COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT

Common Law and Equity Division
2019/CLE/gen/00577

BETWEEN

MERTIS B. ARCHER

Claimant

AND

FAMILY GUARDIAN INSURANCE COMPANY LTD.

Defendant

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT

Common Law and Equity Division
2019/CLE/gen/00578

BETWEEN

PAMELA RUSSELL

Claimant

AND

FAMILY GUARDIAN INSURANCE COMPANY LTD.

Defendant

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT

Common Law and Equity Division
2019/CLE/gen/00763

BETWEEN

NICOLETTE S. CLARKE

Claimant

AND

FAMILY GUARDIAN INSURANCE COMPANY LTD.

Defendant

Before: **The Honourable Madam Senior Justice Deborah E. Fraser**

Appearances: **Mr. Timothy A. Eneas K.C. and Ms. Ashley Sands for the Claimants**

Mr. Robert Adams K.C. and Mr. Edward J. Marshall, II for the Defendant

Hearing Date: **03 October 2023**

Statutory Trust – Construction of Statutory Trust – Revocable Trust – Irrevocable Trust - Resulting Trusting – Express Terms of Trust - Life Insurance Policy – Section 7 of the MWPA, 1884 – Sections 158(2), 159(5) and 241 of the Insurance Act, 2009 - Statutory Interpretation – Express terms of Contract - Change of Beneficiary Clause

JUDGMENT

FRASER, SNR. J:

[1.]This is the trial of an action commenced by Mrs. Mertis B. Archer ("**Mrs. Archer**"), Ms. Pamela Russell ("**Ms. Russell**"), and Ms. Nicolette S. Clarke ("**Ms. N. Clarke**" and collectively, the "**Claimants**") against Family Guardian Insurance Company Ltd ("**FGI**" and all parties collectively referred to as the "**Parties**") concerning: (i) the efficacy and impact of section 7 of the Married Women's Property Act, Chapter 129 ("**MWPA**") on certain life insurance policies issued by FGI; (ii) the efficacy and impact of sections 158 and 241 of the Insurance Act, Chapter 347 (**"the Insurance Act")** on certain life insurance policies issued by FGI; and (iii) the meaning and effect of 'Change of Beneficiary' clauses in certain life insurance policies issued by FGI.

[2.]By order of this Court dated 15 March 2023, the Claimants' actions were ordered to be heard one right after the other as the matters touch and concern similar issues and areas of law.

Background

2019/CLE/gen/00577 – Mrs. Archer v FGI

[3.]On 28 July 2009, FGI issued a Term Life Policy designated Number 20955581 ("**Term Policy**") to Mrs. Archer. The designated beneficiaries under the Term

Policy were Mrs. Archer's husband, Mr. Bertram Archer, and her children, Karla Prince, Karie Prince, Damian Tomlinson and Karow Prince.

[4.] On 28 December 2011, Mrs. Archer converted the Term Policy into a Select Life Plan Policy of Insurance designated Number 21208866 ("**SL Policy**"). The beneficiaries remained the same. It is alleged that, at no time prior to the issuance of the policies, were such policies designated as irrevocable.

[5.] Mrs. Archer's husband passed away on 20 January 2016. The SL Policy states under the "Owner and Beneficiary" clause that the insured may change any beneficiary without their written consent, unless otherwise herein or by law provided.

[6.] In February of 2016, Mrs. Archer instructed FGI to remove her husband as a beneficiary under the SL Policy, thereby leaving her four children as the sole beneficiaries. FGI advised Mrs. Archer that she could not make any changes to the SL Policy until her husband's estate was probated. She also attempted to obtain the cash surrender value of the SL Policy, but FGI did not allow her to do so.

[7.] On 01 July 2016, Mrs. Archer filed a formal complaint against FGI with the Insurance Commission of The Bahamas ("**ICOB**") for FGI's failure to carry out her instructions to remove her late husband as a beneficiary under the SL Policy.

[8.] On 08 March 2017, FGI sent a letter to ICOB (in relation to the SL Policy) advising that Mrs. Archer would not be permitted to change her beneficiaries as a resulting trust was created by virtue of section 7 of the MWPA.

