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

[2021] SGHC 130

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]

Version No 1: 31 May 2021 (08:55 hrs)

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This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Tan Yi Lin Cheryl
v
AIA Singapore Pte Ltd

[2021] SGHC 130

General Division of the High Court — Suit No 584 of 2019
Chua Lee Ming J
17–20 November, 11 December 2020

28 May 2021

Chua Lee Ming J:

Introduction

1 The plaintiff, Ms Cheryl Tan Yi Lin, sued the defendant, AIA Singapore Pte Ltd, for payment of $1m under a life insurance policy (the "Policy") issued by the defendant to the plaintiff's deceased husband, the late Mr Cheong Wai Ming Edmund (the "Insured"). The plaintiff commenced this action in her capacity as the sole executrix of the estate of the Insured pursuant to a Grant of Probate dated 5 November 2016 (the "Grant of Probate"),[1] and as the sole trustee and beneficiary under the Policy pursuant to a nomination dated 6 August 2015[2] made by the insured under s 49L(2) of the Insurance Act (Cap 142, 2002 Rev Ed).

2 The defendant had voided the Policy on the ground that in his application to the defendant for the Policy, the Insured had failed to (a) disclose

his other previous and pending applications for life policies and (b) inform the defendant of his subsequent applications to other insurance companies for life insurance up to the time that the defendant issued its policy to the Insured.

3 I found that the defendant was entitled to void the Policy and dismissed the plaintiff's claim. The plaintiff has appealed against my decision.

Facts

4 The plaintiff and the Insured were married on 8 July 2009 and have a son who was born on 19 September 2013. Both the plaintiff and the Insured were former insurance agents with the defendant, the plaintiff from 26 September 2006 to 7 April 2009 and the Insured from 18 January 2008 to 13 May 2009. At the material time, the Insured was working as an accountant.

5 On 7 May 2014, the Insured submitted an Application Form for Life Insurance to the defendant (the "Application Form").[3] The application was for a five-year term life policy for $1m. The defendant's authorised financial services consultant, one Mr Aik Chin Yeow ("Aik"), attended to the Insured.

6 The present proceedings arose from the following answers given by the Insured in the Application Form (the "Insured's Answers"):

(a) In response to the section asking for "Details of Previous and Concurrent Insurance Applications and Pursuits of Proposed Insured", the Insured answered "No records".

(b) In the "Questionnaire" section of the Application Form, question 2 asked whether, among other things, the Insured had "any

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application for … life … insurance policy pending…?" and the Insured answered "No".

7 In the Application Form, the Insured made the following declaration:

> 2. I/We declare that the statements and answers in this application together with any required questionnaire or amendments (the "Information") are full, complete, true and correct and that no information or material has been withheld. I/We understand that AIA Singapore, believing the Information to be such, will rely and act on the Information accordingly. I/We further agree that the Information shall form the basis of the contract between the parties hereto. I/We understand that if any of the Information is not full or complete or true or correct, the Policy issued hereunder may be void and I/we may receive nothing from the policy.

8 The first page of the Application Form contained the following warning:[4]

> **WARNING**: In accordance with Section 25(5) of the Insurance Act, as may be amended from time to time, you are to fully and faithfully disclose in this Application Form all facts which you know, or ought to know, failing which you may receive nothing from the policy and/or the policy issued may be void. If a foreign currency policy is applied for, the equivalent of returns in Singapore-dollars will depend on the prevailing exchange rate (as determined by AIA Singapore), which may be highly volatile.

9 The last page of the Application Form contained the following warning:[5]

> **WARNING**: If a material fact is not disclosed in this proposal, any policy issued may not be valid. If you are in doubt as to whether a fact is material, you are advised to disclose it. This includes any information that you may have provided to the Financial Services Consultant(s)/Insurance Representative(s) but was not included in the proposal. Please check to ensure you are fully satisfied with the information declared in this proposal. Additionally and without prejudice to the parties' rights and obligations whether under law or otherwise, following the submission of your proposal, you must continue to disclose any and all material facts that may arise or which have changed from the information you had provided.

