

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2013-02675

BETWEEN

HEATH LOVELL

First Claimant

MARGARET MILLETTE-LOVELL

Second Claimant

AND

SAGICOR LIFE INSURANCE COMPANY LIMITED

Defendant

BEFORE THE HONOURABLE MADAME JUSTICE JOAN CHARLES

Appearances:

Claimant: Mr. Brent Ali

Defendant: Mr. Faarees F. Hosein

Date of Delivery: 9th January 2019

JUDGMENT

[1] The Claimants' case is that in or about March, 2009 the Defendant, through its Agent recruited them as Sales Agents for the Defendant's Company. They claimed that they and the Defendant agreed that:

- a. the Defendant would pay a monthly financing package to Heath Lovell in the sum of eight thousand dollars (\$8,000.00) and to Margaret Lovell in the sum of nine thousand dollars (\$9,000.00).
- b. the Claimants would resign their positions at British American Insurance Company Limited prior to taking up their positions as Agents of the Defendant.

[2] The Claimants were interviewed by Agency Manager of one of the Defendant's branches one Harry Goodial who hired them as sales agents after the Defendants products and financing policies were discussed and agreed upon by the Claimants. Mr. Goodial advised the Claimants that they would not have to meet the Defendant's recruitment panel since they were experienced agents. Further, Mr. Goodial gave them the following documents to sign after which he assured the Claimants that they were now hired by the Defendant and could now proceed to sell its products. The Claimants signed the following documents:

- (a) New Employment Enrolment Form
- (b) Pension Enrolment Card
- (c) Agent Number Request Form
- (d) Advisor Financing Request Form
- (e) Information Security Policy
- (f) Electronic Mail and Internet Security Policy
- (g) Sagicor Confidentiality Agreement
- (h) Sagicor Trinidad New Advisor Financing Plan

Mr Goodial assured the Claimants that they were now hired by the Defendant and could proceed to sell its products.

- [3] Based on the above assurances of Mr. Goodial, the Claimant began to sell the Defendant's products and in fact sold one of the Defendant's products; a policy valued at one million ten thousand dollars on 14th May 2009.
- [4] Pursuant to the said Agreement, the Claimants resigned their previous employment as Sales Agents of British American Insurance Company Limited and began training as agents with the Defendant. They also 'submitted all requested documents to the Defendant'. The documents relied upon by the Claimants as evidence of the said contract include:
 - (a) New Employment Enrolment Form
 - (b) Pension Enrolment Card
 - (c) Agent Number Request Form
 - (d) Advisor Financing Request Form
 - (e) Information Security Policy
 - (f) Electronic Mail and Internet Security Policy
 - (g) Sagicor Confidentiality Agreement
 - (h) Sagicor Trinidad New Advisor Financing Plan
- [5] On or about May 2009, the Defendant, its servant/agent informed the Claimants that it wished to adjust the financial package previously agreed between the parties.
- [6] On or about June 2009, the Defendant breached the terms of the said Agreement by:
 - a. unilaterally deciding that it would not employ both Claimants as previously agreed, but would only engage one of them.

b. deciding, in the alternative, that the Claimants could incorporate and be thus employed with a reduced financial package.

[7] The Claimants pleaded that as a result of the Defendant's breach of the said contract, they suffered loss and damage.

[8] The policy was sold on behalf of Sagicor Merchant Branch Limited and not Sagicor Life Incorporated, the Defendant on 14th May, 2009.

Defence

[9] The Defendant denied that it entered into a contract with the Claimants to hire them as Sales Agents. It pleaded that the Claimants were advised that it was only upon a successful completion of the recruitment process that they would be hired. The recruitment process involved the Claimants signing an application form, a financing form, a new advisor financing plan, pension enrolment cards and confidentiality agreement; further to that a selection meeting would have to be held with the Vice President Sales and Marketing.

[10] The Defendant averred that it was only upon completion of this process that the Claimants would have been required to resign from their previous jobs.

[11] After the Defendants participated in the selection process, the Defendant offered a single contract, if both parties formed a company with financing of seven thousand dollars (\$7,000.00) per month due to the Claimants low persistency level with their former employees.

[12] The Defendant denied that the Claimants suffered any loss/damage, and/that they failed to mitigate any loss/damage sustained.