[9.] Consequently, on 29 April 2019 and 05 October 2023, Mrs. Archer filed an Originating Summons and an Amended Originating Summons (respectively) along with a supporting affidavit on 03 May 2022 against FGI seeking a determination of the Court on the following questions and relief:

(a) A declaration that under the terms of (i) the Policy of Insurance issued by the Defendant to Mertis Blackwood Archer designated as No. 20955581 effective as of 28 July 2009 and (ii) section 7 of the MWPA, 1884, the SL Policy created a statutory trust in favor of her husband, Bertram Archer and her children, Karla Prince, Karie Prince, Damian Tomlinson and Karow Prince revocable in nature or alternatively rendered the interests (if any) of Betram Archer, Karla Prince,

Karie Prince, Damian Tomlinson and Karow Prince as beneficiaries under the trust defeasible and revocable.

(b) A declaration that in the premises set out in paragraph (a) above and upon the said Betram Archer predeceasing Mrs. Archer to FGI to remove Betram Archer as a beneficiary under the Policy leaving her four children to remain as the sole beneficiaries ("**Instructions**") is valid and fully effective under the statutory trust created under section 7 of the MWPA, 1884.

(c) Pursuant to section 159 of the Insurance Act 2009, a declaration that having not expressed the designation of the beneficiaries under the SL Policy as irrevocable, the Instructions are valid and fully effective.

(d) A declaration that upon the death of the Insured the death benefit payable by FGI under the SL Policy will be payable to Mrs. Archer's four children as identified in paragraph (a) above.

(e) Such further or other relief as the Court deems just; and

(f) That provision be made for the costs of this action.

2019/CLE/gen/00578 – Ms. Russell v FGI

[10.] On 13 November 1989, FGI issued the Whole Life Policy designated Number 9303983 ("**WL Policy**") to Ms. Russell. Ms. Russell's daughter, Ms. Arimentha Clarke ("**Ms. A. Clarke**"), was the beneficiary under the WL Policy. Ms. A. Clarke passed away on 25 June 2008. The WL Policy states under the 'Change of Beneficiary' clause that Ms. Russell may change her beneficiary upon written request.

[11.] After Ms. A. Clarke's passing, Ms. Russell attended FGI's office numerous times and requested that FGI change the beneficiary of the WL Policy to Ms. Russell's grandchildren, Rikera Ingraham and Michael Bain Jr. who are two of Ms. Clark's children. On each visit to FGI, it refused to effect the requested change.

[12.] An unidentified insurance agent of FGI purportedly advised Ms. Russell to cease making payments on the WL Policy as FGI refused to allow her to change her beneficiary. Ms. Russell stopped making payments on 27 June 2013, thus the WL Policy lapsed.

[13.] Ms. Russell then formally wrote to FGI on 24 October 2013 with the same request to have her grandchildren designated as her beneficiaries under the WL Policy. She sent a copy of this letter to The Insurance Commission of The Bahamas.

[14.] On 30 January 2014, FGI sent a letter to Ms. Russell stating that FGI was prepared to allow the beneficiary change to be made provided that, if Ms. A. Clarke had a will, it contained a bequest of the proceeds payable under the WL Policy to Ms. Russell's grandchildren. FGI also stated that in the event that Ms. A. Clarke died intestate, that it required confirmation that the two named grandchildren were Ms. A. Clarke's only children and a release from Ms. A. Clarke's husband containing a hold harmless provision in respect of future claims in relation to the WL Policy.

[15.] On 10 March 2016 and 06 March 2017, The ICOB wrote to FGI in relation to their investigation of Ms. Russell's WL Policy and FGI's failure to change her beneficiary.

[16.] On 23 March 2016 and 23 March 2017, FGI wrote to the Insurance Commission of The Bahamas and advised that Ms. Russel would not be permitted to change her beneficiary because of a trust that was created by virtue of section 7 of the MWPA, 1884.

[17.] Subsequently, Ms. Russell filed an Originating Summons and an Amended Originating Summons on 29 April 2019 and 05 October 2023 (respectively) along with a supporting affidavit on 05 October 2021 seeking the determination of the Court on the following questions and relief:

(a) A declaration that under the terms of (i) the Policy of Insurance issued by FGI to Ms. Russell designated No. 9303983 effective as of 13 November, 1989; and (ii) section 7 of the MWPA, 1884 ("MWPA") the WL Policy created a statutory trust in favor of Ms. A. Clarke revocable in nature or alternatively rendered the

interest (if any) of Ms. A. Clarke as a beneficiary under the trust defeasible and revocable.

(b) A declaration that in the premises set out in paragraph (a) above and upon the said Ms. A. Clarke predeceasing Ms. Russell on 5 June 2008, the subsequent instructions by Ms. Russell to FGI to change the beneficiary under the WL Policy to her grandchildren, Rikera Shavonne Ingraham and Michael Cleon Xavier Bain Jr. dated 24 October 2013 was valid and fully effective thereby designating the said Rikera Ingraham and Michael Bain Jr. as the sole beneficiaries.