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10 It was not disputed that the Insured's Answers were false. The Insured had made three previous applications for life insurance within the previous six weeks of the Application Form; one had been issued whilst two were still pending as of 7 May 2014:

(a) On 28 March 2014, the Insured had applied to Prudential Assurance Company Singapore (Pte) Ltd ("Prudential") for a 66-year term life policy for $500,000.[6] On 31 March 2014, Prudential issued a "PruTerm Vantage" policy for $500,000 to the Insured.[7]

(b) On 2 May 2014, the Insured had applied to Prudential for a ten-year term life policy for $1.5m.[8] The sum assured was subsequently reduced to $600,000.[9] On 23 May 2014, Prudential issued another "PruTerm Vantage" policy, this time for $600,000, to the Insured.[10]

(c) On 6 May 2014, the Insured had applied to Aviva Ltd ("Aviva") for a ten-year term life policy for $2m.[11] On 30 May 2014, Aviva issued a "MyProtector-Level Plus 10 Years" policy for $2m to the Insured.[12]

11 On 30 June 2014, the defendant issued the Policy, an "AIA Secure Term Plus – 5 Year" policy, No L540625220, for $1m to the Insured, pursuant to the Application Form previously submitted.[13]

12 Between 7 May 2014 (when the Insured submitted the Application Form to the defendant) and 30 June 2014 (when the defendant issued the Policy), the Insured applied for the following life insurance policies:

(a) On 8 May 2014, the Insured applied to Manulife (Singapore) Pte Ltd for ten-year term life policy for $1m.[14] On 26 May 2014, the Insured agreed to the assured sum being reduced to $750,000.[15] On 17 June

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2014, Manulife issued a "Manuterm 10-Year Renewable and Convertible" policy for $750,000 to the Insured.[16]

(b) On 22 May 2014, the Insured applied to The Great Eastern Life Assurance Company Limited ("GE") for a five-year term life policy for $1m.[17] The sum assured was subsequently reduced to $400,000.[18] On 17 July 2014, GE issued a five-year "Smart Term Assurance" policy for $400,000 to the Insured.[19]

(c) On 24 May 2014, the Insured applied to AXA Insurance Pte Ltd ("AXA") for a ten-year term life policy for $1m.[20] On 30 May 2014, AXA issued a "10 Year Term Protector" policy for $1m to the Insured.[21]

13 The Insured died in Australia on 26 September 2016 after he fell from an apartment on the 33rd floor. The Insured was viewing the apartment together with the plaintiff. The Coroners Court of Victoria, Australia, found that the Insured died from "multiple injuries sustained in a fall from height" and that the fall was accidental.[22]

14 On 10 October 2016, the plaintiff made a claim under the Policy by lodging a Death Claim Form with the defendant.[23] Crawford & Company International Pte Ltd ("Crawford"), who are loss adjusters, carried out an investigation into the Insured's death for nine insurers/reinsurers, including the defendant. In its preliminary report dated 10 February 2017, Crawford noted that the Insured had purchased 12 policies (totalling $6,854,750) and that the Grant of Probate listed seven policies (totalling $2,764,000).[24] The plaintiff did not include all of the Insured's policies in the schedule of assets filed in connection with the application for the Grant of Probate. She wanted to keep the value of the assets under $3m so that she could avoid filing for probate in

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the High Court, which she thought would be "very expensive".[25] The schedule of assets was subsequently amended to include more policies.[26] The policy issued by Aviva (see [10(c)] above) was not included in the schedule even after the amendment, presumably because Aviva did not require the Grant of Probate.[27]

15 On 25 July 2017, the defendant informed the plaintiff that the Policy was null and void because the Insured had "withheld information material to [the defendant's] underwriting".[28]

16 In its final report dated 5 September 2017, Crawford concluded that the finding by the Coroners Court of Victoria was consistent with Crawford's findings. Crawford also pointed out that five insurers had denied the plaintiff's claims on the Insured's policies, on the ground of non-disclosure.[29]

17 On 17 June 2019, the plaintiff commenced the present action.

The defendant's case

18 The defendant's case was that the Policy was a contract of utmost good faith and the Insured was under a duty, under the terms of the Policy and at law, to disclose all material facts to the defendant until the Policy was issued on 30 June 2014.[30]

19 The defendant denied liability under the Policy on the ground that the Insured fraudulently misrepresented and/or fraudulently failed to disclose material facts:

(a) The Insured was required to disclose previous applications for life insurance policies and applications that were pending (see [6] above)

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but failed to disclose his three previous applications for life insurance policies dated 28 March 2014, 2 May 2014 and 6 May 2014 (see [10] above).