- [13] The Defendant averred that the Claimants' resignation from British American Insurance Company Limited is stated in letter dated 30th April, 2009 and not as a result of encouragement from the Defendant.
- [14] I took into account the documents relied upon and disclosed by both parties, listed below:
- (a) Policy sold on 14th May 2009
 - (b) New Employee Enrolment Form dated 28th April 2009
 - (c) Pension Enrolment Card – 28th April 2009
 - (d) Financial Planner – 12th April 2009
 - (e) Agent Number Request Form – 28th April 2009
 - (f) Advisor Financing Request Form – 28th April 2009
 - (g) Electronic Mail and Internet Security
 - (h) Confidentiality Agreement – 1st May 2009
 - (i) Manager's Evaluation Summary for Prospective Sales Representatives dated 12th April, 2009.
 - (j) Mr. Goodial's Evaluation of the Claimants dated 28th April, 2009 – speaks of training/ meetings with Claimants at that date and his assessment of them.
 - (k) Interviews conducted on 12th April 2009 on the basis of his Evaluation Summary.
 - (l) Heath Lovell's Personal History Record dated 12th April, 2009. (Presently contracted to British American Insurance Company Limited).
 - (m) Application for Registration as a Salesman dated 30th April, 2009.
 - (n) Inspection Report Request to Sagicor Life by Harry Goodial dated 20th April, 2009 re Heath same date re Margaret.

- (o) Incumbent on the Defendant to set out recruitment process and call evidence in support of same.
 - (p) Authority of Branch Managers
 - (q) Report on Margaret dated 4th May, 2009. Employed at British American Insurance Company Limited until 30th April, 2009.
 - (r) Manager's Evaluation re Margaret dated 14th April, 2009. Refers to meetings held with the Claimants. Good reports of training given.
 - (s) Personal History Record dated 14th April, 2009.
 - (t) Application to Central Bank of Trinidad and Tobago for Registration as a Salesman dated 30th April, 2009 - Agent of British American Insurance Company Limited.
 - (u) Electronic Mail, Internet, Security Policy dated 28th April, 2009.
 - (v) Confidentiality Agreement dated 1st May, 2009 between the Claimants and the Defendant.
 - (w) New Advisors Financing Plan dated 6th May, 2009.
 - (x) Letters of Resignation of Heath dated 30th April, 2009 from British American Insurance Company Limited and Central Statistical Office (CSO).
 - (y) Letter from British American Insurance Company Limited to Margaret Lovell dated 8th May, 2009 referenced her Resignation letters dated 30th April, 2009.
- [15] In order to determine this case I need to carefully consider the evidence of the witnesses given that a formal written contract was not adduced in evidence in support of the Claimant's case although they alleged that they were contracted by the Defendant. An analysis of the evidence follows.

EVIDENCE

Witness Statement – Heath Lovell

- [16] In March 2009 he met with Henry Goodial, Agency Manager, Sagicor, St. Augustine with his wife, the Second Claimant and one Duane Austin, an agent from Guardian Life. They discussed the employment of himself and his wife as Sagicor agents. The recruitment process, general product information and financing policies of the Defendant were also discussed.
- [17] After a number of meetings and a telephone call to Goodial, they agreed to Goodial's offer to be employed as Sales Agents of the Defendant with financing of eight thousand dollars (\$8,000.00) monthly for the First Claimant and nine thousand dollars (\$9,000.00) monthly for the Second Claimant.
- [18] Mr. Goodial explained that as the Claimants were experienced agents, they did not have to meet the Defendant's recruiting panel that the decision with respect to selection was Goodial's and Jacinto Martinez, Branch Manager.
- [19] He and his wife began training in April, 2009. They were given forms to begin selling the Defendant's insurance products. They also received training on the Defendant's products and services.
- [20] On 30th April, 2009, he applied to the Central Bank of Trinidad and Tobago for a licence to work for Sagicor.
- [21] He was told that his meeting with the Vice President Sales and Marketing was a formality. In May he met with Mr. Whiby. He was then told of Whiby's views against married persons working together. Mr. Whiby indicated that only one of the Claimants will be employed – he suggested in the alternative, that the Claimants form a company which would be hired as an agent. He and Goodial had several meetings to discuss the situation and solve the problem.

[22] On 30th June, 2009, Mr. Goodial informed the Claimants that the contract previously agreed to will be changed as suggested by Mr. Whiby. He and his wife refused the proposed change to the contract.