(c) A declaration that upon the death of FGI the death benefit payable by the Defendant under the WL Policy will be payable to Rikera Ingraham and Michael Bain Jr.

(d) Such further or other relief as the Court deems just; and

(e) That provision be made for the costs of this action.

2019/CLE/gen/00763 – Ms. N. Clarke v FGI

[18.] On 16 October 1995, FGI issued a Whole Life Policy designated Number 9216275 ("**WL Policy 2**") to Ms. N. Clarke's mother, Ms. Almanda Clarke. Her mother's name under the policy was incorrectly spelled as "Almada" Clarke and after her death Ms. Clarke swore an affidavit with Andrew Clarke confirming that the name "Almada" was an error and should have been "Almanda".

[19.] The original designated beneficiary under the WL Policy was Ms. N. Clarke's brother, Simeon L. Clarke. Her brother passed away on 22 December 2013. The WL Policy 2 states under the 'Change of Beneficiary' clause that the life insured (being Ms. Clarke's mother) can change the beneficiary upon written request.

[20.] On 09 February 2015, Ms. Almanda Clarke made written application to FGI to change her beneficiary under the WL Policy 2 from Ms. Clarke's brother to Ms.

Clarke. FGI refused to comply with the request and has declined to acknowledge Ms. Clarke as the new beneficiary under the WL Policy 2.

[21.] On 15 May 2015, Ms. Clarke's mother filed a formal complaint with the ICOB against FGI for its failure to carry out her instructions to remove Simeon L. Clarke as the named beneficiary and replace him with Ms. Clarke.

[22.] On 10 October 2015, Ms. Almanda Clarke passed away. The death benefit payable under WL Policy 2 has not been paid to Ms. Clarke.

[23.] On 05 June 2019 and 05 October 2023, Ms. Clarke filed an Originating Summons and an Amended Originating Summons (respectively) along with a supporting affidavit on 21 September 2021 seeking the determination of the Court on the following questions and relief:

(a) A declaration that under the terms of (i) the Policy of Insurance issued by FGI to Ms. Clarke's mother, Almanda M. Clarke (now deceased) designated as No. 9216275 effective as of 16 October 1995 and (ii) section 7 of the MWPA, 1884, the Policy created a statutory trust in favor of Simeon L. Clarke revocable in nature or alternatively rendered the interest (if any) in Simeon L. Clarke as a beneficiary under the trust defeasible and revocable.

(b) A declaration that in the premises set out in paragraph (a) above and upon the said Simeon L. Clarke predeceasing Ms. Almanda Clarke on 22 December 2014, the subsequent instructions by Ms. Almanda Clarke to FGI to change the beneficiary under the terms of WL Policy 2 to Ms. Clarke dated 09 February 2015 was valid and fully effective thereby designating Ms. Clarke as the sole beneficiary under the statutory trust created under section 7 of the MWPA.

(c) A declaration that upon the death of Ms. Almanda Clarke on 10 October 2015 the death benefit payable by FGI under the WL Policy 2 is payable to Ms. Clarke.

(d) An order directing FGI to pay the death benefit under the WL Policy 2 in the sum of B$5,000.00 to Ms. Clarke.

(e) Such further or other relief as the Court deems just; and

(f) That provision be made for the costs of this action.

Issues

[24.] The Claimants identify the following issues for the Court's determination:

(a) How are the terms and purpose of the statutory trusts created under section 7 of the MWPA ascertained?

(b) What is the meaning and effect of the provisions in the policy authorizing the insured to change the designated beneficiary?

(c) What interest (if any) is vested in the designated beneficiaries?

(d) Does the law of perpetuities have any effect on the operation of the trusts created under the policies and the MWPA?

[25.] FGI did not expressly provide issues for the Court to determine.

[26.] Based on my understanding of the Parties' respective cases and the relevant law, I frame the issues as follows:

(i) Whether any of the policies fall within the ambit of section 7 of the MWPA?

(ii) Whether section 7 of the MWPA vests an absolute interest in favor of the originally named beneficiary under the respective life insurance policies?

(iii) What impact (if any) the 'Change of Beneficiary' clauses have on the respective life insurance policies?

(iv) What impact (if any) the "Conformity with Statutes" clauses have on the respective life insurance policies?

[27.] I will explore each issue later in my judgment. I turn now to the evidence before me.

