IN THE APPELLATE DIVISION OF THE HIGH COURT
OF THE REPUBLIC OF SINGAPORE

[2021] SGHC(A) 23

Civil Appeal No 3 of 2021

Between

Cheryl Tan Yi Lin

… *Appellant*

And

AIA Singapore Pte Ltd

… *Respondent*

In the matter of Suit No 584 of 2019

Between

Cheryl Tan Yi Lin

… *Plaintiff*

And

AIA Singapore Pte Ltd

… *Defendant*

GROUNDS OF DECISION

[Insurance] — [General principles] — [Claims]
[Insurance] — [General principles] — [Non-disclosure]
[Contract] — [Misrepresentation] — [Fraudulent]

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v
AIA Singapore Pte Ltd

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Appellate Division of the High Court — Civil Appeal No 3 of 2021
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30 November 2021

3 December 2021

Belinda Ang Saw Ean JAD (delivering the grounds of decision of the court):

Introduction

1 This appeal is against the judgment of the High Court Judge ("the Judge") in High Court Suit No 584 of 2019; the grounds of decision dated 28 May 2021 are set out in *Tan Yi Lin Cheryl v AIA Singapore Pte Ltd* [2021] SGHC 130 ("the Judgment").

2 We heard and dismissed the appeal on 30 November. We provide the written grounds below.

Brief facts of the case

3 The appellant is the wife of the late Mr Cheong Wai Ming Edmund ("Mr Cheong"), and the sole executrix of Mr Cheong's estate. The appellant and Mr

Cheong were former insurance agents with the respondent. Mr Cheong was an insurance agent with the respondent for over a year. The appellant was an insurance agent with the respondent from 2006 to 2009. In addition, she was also an insurance agent with Prudential Assurance Company Singapore Pte Ltd ("Prudential") from 2009 to 2013. She was an insurance agent for a total of eight years.

4 The brief facts of the parties' dispute are as follows. On 7 May 2014, Mr Cheong submitted a proposal form for a five-year term life policy for $1m, which we shall refer to as the "Application Form" and the "Policy" respectively. In answering the questions posed in the Application Form, Mr Cheong had unequivocally confirmed that he had no records of previous and concurrent insurance applications and had no applications for life insurance policies pending. Mr Cheong's application was accepted by the respondent and the Policy was issued on 30 June 2014. However, it was not disputed that Mr Cheong's answers were false since he had applied for as many as seven life insurance policies: Mr Cheong had made *three* previous applications for life insurance during the six weeks before the Application Form, and *three* more life insurance policies after submitting the Application Form and before the Policy was issued. All in all, the total sum assured on his life was $6.25m:

S/N	Date of Application	Date of issuance	Insurance Company	Policy
1	28 March 2014	31 March 2014	Prudential	66-year term life $500,000
2	2 May 2014	23 May 2014	Prudential	10-year term life $600,000
3	6 May 2014	30 May 2014	Aviva	10-year term life $2m
4	7 May 2014	30 June 2014	AIA	5-year term life $1m
5	8 May 2014	17 June 2014	Manulife	10-year term life $750,000
6	22 May 2014	17 July 2014	Great Eastern	5-year term life $400,000
7	24 May 2014	30 May 2014	AXA	10-year term life $1m
Total assured sum				**$6,250,000**

5 Mr Cheong died on 26 September 2016. Thereafter, on 10 October 2016, the appellant claimed the death benefits under the Policy. In the Death Claim Form, the appellant declared that Mr Cheong was not insured with other companies.

6 The respondent rejected the appellant's claim for the death benefits on grounds of fraudulent misrepresentation and material non-disclosure. On 17 June 2019, the appellant commenced legal proceedings against the respondent in her capacity as the sole executrix of Mr Cheong's estate pursuant to a Grant of Probate dated 5 November 2016 ("the Grant of Probate"). The appellant claimed for the $1m death benefit.