(b) The Insured was under a duty to continue to disclose all material facts until the Policy was issued. The Insured failed to disclose that he had made three further applications for life insurance policies on 8 May 2014, 22 May 2014 and 24 May 2014 (see [12] above) before the Policy was issued on 30 June 2014.

The plaintiff's case

20 The plaintiff's case was as follows:

(a) The Insured had informed Aik of the three policies referred to in [10] above, on 7 May 2014, when the Application Form was completed.[31] The defendant was deemed to have knowledge of such information.[32]

(b) Aik completed the Application Form on behalf of the Insured and advised the Insured that there was no need to disclose applications for life policies that were still pending or policies that were taken up with other insurers.[33] The Insured relied on Aik's advice.[34]

(c) In the alternative, the misrepresentations and non-disclosures were not fraudulent.[35]

(d) The defendant was not induced by or relied upon the misrepresentations and had not altered its position as a result of the misrepresentations.[36]

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(e) In the alternative, the defendant had waived its rights against the Insured.[37]

The issues

21 The following were the issues before me:

(a) Whether the Insured had an obligation of continuing disclosure?

(b) Whether there was fraudulent misrepresentation and/or fraudulent non-disclosure of material information by the insured?

(c) Whether the defendant was induced by the misrepresentations and/or had altered its position?

(d) Whether the defendant had waived its rights under the Policy?

Whether the Insured had an obligation of continuing disclosure?

22 The Insured made his application for the Policy on 7 May 2014 by way of the Application Form. The Policy was issued on 30 June 2014. As stated in [12] above, between these two dates, the Insured had made three applications for life policies to three different insurers.

23 I agreed with the defendant that the Insured was under an obligation of continuing disclosure and had to disclose these three applications to the defendant before the Policy was issued. The law is clear on this.

24 What matters is the state of affairs at the date when the contract is concluded, and the representation is acted upon; a representation made is generally treated as continuing: *The Law of Contract in Singapore* (Andrew Phang Boon Leong gen ed) (Academy Publishing, 2012) at para 11:059, citing

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Foodco UK LLP v Henry Boot Developments Ltd [2010] EWHC 358 (Ch) at [186].

25 The same principle applies to insurance contracts. An insurance contract is concluded when the policy is issued. Poh Chu Chai, *Principles of Insurance Law* (LexisNexis, 6th Ed, 2005) ("*Principles of Insurance Law*") states at p 111 that a contract of insurance is one "where the parties are under a duty to exercise the utmost good faith and to make full disclosure of all facts material to the contract". It then states at p 158:

> An insured's duty of disclosure continues right up to the moment a contract of insurance is concluded. If there is any material change in the risk to be insured before the contract is concluded, the change has to be disclosed to the insurer. An insurer who issues a policy to an insured is not bound by the policy if the insured fails to disclose material changes in the risk before the contract is concluded. …

26 The plaintiff also admitted that she knew from the warning notice on the last page of the Application Form (see [9] above) that there was a continuing obligation of disclosure.[38] That warning notice included the following sentence:

> … Additionally and without prejudice to the parties' rights and obligations whether under law or otherwise, following the submission of your proposal, you must continue to disclose any and all material facts that may arise or which have changed from the information you had provided.

Whether there was fraudulent misrepresentation and/or fraudulent non-disclosure of material information by the insured?

27 This issue raised the following questions:

(a) Whether the Insured/the plaintiff informed Aik about the Insured's other applications for life policies?

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(b) Whether the misrepresentations or non-disclosures (if any) were fraudulent?

Whether the Insured/plaintiff told Aik about the applications for other policies?

28 It was indisputable that the Insured's Answers were false. However, the plaintiff alleged that:

(a) on 7 May 2014, the Insured and she had informed Aik of the Insured's then existing life policy and pending applications for life policies, and Aik had informed them that there was no need to disclose pending applications or policies issued by other insurance companies; and

(b) she informed Aik of the Insured's subsequent applications for life policies, which were made between 7 May 2014 and 30 June 2014 (see [12] above).