Evidence

Mrs. Archer's Evidence

[28.] On 03 May 2022, Mrs. Archer filed the Affidavit of Mertis Archer ("**Archer Affidavit**") which provides essentially the background history as stated earlier in this judgment. The affidavit also exhibits the Term Policy, the SL Policy, the death certificate of her husband, Mr. Betram Archer, the formal complaint filed against FGI to the ICOB dated 01 July 2016, and a copy of a letter sent by FGI to the ICOB dated 08 March 2017 outlining FGI's position relating to, inter alia, its inability to

comply with Mrs. Archer's request to change the beneficiary designation under the SL Policy.

Ms. Russell's Evidence

[29.] On 05 October 2021, Ms. Russell filed the Affidavit of Pamela Russell ("**Russell Affidavit**") which also provides the history of the matter as stated earlier in the judgment. It also exhibits the WL Policy, the death certificate of Ms. Russell's daughter, Arimentha Clarke, a letter dated 24 October 2013 written by Ms. Russell to FGI requesting her grandchildren be the designated beneficiaries under the WL Policy in place of her deceased daughter (a copy of the letter was also sent to the ICOB), a letter from FGI to the ICOB dated 30 January 2014 stating, inter alia, it was prepared to allow the beneficiary change provided that certain conditions were satisfied, letters dated 10 March 2016 and 06 March 2017 from the Insurance Commission of The Bahamas both to FGI relating to an investigation of the WL Policy and FGI's failure to change the beneficiaries as requested by Ms. Russell and letters dated 23 May 2016 and 23 March 2017 from FGI to the Insurance Commission of The Bahamas in essence stating that Ms. Russell would not be able to change her beneficiaries based on section 7 of the MWPA.

Ms. Clarke's Evidence

[30.] On 21 September 2021, Ms. Clarke filed the Affidavit of Nicolette S. Clarke ("**Clarke Affidavit**") which also provides the background of her matter as stated earlier in this judgment. It also exhibits the WL Policy 2, the death certificate of her brother, Simeon L. Clarke, a written request dated 09 February 2015 from Almanda Clarke to FGI requesting a change of beneficiary from Simeon L. Clarke to Ms. Clarke, a formal complaint dated 15 May 2015 from Mrs. A. Clarke to the ICOB relating to FGI's refusal to make the aforementioned beneficiary change and the death certificate of Mrs. A. Clarke.

FGI's Evidence

FGI's Evidence in Response to Mrs. Archer's Evidence

[31.] On 12 July 2023, FGI filed the Affidavit of Krystle Saunders ("**Saunders Affidavit 1**") which states that: (i) she ("**Ms. Saunders**") is General Counsel for FGI; (ii) on 28 July 2009, FGI issued to Ms. Archer the Term Policy (an application for insurance completed by Ms. Archer is exhibited to the affidavit); (iii) on 27 January 2012, Ms. Archer submitted a 'Request for Conversion of Term Policy' to FGI. Mrs. Archer sought a conversion of the Term Policy to the SL Policy with no change of beneficiaries or value (the request is exhibited to the affidavit); (iv) On 12 March 2012, an addendum to the Term Policy was issued by FGI to confirm the SL Policy was also issued to her, which named Mrs. Archer's husband and children as the beneficiaries (a copy of the addendum is exhibited to the affidavit); (v) According to the SL Policy, Mrs. Archer had the ability to change any beneficiary of the policy without the written consent of the beneficiary unless otherwise therein or by law provided; and (vi) On 20 January 2016, Mrs. Archer's husband ("Mr. Archer") died. Shortly after his death, Mrs. Archer asked FGI to remove him as a named beneficiary under the SL Policy. In response, FGI informed her that she could not do so by virtue of section 7 of the MWPA, which created a trust in his favor. FGI, therefore denied the request.

[32.] The Saunders Affidavit 1 further provides that: (i) On 01 July 2016, Mrs. Archer lodged a formal complaint to ICOB asserting, among other things, that she was entitled to remove Mr. Archer as a beneficiary of the SL Policy based on its terms (the complaint is exhibited to the affidavit); (ii) After the complaint was lodged, FGI and ICB exchanged various email correspondence over the question of whether a policy holder may unilaterally change the beneficial designation in a life insurance policy captured by section 7 of the MWPA; (iii) On 06 March 2017, the ICB shared with FGI the contents of a legal opinion obtained in relation to the questions (the correspondence is exhibited to the affidavit); (iv) By letter dated 08 March 2017, FIG informed ICB that Mrs. Archers' SL Policy was a continuation of the Term Policy and that in light f the provision of section 7 of the MWPA, the Plaintiff could not remove Mr. Archer as a beneficiary of the SL Policy (the letter

is exhibited to the affidavit); (v) By letter dated 23 March 2017, FGI reiterated to ICOB that that owners of policies like that of Mrs. Archer were precluded, as a matter of law, from changing the beneficiaries of their policies if the beneficiaries were either the spouse or children of the policy owner based on section 7 of the MWPA (the letter is exhibited to the affidavit); and (vi) By letter dated 30 March 2017, Ms. Saunders advised Mrs. Archer that FGI was unable to allow her to change Mr. Archer as beneficiary under the terms of the policy (the letter is exhibited to the affidavit).