7 The Judge held that there was fraudulent misrepresentation which entitled the respondent to avoid the Policy. The Judge also held that Mr Cheong had an obligation of continuing disclosure of his other applications for life policies, up till when the Policy was issued, but he had breached that obligation by knowingly failing to disclose the same. The Judge rejected the appellant's assertions that (a) the insurance agent who attended to them as regards the Application Form, Mr Aik Chin Yeow ("Mr Aik"), had been informed about Mr Cheong's applications for other life policies and the existing Prudential policy, which was a term life policy issued by Prudential in March 2014; and (b) Mr Aik advised Mr Cheong and/or the appellant that it was not necessary to disclose such applications and policy in the Application Form.

8 The two main planks of the appellant's submissions, on appeal, were that the Judge erred in finding that there was fraudulent misrepresentation, and that the Judge erred in finding that the misrepresentation induced the respondent to issue the Policy.

Decision of the appellate court

9 We affirmed the Judge's findings of fact and upheld his conclusions that Mr Cheong had made fraudulent misrepresentations in his Application Form and non-disclosures of applications made between the date of the Application

Form and the Policy. These misrepresentations and non-disclosures had induced the respondent to issue the Policy to him. We agreed with the Judge that the respondent was entitled to avoid the Policy.

10 The appellant's case was that she was present when Mr Cheong met Mr Aik to apply for a five-year term life policy. It was the appellant's pleaded case that both she and the insured disclosed Mr Cheong's pending applications for life policies with Prudential and with Aviva Ltd to Mr Aik, as at the date of the Application Form. In short, the insured and the appellant had made disclosures, but it was Mr Aik who told them that disclosure was not necessary because Mr Cheong's two applications were pending and not yet approved. Besides, Mr Aik advised that polices with different insurers need not be disclosed in the Application Form or in the Financial Health Review ("FHR").

11 The appellant referred to an investigation conducted by Crawford International Pte Ltd ("Crawford"), the loss adjusters appointed by the various insurance companies to investigate, *inter alia*, whether Mr Cheong "declare[d] the existence of the other policies to Insurers". Crawford's Interim Report dated 5 May 2017 states that "[s]o far there is no evidence that [the appellant] had deliberately concealed facts of the other insurance to the insurance agents and FAs".[1] The appellant's counsel relied on this report as supporting the appellant's case that there was no fraudulent misrepresentation or deliberate non-disclosure by the appellant. The appellant also relied on the written statement provided by other insurance agents, such as Ms Shirley Chua ("Ms Chua"), who was Mr Cheong's Aviva insurance agent, to show that Mr Cheong had disclosed his other insurance policies. But none of these agents, save for Mr Aik, were called to testify as witnesses.

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[1] RA V(2) 261–262.

12 The Judge accepted Mr Aik's evidence that he was not informed as claimed by the appellant. First, the appellant's claim that Mr Aik knew of Mr Cheong's existing life insurance policy and pending policy applications was not supported by any objective evidence. Mr Aik's written statements to Crawford did not support the appellant's assertion that on 7 May 2014, Mr Aik knew about the *life* insurance policies Mr Cheong had been issued with or had applied for. Mr Aik explained in his email of 23 May 2017 to Crawford that he heard about the Prudential policy of $1m from the appellant many months or a year after the purchase of the AIA term policy. All he knew on 7 May 2014 was that Mr Cheong had other *investment* policies, which are not *life insurance* policies. Mr Aik also testified that while the appellant told him about the other investment policies, she did not provide any details, which is also what he had told Crawford in the written statement. The appellant's claim at trial that they had disclosed the life insurance policies, such as the Manulife life insurance, to Mr Aik subsequently was not borne out by any objective evidence. She referred to a WhatsApp conversation between her and Mr Aik almost a year after the Policy was issued. But this conversation on 7 April 2015 does not bear out her claim that she told Mr Aik about the life insurance, but only Mr Cheong's AIG Sapphire accident plan. We also agreed with the Judge that the WhatsApp messages between the appellant and Ms Chua, supported the Judge's finding that not only did Mr Aik not know about Mr Cheong's other life insurance policies, the appellant also sought to actively prevent Mr Aik from finding out about these life insurance policies.