29 I rejected the plaintiff's allegations for several reasons.

30 First, the objective evidence contradicted the plaintiff's allegations. One Ms Chua Ser Chee Shirley ("Shirley") was the insurance agent from Aviva who had sold the Insured the $2m policy issued by Aviva (see [10(c) above). On 26 October 2016, the plaintiff was going with Shirley to see a lawyer regarding her application for the Grant of Probate. By this time, Shirley had become friends with the plaintiff.[39] Shirley helped to prepare the schedule of the Insured's assets for the probate application.[40] The schedule of assets included some of the Insured's other life insurance policies. The plaintiff asked Shirley whether Aik (also known as David) could go along because Aik wanted to learn about the process.[41]

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31 The following WhatsApp messages between the plaintiff and Shirley, and between the plaintiff and Aik, on 26 October 2016 were telling:

(a) Shirley warned the plaintiff that "later the will officer ask [her] about stuff then [Aik] will know".[42] The plaintiff's immediate response was that she would ask Aik not to go because "he [did not] know the insurance [the Insured bought]" and that only Shirley knew.[43]

(b) Shirley also said that she was "scared" that Aik would see the schedule of assets.[44] In response, the plaintiff said that she would tell Aik not to go with them.[45] Separately, the plaintiff then told Aik that he should not go with her and lied to Aik that "the lawyer" said that only one person could go with her and she was already going with her mother, her friend and her domestic helper.[46]

32 It was clear from the WhatsApp messages above that the plaintiff changed her mind about letting Aik go with her because she did not want Aik to find out about the Insured's other policies. This could only mean that Aik was not aware of the Insured's other policies. The plaintiff did not offer any other credible explanation for the WhatsApp messages.[47]

33 In addition, on 9 October 2016, Aik asked the plaintiff whether the Insured had any policies issued by Prudential.[48] This also showed that Aik was not aware of the Insured's policies issued by Prudential.

34 Second, the plaintiff did not want Aik to know that Shirley was an Aviva agent and told Aik that Shirley was a property agent.[49] In her oral testimony, the plaintiff explained that Shirley and Aik did not know each other and there was no need for them to know each other.[50] Shirley knew that Aik was an AIA agent. Clearly, what the plaintiff meant was that there was no need for Aik to know

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that Shirley was an Aviva agent. In my view, the plaintiff did not want Aik to know that Shirley was an Aviva agent because Aik did not know that the Insured had bought a policy from Aviva.

35 Third, the Insured did not make full disclosures of *all* his applications to other insurers in his applications to Aviva, Manulife, Great Eastern and AXA:

(a) In his application to Aviva dated 6 May 2014, the Insured did not disclose his application to Prudential dated 2 May 2014 that was pending.[51] The plaintiff claimed that she told the Aviva agent but the agent answered "No" to the question whether there were other applications pending.[52]

(b) In his application to Manulife dated 8 May 2014, the Insured did not disclose his applications to Aviva dated 6 May 2014 and AIA dated 7 May 2014, both of which were pending.[53] The plaintiff claimed that she told the Manulife agent but the agent said there was no need to disclose applications to other insurers.[54]

(c) In his application to GE dated 22 May 2014, the Insured did not disclose his applications to Prudential dated 2 May 2014, Aviva dated 6 May 2014, AIA dated 7 May 2014, and Manulife dated 8 May 2014.[55] The plaintiff claimed that the other applications were disclosed to the GE agent.[56]

(d) In his application to AXA dated 24 May 2014, the Insured did not disclose his existing life policies with Prudential issued on 31 March 2014 and 23 May 2014.[57] The plaintiff claimed that the Insured did disclose to the AXA agent.[58]

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36 I did not believe the plaintiff. I found it unbelievable that *all* the representatives of *different* insurance companies would have made the same fundamental error. I also noted the following:

(a) The application to Manulife disclosed policies issued by Prudential.[59] If indeed (as the plaintiff claimed), the Manulife agent had said there was no need to disclose applications to other insurers, then the Prudential policies should not have been disclosed in the application. Yet, they were.