Harry Goodial

[23] This witness died before trial and could not be cross examined on his witness statement. As a result I gave little weight to his evidence. I did accept that he told the Claimants that they could start working for the Defendant which led to the sale of a policy by the Claimant. The sale was not disputed by the Defendant.

[24] He was Agency Manager of the St. Augustine Branch. He was authorized in conjunction with Jacinto Martinez to recruit sales agents.

[25] He met the Claimant at various times between March and June 2009. He selected them for training and recommended them for selection and contract. It was agreed that monthly financing would be paid in the sum of nine thousand dollars (\$9,000.00) and eight thousand dollars (\$8,000.00). Contracts were prepared and signed and submitted to the Defendant's office. Those were never returned.

[26] The Claimants were authorized to work by him during their meeting with Jacinto Martinez. They were given application forms to work and Heath sold an Investment Policy to Vidhya Maharaj.

[27] On 30th June, 2009, he was instructed by Jacinto Martinez to tell the Claimants that they would not be employed as previously agreed, but would have to incorporate with reduced financing or only one of them would be employed. They rejected this new arrangement.

Jacinto Martinez

- [28] He was the Branch Manager with responsibility for Central and East Trinidad between 2000 and 2012.
- [29] He agreed that he was introduced to the Claimants by Goodial, Agency Manager, in March 2009. Mr. Goodial reported to him.
- [30] He explained the Defendant's recruitment process for experienced salesmen to both Claimants. The process:
- (i) Signing of Application Form;
 - (ii) Signing of a Financing Form;
 - (iii) Signing the Pension Enrolment Cards;
 - (iv) Signing the new Employee Enrolment Card.
- [31] He explained the financing plan with the Claimants. He also explained to the Claimants that after the submission of the documents, there had to be a selection meeting with the Vice President, Sales and Marketing, Gregory Whiby; that it was only upon acceptance of the application to become salesmen that they would have to produce a letter of resignation from their former employer to submit to the Central Bank of Trinidad and Tobago to register as a Salesman for the Defendant's company.
- [32] In or about April to May, 2009, he was informed by Goodial that the Claimants had submitted documents – Application forms, Pension Enrollment Cards, new Employee Enrolment card, Internet Security Policy and Confidentiality Agreement.
- [33] The Defendant's practice was to have an applicant for employment sign all application documents before applicants are employed.
- [34] In May, 2009, a meeting was held with Whiby who offered a single contract or incorporation based on the Claimants' low persistency rate during their employment with British American Insurance Company Limited.

- [35] The Claimants refused this offer.
- [36] He denied that the Claimant ever underwent training with the Defendant.
- [37] The witness was asked about the confidentiality agreement which the Claimants signed¹. It will be recalled that this document stated that it was supplemental to a pre-existing contract between the salesman and the Defendant. The witness confessed that a confidentiality agreement goes along with a signed contract.²
- [38] Mr. Martinez testified that the Confidentiality Agreement presupposed the existence of a contract between the agent and the Defendant company. He agreed that Sagicor's policy required that a contract subsisted between agent and company before execution of the Confidentiality Agreement. Mr. Martinez vacillated on the issue of whether a contract existed between the Claimants and the Defendant company; at first he asserted that if a contract existed it had not been signed by the Defendant; he also said that there was an unsigned contract in existence. It is noted that this unsigned document was not disclosed in these proceedings.
- [39] However, again in re-examination he contradicted himself on whether there was a contract which was not signed or whether there was no contract.
- [40] If there was a contract that was not signed, i.e. not by anyone on behalf of the Defendant, the latter would have still been under an obligation to disclose it. On the one hand he is saying there was such a contract but it was not signed and on the other he is saying there was no contract. He is equally contradictory in his cross examination as he was in re-examination on this issue.