13 As for Crawford's Interim Report relied upon by the appellant, we were unable to agree that this assisted the appellant's case. First, as a preliminary note, this was an interim report that was in no way conclusive on its findings on whether there was non-disclosure. Within the same report, Crawford stated that

whether Mr Cheong had declared the existence of various policies at the proposal stage was an issue "that require[d] the Insurers' further consideration". Second, this report was not binding on the court. The court was entitled, and indeed required, to make its own findings on whether there was any fraudulent misrepresentation and/or deliberate non-disclosure, which were issues of law and fact. The Judge's findings that the appellant and Mr Cheong did not in fact disclose Mr Cheong's existing life insurance policy, and pending applications for life insurance policies at the material time, could not be said to be against the weight of evidence, as we have highlighted above.

14 Second, there was no reason for the appellate court to interfere with the Judge's finding that the appellant was not a truthful witness. Her credibility as a witness was seriously undermined by the many lies that she told on different occasions. We agreed with the respondent that the appellant had no qualms lying. She lied in the Death Claim Form for which she had no plausible excuse to claim that Mr Cheong was not insured with any other life insurance companies. Around that time, the appellant had also submitted death claims under various other life policies to other insurance companies. In addition, she had no plausible excuse for under-declaring the size of the insured's estate in the application for the Grant of Probate. Under oath, she falsely stated that the insured's estate did not exceed $3m when the total sum assured under all the life policies was $6.25m. There were other examples (taken cumulatively with her earlier transgressions) that supported the Judge's finding that the appellant was not a truthful witness. She was unable to give a credible explanation regarding the WhatsApp conversation between her and Ms Chua, as to why she said that Mr Aik did not "know the insurance [Mr Cheong] bot [sic]" or why she did not want Mr Aik to go with her and Ms Chua to apply for the Grant of Probate, or why she did not want Mr Aik to know that Ms Chua was their

insurance agent, but instead introduced Ms Chua as their property agent. All she asserted at trial was that "they no need to know each other" because Mr Aik would "say a lot of things later".[2] The appellant also denied having received some e-mails from Mr Aik, including one that enclosed the Application Form and the FHR signed by Mr Cheong. Yet she failed to provide her own expert witness with access to her e-mail to verify her claim that she did not receive the said e-mails, when her expert had asked for such access. It was therefore plain that she did receive such e-mails and had no basis to disavow her knowledge of what was in the Application Form.

15 Third, the appellant admitted during cross-examination that the Warnings stated in the Application Form that the Policy would be voided for the want of disclosure of material information would be something she and Mr Cheong were familiar with. We also agreed with the Judge that the duty of disclosure is a continuing one and subsisted until the Policy was issued. The Warnings include a clear reminder to continue to disclose any and all material facts that may arise or which have changed from the information provided. As former insurance agents themselves, the appellant and Mr Cheong would reasonably be expected to have known of the duty of continuing disclosure of material facts, and whether there was existing or pending applications for life insurance policies would be such a material fact.

16 For the sake of argument, even if Mr Aik knew about Mr Cheong's existing policies from the time of the Application Form to the issuance of the Policy, Mr Aik's knowledge cannot be imputed to the respondent. It is trite in insurance law that an insurance agent who assists the proposer for insurance to fill in a proposal form does so as the agent of the proposer and not the agent of

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2 NE 17/11/20 142,

the insurer, as stated by the Court of Appeal in *National Employers' Mutual General Insurance Association Ltd v Globe Trawlers Pte Ltd* [1991] 1 SLR(R) 550 ("*Globe Trawlers*"). Mr Aik was acting as the agent for Mr Cheong in helping him with the Application Form, and his knowledge, if there were any, could not be imputed to the respondent. In so far as the appellant argued that Mr Aik was the agent of the respondent when he allegedly said that it was not necessary to disclose other pending applications, there was no basis to suggest that Mr Aik had apparent authority. In insurance law, the agent is held out as having authority to act for the insurer only if there is a representation by the insurer that the agent has such authority. In the Application Form, there was an express declaration by the respondent that no statement, information or agreement made by the person soliciting/taking this application binds the respondent. Hence, the argument that what Mr Aik said can be imputed to the respondent was without merit.