(b) The applications to GE and AXA also disclosed policies issued by Prudential.[60] It did not make sense that having been told of all the other applications to other insurers, the GE agent and the AXA agent decided to disclose only the Prudential policies. It made even less sense that the AXA agent would have decided to disclose a Prudential policy issued in 2010 but not the Prudential policy issued in 2014 for a larger assured sum.

(c) Some of the insurers (including the defendant) denied the plaintiff's claims on the Insured's policies on the ground of non-disclosure. According to the plaintiff, the non-disclosures were caused by the insurers' respective agents. The plaintiff also knew that insurance agents are regulated. Yet, the plaintiff did not complain to the Monetary Authority of Singapore about the agents.[61]

37 Fourth, the plaintiff was an insurance agent with the defendant from September 2006 to April 2009 and with Prudential from 2009 to 2013.[62] The Insured was an insurance agent with the defendant from January 2008 to May 2009. I found that it was more likely than not that the Insured and the plaintiff

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were aware that the Insured had to disclose all his other applications for life policies, including those that were still pending.

38 Fifth, s 94 of the Evidence Act (Cap 97, 1997 Rev Ed) prohibited the plaintiff from adducing oral evidence to the effect that the Insured had informed the defendant of his other previous or pending applications for life insurance policies. Such oral evidence contradicted the Insured's representation in writing that he had no previous or pending applications.

39 Sixth, the plaintiff relied on the fact that in answer to Crawford's question as to why the Insured's other insurance policies were not disclosed in the Application Form, Aik had answered that the Insured "did not want to take into account his existing policies to factor into the purchase of [the Policy]".[63]

40 In his oral evidence, Aik explained that he had the Insured's Financial Health Review ("FHR") in mind when he gave this statement to Crawford.[64] In his FHR, the Insured had stated that he "[did] not wish to take into account existing policies for planning".[65] This statement was given in connection with the Insured's current financial plans, not in connection with whether to purchase the Policy.[66] Aik explained that his answer to Crawford was a mistake.[67]

41 I accepted Aik's explanations. The words used in Aik's answer to Crawford were consistent with the Insured's statement in the FHR. Aik mistakenly attributed the Insured's statement to the purchase of the Policy. I accepted Aik's explanation that the Insured did not tell him whether he (the Insured) had any existing policies.[68]

42 Seventh, I did not find the plaintiff to be a credible witness. She challenged the authenticity of nine emails sent by Aik to her between

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6 May 2014 and 27 November 2014,[69] including in particular an email dated 7 May 2014 from Aik, which enclosed the Application Form and the FHR signed by the Insured earlier that day.[70] The plaintiff categorically denied receiving the email dated 7 May 2014.[71] The plaintiff engaged a computer forensic expert, Ms Lee Catherine Susan ("Lee") from KordaMentha Pte Ltd to provide findings in relation to the authenticity of the nine emails and whether the emails were sent by Aik and received by the plaintiff.

43 Lee's expert report stated the following:

(a) There was no evidence that the emails had been manipulated with. However, because of the limited data and information that she had been provided with to undertake her analysis, she was unable to conclude whether the original emails had been manipulated or altered.[72]

(b) The emails appeared to be sent from Aik at his email address and transmitted to a Google mail server for deliver to the plaintiff at her email address.[73]

(c) Proof of receipt of the emails should be obtained from the plaintiff's mailbox or mail server. As she had been instructed and provided with limited data and information, she was unable to provide an opinion on whether the emails were received by the plaintiff.

44 Lee explained that by examining the plaintiff's mailbox or mail server, she would still not know whether an email was received if the email had been deleted, but, obviously, if the email was received and had not been deleted, she would be able to confirm the same.[74] Lee testified that she was not instructed to examine the plaintiff's mailbox or mail server and when she asked about doing so, she was instructed not to.[75] The plaintiff first claimed that Lee did not ask

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for access to her email account.[76] The plaintiff subsequently changed her evidence and said that she could not recall whether Lee asked her for access to her email account.[77]

45 I accepted Lee's evidence. In my view, the plaintiff did not want to give Lee access to her email account. In the circumstances, the reasonable inference was that the plaintiff did receive the emails.

