers who joined the insurance scheme.

The premiums fell into arrears, as LICl claimed premiums calculated on the basis of the total number of members, while FPGWS could only make deductions from the salaries of members who had sent their forms to join the scheme. The defendants visited Police Stations and informed members that the services of LICl were terminated, as contained in their records.

DW1 said that the policy of insurance was between the member and LICl. It was not a group policy. There was no written agreement between LICl and FPGWS.

It was the responsibility of FPGWS to look after the welfare of its members. FPGWS is still deducting premiums from salaries of members. He reiterated that members did not receive the benefits of the endowment cover, as they had not paid the premiums due.

Mr Maisamoa, counsel for the plaintiffs asked DW1 if letters were issued by LICl to individual members to pay premiums after FPGWS terminated its services. He answered in the affirmative and said that he received a letter.

In re-examination, the witness confirmed that LICl issued individual policies to members. Ms Pranjivan, counsel for the defendants referred him to the paragraph in the letter of FPGWS to LICl, which stated that members would be informed that they could continue with the policy. DW 1 reiterated that FPGWS advised members of the insurance scheme it terminated its services with LICl. The plaintiffs were responsible for payments of premiums thereafter.

*The determination*

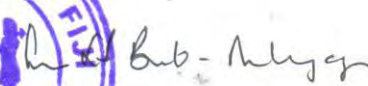

3. The case for the plaintiffs is that the defendants, through the “*inception of the Compulsory In House (insurance) Scheme via the FPGWS*”, agreed to provide them with the retirement benefit of \$11,600.00 under the term life endowment cover.
4. Mr Maisamoa, in his closing submission contends that the defendants, by FPGWS Circular no.5/2009, made an offer to the plaintiffs to provide the retirement benefit of \$11,600.00 under the term life endowment cover. The plaintiffs accepted the offer and entered into a contract arrangement with the defendants.
5. The defendants deny that a contract or agreement was made and state that the plaintiffs entered into individual contracts of insurance with LICl.
6. FPGWS Circular no.5/2009 titled “**VITAL INFORMATION**” sets out the terms of the life endowment cover/ retirement benefits and provides as so far as material that:
  - All Officers are covered for a \$ 10,000.00 across the Board irrespective of their Rank.*
  - All Officers will be paying the same premium (\$15) across the Board irrespective of Age.*
  - Maturity value will depend on their Age from the inception of their cover. (Table Attached)*  
(benefits on death)..
  - All officers will be issued with their own Policy Document.*
  - Under this new Term Life Endowment Cover, the Officers are entitled to a Guaranteed Maturity when they retire from the Force at the Age of 55 years.*The attached table sets out the premium payable and maturity value depending on the age and period of service of the officer.
7. On a reading of Circular no.5/2009 in its entirety, I do not find any offer or promise made by the defendants, to provide retirement benefits, as pointed out in the closing submissions filed on behalf of the defendants.

8. Circular no.5/2009 provides information on the insurance cover, as reflected in its title “**VITAL INFORMATION**”.
9. *A fortiori*, the first plaintiff,(PW1) at the commencement of his evidence in chief stated that every week, the fourth defendant communicated information to Police Officers by Circulars. A senior group of Police Officers discussed the “*new policy*” of the insurance scheme contained in Circular no.5/2009 with officers of the Rakiraki Police Station.
10. The role of the defendants via the FPGWS was to facilitate the payment of the premium to the insurer, as stated in the agreed facts. The defendants deducted the premium from the salaries of the plaintiffs every fortnight and sent it to LIC. LIC issued individual policies of insurance to the first and second plaintiffs.
11. In my view, the Circular does not constitute an offer nor did any consideration pass from the plaintiffs to the defendants to support the alleged contract, contrary to the contentions in the closing submissions of the plaintiffs.
12. It follows that the claims on the grounds of breach of contract and legitimate expectation are unfounded.
13. For completeness, I would note one further point. It emerged that FPGWS had agreed to pay the retirement benefits of officers who joined the insurance scheme at the age of 50 years and over, provided the officer assigned his policy of insurance to FPGWS on retirement, as testified by PW3 and PW4. FPGWS would then take over the policy, pay him the retirement benefit of \$11600 and pay the premiums to LIC for the balance period stipulated in the table attached to Circular. Finally, LIC would pay the maturity value to FPGWS.
14. The first and second plaintiffs fell within the category of officers who opted for the scheme after the age of 50 years and had not paid premiums for the required period of 5 years. The plaintiffs did not contend that they had assigned their policies of insurance to FPGWS. In any event, the question of assignment did not arise, as their policies lapsed in 2010, prior to their retirement.



The Policy Status Reports sent to the plaintiffs by LICI states that their policies had lapsed resulting from the “*First Unpaid Due: 18<sup>th</sup> Pay 2010*”.

15. The plaintiffs plead that the defendants acted negligently and fraudulently, in failing to inform them that the FPGWS was not registered under the Companies Act. The evidence is to the contrary.
16. The Memorandum and Articles of Association of FPGWS as produced by the first plaintiff provides that FPGWS was registered as the “*Fiji Police Welfare Society Limited*” on 14<sup>th</sup> November, 2002.
17. The plaintiffs failed to lead any evidence in support of the other particulars of negligence and fraud pleaded in the statement of claim.
18. In my judgment, the plaintiffs have no cause of action against the defendants.
19. The action of the plaintiffs fails.
20. **Orders**
  - (a) The action of the first and second plaintiffs is declined.
  - (b) I make no order as to costs.

  
  
**A.L.B. Brito-Mutunayagam**  
Judge  
7<sup>th</sup> July, 2017