¹ Trial Bundle C page 27

² Pg 64 ln 3 – 31 witness' evidence of 14 December 2017

ANALYSIS AND CONCLUSION

- [41] The Claimants were cross examined at length and in fact, as was apparent from the pleadings on both sides, the issue of the precise dates and the precise order as to when events happened, when they tendered their resignation, when they started training were in issue. I note that they testified that they could not remember the exact dates when those events occurred.
- [42] Mr. Jacinto Martinez on the other hand had stated in his witness statement that he had met with the Claimants and Mr. Goodial between March and June.
- [43] The onus lay on the Defendant to plead the lack of authority actual/ostensible on the part of Mr. Goodial to bind the Defendants. This was not done; however critical to the determination of this case was the issue as to the authority, ostensible or actual which Mr. Goodial had to negotiate on behalf of the Defendant. The Claimants' case is premised on the fact that Mr. Goodial, as Agency Manager, exercised ostensible authority on behalf of the Defendant when he engaged them and they relied upon the exercise of that authority when they began selling policies for the Defendant.
- [44] Mr. Goodial had unfortunately died by the time the trial proceeded, but he had given a witness statement. He testified that he, together with Jacinto Martinez had the authority to recruit sales agents on behalf of the Defendant. He also stated that the Claimants signed a contract of employment with the Defendant and that a copy of that contract together with other employment forms to Mr. Whiby, Vice President, Sales and Marketing. I bear in mind that Mr. Goodial had not been cross examined and therefore only have regard to that part of his evidence which could otherwise be substantiated on the case.

[45] The Confidentiality Agreement which had been signed clearly referred to a pre-existing contract; the confidentiality agreement was clearly created subsequent to a contract between the Claimants and the Defendant. Mr. Martinez, during his cross-examination agreed that that is what the confidentiality agreement appeared to say. He gave two inconsistent answers on the issue of whether a contract of employment existed between the Claimants and Defendant:

1. that none existed;
2. that there was an unsigned contract.

[46] The Defendant is a well-established financial institution in Trinidad and Tobago and the Region; it is reasonable to conclude that they understand the purport of a document which refers to an existing contract. More importantly they must be taken to have intended that prospective salesmen, such as the Claimants, would accept that they were contracted, especially where Mr. Goodial assured them that they could start selling policies and they did so.

[47] The Advisor Financing Request Form at page 9, states: *'This Form should be completed by an agent, unit manager requesting financing for a new advisor or change to an existing advisor's financing.'* The documents clearly support the Claimants' and Mr. Goodial's position that the Claimants had been contracted by the Defendant as new advisors/sales agents. The Advisor Financing Request Form went on to state: *'Please submit to the Sales Administration Unit along with the new advisors Recruiting Kit or directly to the VP Sales and Marketing if requesting for an existing advisor.'* The documents were sent to the VP Sales and Marketing Manager relative to existing advisors.

[48] Another document which I looked at which supported the Claimants' case that there was an existing contract, was the Confidentiality Agreement

which read in part ‘Whereas a salesman has entered into a contract with the company prior to the date of these presents. This document clearly indicates that the Claimants had contracted with the company before the execution of the Confidentiality Agreement.

[49] I also had regard to the fact that First Claimant actually sold a policy. He had been given application forms by Mr. Goodial after he had been interviewed by Mr. Goodial and signed all documents referred to above³. The Defendant made the point that the policy was sold for and on behalf of another company, Sagicor Merchant as opposed to this Defendant, which is Sagicor Insurance Company. I am of the view that the policy was sold for and on behalf of the Defendant, who benefitted from the sale. The Defendant’s agent, Mr. Goodial, employed by the Defendant, authorised the Claimants to sell this policy which formed part of the suite of products offered for sale by the Defendant.

[50] I note that the Defendant failed to plead to the issue of Mr. Goodial’s authority to contract new Advisors on behalf of the Defendant. This omission, as well as the failure to call Mr. Whiby, their Vice President of Sales and Marketing, served to further weaken Sagicor’s case. Mr. Whiby had retired, but was available. He could have testified definitively as to whether a contract signed or unsigned by the Claimants and Mr. Goodial for the Defendant, had been submitted to him together with the other employment documents. This evidence was important given the materiality of the issue to the case. I drew an adverse inference against the Defendant for their failure to call Mr. Whiby as a witness – that if called he would not support the Defendant’s case that they had not hired the Claimants as sales agents.

[51] For all the above reasons I accepted the Claimants’ case that they entered into contracts of employment with the Defendant, and that they began

³ Paragraph 5 intra

working for the Defendant pursuant to the terms of the said contract. I hold that the Defendant breached that contract by wrongfully terminating it, causing damage and loss to the Claimants. I note that the Defendant company benefitted from the First Claimant's sale of one of its policies during his employment with the Defendant.

[52] I hereby order that:

1. There be judgment for the Claimants against the Defendant.
2. The Defendant do pay to the Claimants damages to be assessed by a Master in Chambers.
3. The Defendant do pay to the Claimants costs on a prescribed basis on the damages and interest.

Joan Charles

Judge