46 In addition, the plaintiff lied to the defendant in the Death Claim Form that the Insured did not have any other insurance policies.[78] The plaintiff's explanation was that Shirley helped her with the form and that Shirley told her there was no need to disclose the Insured's other policies.[79] I did not accept the plaintiff's evidence that she had simply followed Shirley's advice. In my judgment, the plaintiff did not want to disclose the number of claims that she was making. This was evident from the plaintiff's WhatsApp messages with Shirley relating to the plaintiff's claim on the policy issued by Manulife. In the WhatsApp messages, the plaintiff confirmed that the Manulife agent did not know how many claims she was making and that there was no need to state how many claims she was making.[80]

47 The plaintiff also lied in her application for Grant of Probate. She submitted a schedule of assets (see [14] above) that she clearly knew was incorrect. Further, in her Statement in support of her application for Grant of Probate, the plaintiff stated that the Insured's estate did not exceed $3m;[81] the plaintiff knew this was false.

48 Based on all the evidence before me, I concluded that (a) the Insured and the plaintiff did not inform Aik about the Insured's applications for other life policies made before 7 May 2014, or the Insured's applications for other life

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policies made between 7 May 2014 and 30 June 2014, and (b) Aik did not advise the Insured and the plaintiff that there was no need to disclose pending applications or policies issued by other insurers.

Whether the misrepresentations and non-disclosures were fraudulent?

49 The Insured clearly knew that he had made applications for other life policies. I found that Aik did not advise him or the plaintiff that there was no need to disclose pending applications or applications to other insurers. In the circumstances, there was no doubt that the Insured's misrepresentations and non-disclosures were deliberate and that he knew they were false. The Insured's misrepresentations and non-disclosures were therefore fraudulent.

Conclusion

50 The Insured had fraudulently misrepresented and/or failed to disclose to the defendant his applications for other life policies as of 7 May 2014 and his applications for other life policies made between 7 May 2014 and 30 June 2014.

51 I would add that the plaintiff had also submitted that the Application Form was completed by Aik. This was disputed by Aik. In any event, in my view, even if Aik did complete the Application Form, that fact did not assist the plaintiff. Aik would have completed the Application Form based on the Insured's input. Further, in completing the Application Form, Aik would have been acting as the Insured's agent: *National Employers' Mutual General Insurance Association Ltd v Globe Trawlers Pte Ltd* [1991] 1 SLR(R) 550 at [31]–[33].

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Whether the defendant was induced by the misrepresentations?

52 Mr Ho Chee Meng ("Ho"), the defendant's Head of New Business, testified that:

> (a) The Insured's annual income and insurance history (including pending applications) were material to the underwriting of the Policy. In particular, they were material to determining whether his income and financial resources justified the total amount of coverage or proposed coverage. AIA would not accept the Insured's application if the total amount of coverage or proposed coverage was above AIA's per life limit, which was expressed as a multiple of the Insured's annual income.[82]
>
> (b) Pursuant to the Income Multiple Table in the AIA Underwriting Guidelines, AIA's per life limit for life insurance policies was 30 times the annual income of the life to be insured, if the life to be insured was between 20 to 40 years of age.[83]
>
> (c) The total sum of the existing and proposed coverage was subject to the per life limit in order to ensure that it was proportionate to the applicant's income and financial needs of the life to be insured. This was consistent with well-established underwriting practice in Singapore for life insurance policies.[84]
>
> (d) In accordance the established practice in the insurance industry in Singapore, the AIA Underwriting Guidelines, the underwriting assessment takes into account both existing policies and pending applications with *all* insurers when comparing against the per life limit.[85]

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(e) Information on existing policies with and pending applications to other insurers are material to the underwriting process because they may guide the underwriter to ask further questions.[86]

(f) In the Insured's case, based on his age and disclosed annual income, the per life limit for his total coverage was $2,250,000.[87] The underwriting note dated 14 May 2014 in respect of the Insured's application for the Policy stated that the Insured's total sum assured was within AIA's life per limit and AIA relied on and/or was induced by the information provided and representations made by the Insured and had issued the Policy to the Insured on that basis.[88]

(g) AIA would have declined the Insured's application for the Policy if AIA had known of the Insured's then existing and pending applications for life policies.[89]

53 I accepted Ho's evidence that the Insured's representations as to his total assured sum was taken into account in his decision to approve the Insured's application for the Policy, and that if the Insured had given full disclosure of his existing and pending applications for life policies, the Insured's application would have been rejected.