17 The Judge was therefore right that there was fraudulent misrepresentation and non-disclosure: Mr Cheong/the appellant knew that disclosure was required and yet chose not to disclose Mr Cheong's applications for six different life insurance policies. This also disposed of the appellant's reliance on the Incontestability Clause in the Policy. The Incontestability Clause provided that the validity of the Policy could not be contested after two years from the issue date except for failure to pay premiums and fraud. The appellant, therefore, cannot rely on the Incontestability Clause to claim entitlement to the benefits under the Policy in view of Mr Cheong's fraudulent misrepresentation in the Application Form.

18 Finally, the respondent had proven that the fraudulent misrepresentation and non-disclosure induced the respondent to issue the Policy. The Judge rightly found that the fact of other existing life insurance policies and applications on

the insured's life was material to the respondent's underwriting of the Policy, because the assured sum applied for must be proportionate to the income of the insured. The respondent's underwriting assessment, which was uncontradicted as the appellant adduced no evidence of contrary practice, took into account both existing policies and pending applications with all insurers when comparing against the respondent's per life limit; the appellant's misrepresentation and non-disclosure of other existing or pending life insurance policies had therefore induced the respondent to grant the Policy.

19 The appellant took issue with the fact that the respondent did not call the actual underwriter who had reviewed the Application Form and assessed risk to testify in court, and did not file a notice to admit documentary hearsay evidence since the actual underwriter's note was admitted through Mr Ho Chee Meng ("Mr Ho")'s affidavit of evidence-in-chief. The appellant's counsel argued that this put the appellant at a disadvantage, because she could not avail herself of section 32C of the Evidence Act (Cap 97, 1997 Rev Ed) ("EA"). This objection was made despite the appellant's own reliance on Ms Chua's statement, when the appellant did not call Ms Chua as a witness (see above at [11]).

20 We did not consider the appellant's belated objection meritorious. The appellant did not, at *any* time during the trial, object to the underwriting note, whether on the footing that it was hearsay evidence or that the underwriter concerned was not called to testify as a witness, or that notice to admit hearsay evidence was not filed. The actual underwriting note was adduced as evidence through Mr Ho's affidavit. It was admitted and marked during the trial. Mr Ho is the Head of New Business of the respondent who had sight of the actual underwriting note and attested to the underwriting practice of the respondent at the trial below. The actual underwriting note was stated to be part of the respondent's records. The appellant's then counsel had the opportunity to object

to the lack of notice there and then, as the court below would be the proper place for the s 32C EA argument. He was nevertheless content to proceed with cross-examining Mr Ho on his understanding of the said underwriting note, when he could have and should have raised the objection below. The appellant was thus not entitled to raise such objections belatedly on appeal.

21 In any event, counsel for the appellant in this appeal accepted the admissibility of the underwriting note as being made in the course of business. We did not see how counsel's argument – that the appellant did not have an opportunity to cross-examine the underwriter concerned – would assist the appellant's case in the appeal.

22 As such, we agreed with the Judge that the fraudulent misrepresentation that Mr Cheong had no other life insurance policies, whether issued or pending, played a substantial part in inducing the respondent to issue the Policy.

23 We therefore dismissed the appeal and ordered the appellant to pay the respondent costs of $50,000 inclusive of disbursements. The usual consequential orders would apply.

Belinda Ang Saw Ean
Judge of the Appellate Division

Woo Bih Li
Judge of the Appellate Division

See Kee Oon
Judge of the High Court

Anil Narain Balchandani (Red Lion Circle) for the appellant;
Tan Teck San Kelvin, Chng Teck Kian Desmond (Drew & Napier LLC) for the respondent.