Whether the defendant had waived its rights under the Policy?

54 In her Reply (Amendment No 1), the plaintiff pleaded that the defendant had waived its rights in respect of the Insured's misrepresentations and/or non-disclosures.[90] The plaintiff did not plead any particulars as to how the waiver came about.

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55 In closing submissions, the plaintiff first submitted that the defendant had waived its rights because it had renewed the Policy in 2015 and 2016 despite having told by the Insured and/or the plaintiff (through Aik) about the Insured's other existing and pending applications for life policies.[91] Upon the defendant pointing out that there were no renewals because the Policy was for a five-year term from 2014 to 2019, the plaintiff then submitted that the waiver arose because the defendant had not voided the Policy earlier.[92]

56 I rejected the plaintiff's case on waiver. First, the particulars of the alleged waiver had not been pleaded. Second, I had found that the Insured and the plaintiff had not informed Aik about the Insured's other existing and pending applications for life policies. Third, the plaintiff had not shown how the Insured had suffered prejudice.[93]

The basis clause

57 The defendant also relied on the following basis clause in the Application Form:

> **DECLARATION**
>
> …
>
> 2. I/We declare that the statements and answers in this application together with any required questionnaire or amendments (the "Information") are full, complete, true and correct and that no information or material has been withheld. I/We understand that AIA Singapore, believing the Information to be such, will rely and act on the Information accordingly. I/We further agree that the Information shall form the basis of the contract between the parties hereto. I/We understand that if any of the Information is not full or complete or true or correct, the Policy issued hereunder may be void and I/we may receive nothing from the policy.

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58 *Principles of Insurance Law* describes the effect of a basis clause as follows (at p 237):

> The use of a basis clause is by far the most common way warranties are created in an insurance contract. When an insured warrants the truth or accuracy of the statements given in a proposal form, the insurer is entitled to avoid the contract *ab initio* if the statements are inaccurate even though they have no effect on the insured risk. The insurer is not obliged to show any causal link between the misstatement and the loss which takes place. Equally, if there is a misstatement in a proposal form containing a basis clause, the insurer is also not obliged to show that the misstatement constitutes a fact material to the risk insured, namely, that the information would have influenced a prudent insurer in his decision whether to take on the risk or the amount of premium to be charged for undertaking the risk.

59 I agreed with the defendant that the basis clause meant that the Insured's Answers became warranties or conditions precedent and that the effect of the Insured's Answers being false was that the defendant was also entitled to avoid the Policy on this ground.

The incontestability clause

60 The plaintiff relied on a term of the Policy which provided that the validity of the Policy could not be contested after two years from the issue date except for failure to pay premiums or fraud.[94] However, as I had found that the Insured's misrepresentations and non-disclosures were fraudulent, the defendant was entitled to rely on the fraud exception in the incontestability clause.

Conclusion

61 For the above reasons, I found that the defendant was entitled to avoid the Policy. Accordingly, I dismissed the plaintiff's claim and ordered the

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plaintiff to pay costs fixed at $60,000 plus disbursements to be fixed by me if not agreed.

Chua Lee Ming
Judge of the High Court

Tan Yew Fai (Y F Tan & Co) for the plaintiff;
Tan Teck San Kelvin and Chng Teck Kian Desmond (Zhuang Deqiang) (Drew & Napier LLC) for the defendant.

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1 1 Agreed Bundle ("AB") 385.
2 2 AB 807–808.
3 1 AB 328–333.
4 1 AB 328.
5 1 AB 333.
6 1 AB 26–39.
7 1 AB 15.
8 1 AB 43–59.
9 1 AB 42.
10 1 AB 41.
11 2 AB 734–753.
12 1 AB 102–188.
13 1 AB 301–326.
14 1 AB 261–288.
15 1 AB 289.
16 1 AB 237–300.
17 1 AB 349–354.
18 1 AB 361.
19 1 AB 338–361.
20 2 AB 764–770.
21 1 AB 191–192.
22 Plaintiff's Bundle of Documents ("PBD") 478 (paras 20 and 21(b)).
23 2 AB 809–813.
24 2 AB 855–957, at 864–865.

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[25] NE, 18 November 2020, at 41:6–9, 44:18–45:7.
[26] 1 AB 386.
[27] NE, 18 November 2020, at 45:1–7.
[28] 2 AB 827–828.
[29] 2 AB 964–999, at 969.
[30] Defence (Amendment No 2), at para 12.
[31] Reply (Amendment No 1), at para 2.6(iii).
[32] Reply (Amendment No 1), at para 2.4.
[33] Reply (Amendment No 1), at paras 2.7–2.9.
[34] Reply (Amendment No 1), at para 2.4.
[35] Reply (Amendment No 1), at paras 5–6.
[36] Reply (Amendment No 1), at paras 9.2 and 9.6.
[37] Reply (Amendment No 1), at para 8.
[38] NE, 17 November 2020, at 89:30–90:3.
[39] NE, 17 November 2020, at 139:21–23.
[40] PBD 123 (at 11:57); NE, 17 November 2020, at 139:26–140:3 and 140:14 – 18.
[41] PBD 124 (at 21:03); NE, 17 November 2020, at 140:20–22.
[42] PBD 124 (at 21:35).
[43] PBD 124 (at 21:35 and 21:36); NE 18 November 2020, at 33:18–34:3.
[44] PBD 124 (at 21:35 and 21:36).
[45] PBD 124 (at 21:37) and PBD 125 (at 21:38).
[46] PBD 275 (at 21:37).
[47] NE, 17 November 2020, at 141:12–144:13, 145:23–148:30.
[48] PBD, at p 269 (at 23:27).
[49] PBD 124 (at 21:34).
[50] NE, 17 November 2020, at 141:3–4, 142:21–26.
[51] 1 AB 128–147 (at 133).
[52] 17 November 2020, at 120:21–121:24.
[53] 1 AB 261–270 (at 267).
[54] NE, 17 November 2020, at 121:29–123:5.
[55] 1 AB 349–354 (at 353).
[56] NE, 17 November 2020, at 126:1–127:2.
[57] 1 AB 220–226 (at 225).
[58] NE, 17 November 2020, at 123:20–125:13.
[59] 1 AB 267.
[60] 1 AB 225 and 353.
[61] NE, 17 November 2020, at 127:8–27.
[62] NE, 17 November 2020, at 34:5–35:4.
[63] 2 AB 967.
[64] NE, 18 November 2020, at 98:1–5.
[65] Defendant's Bundle of Documents ("DBD") 454.
[66] See DBD 453.
[67] NE, 18 November 2020, at 99:28–29.
[68] Aik Chin Yeow's AEIC, at para 26.
[69] Exhibits D3–D11.
[70] Exhibit D7.
[71] NE, 18 November 2020, at 2:13 to 2:18
[72] Lee Catherine Susan's AEIC, at p 14, para 49.

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[73] Lee Catherine Susan's AEIC, at p 14, para 51.
[74] NE, 17 November 2020, at 18:27–19:2 and 19:15–27.
[75] NE, 17 November 2020, at 18:6–19, 19:3–13, 19:28–30.
[76] NE, 18 November 2020, at 9:20–21.
[77] NE, 18 November 2020, at 10:17–22.
[78] 1 AB 372.
[79] NE, 17 November 2020, at 153:4–154:17.
[80] PBD 169 (at 14:26).
[81] 1 AB 394–395.
[82] Ho Chee Meng's AEIC, at paras 13.
[83] Ho Chee Meng's AEIC, at para 14.
[84] Ho Chee Meng's AEIC, at para 15.
[85] Ho Chee Meng's AEIC, at paras 20–21.
[86] Ho Chee Meng's AEIC, at para 23.
[87] Ho Chee Meng's AEIC, at para 25.
[88] Ho Chee Meng's AEIC, at paras 27–28.
[89] Exhibits D18 and D19; NE, 19 November 2020, at pp 35:29–37:28.
[90] Reply (Amendment No 1), at para 8.
[91] NE, 20 November 2020, at 35:26–37:9.
[92] NE, 20 November 2020, at 37:12–29.
[93] NE, 20 November 2020, at 37:30–38:8.
[94] 1 AB 316.

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