FGI' Evidence in Response to Ms. Russell's Evidence

[33.] On 12 July 2023, FGI filed the Affidavit of Krystle Saunders ("**Saunders Affidavit 2**") which provides: (i) the history of the matter as outlined above; (ii) Ms. Saunders searched FGI's records and have not been able to locate any record of Ms. Russell's attendance at FGI's office for the purpose of requesting that the name of the beneficiary in her policy be changed from Mrs. Clarke to Rikera Shavonne Ingraham and Michael Cleon and Xavier Bain Jr ("**Grandchildren**"). Ms. Saunders states that she has not been able to locate an "Application for Change" from which is required when making any such request; (iii) On 30 January 2014, FGI informed Ms. Russell that it was prepared to permit the change of the beneficiary designation in the policy as requested subject to certain conditions being first satisfied, namely that: (a) the presentation of a certified copy of Mrs. Calrke's Will, if she had one, indicating the proceeds of the policy were to be paid to the Grandchildren; or (b) if Mrs. Clarke did not have a Will, confirmation that the Grandchildren are the only two children born to Mrs. Clarke, an updated beneficiary designation form executed by her and a release from Mrs. Clarke's husband on terms confirming that he would hold FGI harmless against any future claims related to the policy (a copy of the letter is attached to the affidavit); and (iv) on 10 March 2016, FGI received a letter from ICOB as a result of a complaint made by Ms. Russell to it on 24 October 2013 regarding her request that FGI change the name of the beneficiary in the policy (the letter is attached to the affidavit).

[34.] The Saunders Affidavit 2 further provides that: (i) by the letter from ICOB, ICOB believed that when Mrs. Clarke died the trust created by the policy came to

an end. Therefore, Ms. Russell was free to change the beneficiary designated in the policy. FGI, however, disagreed with this position and sent a letter to ICBO outlining the basis for its disagreement (the letter dated 23 March 2016 from FGI to ICOB); (ii) on 06 March 2017 ICOB sent another letter to FGI in which ICOB shared the contents of a legal opinion obtained by ICOB on the question of whether or not an insured could change the beneficiary of a life insurance policy captured by section 7 of the MWPA (the letter is attached to the affidavit); (iii) On 07 March 2017, Ms. Saunders along with other representatives of FGI met with representatives of ICOB to discuss the respective positions that had been advanced between them, but the parties were unable to reach an agreement on the issue; and (iv) by letter dated 23 March 2017 FGI maintained its earlier position that an insured may not unilaterally change the beneficiary designation of a life insurance policy captured by section 7 of the MWPA (the letter is attached to the affidavit).

FGI's Evidence in Response to the Evidence of Ms. N Clarke's Evidence

[35.] On 12 July 2023, FGI filed the Affidavit of Krystle Saunders ("**Saunders Affidavit 3**") which provides that: (i) She is General Counsel for FGI; (ii) on 16 October 1996, FGI issued the WL Policy 2 to Ms. N. Clarke's mother, Mrs. A. Clarke (the policy is exhibited to the affidavit). According to the terms of the WL Policy 2, the value of the death benefit payable to Mrs. A. Clarke's husband ("**Mr. Clarke**") was $5,000.00; (iii) On 22 December 2013, Mr. Clarke died; (iv) On 07 January 2015 and 09 February 2015, Mrs. A. Clarke completed two 'Application for Change' forms in which she indicated that she wanted to change the beneficiary designation in the WL Policy 2. Initially, Mrs. A. Clarke sought to change the beneficiary designation from Mr. Clarke to Emily L. Clarke, whom she described as her daughter. Thereafter, she applied to change the beneficiary designation from Mr. Clarke to Ms. Clarke, whom she also described as her daughter (the two application forms are exhibited to the affidavit); (v) In 2015, FGI received two letters from Baycourt Chambers (Mrs. A. Clarke's attorneys at the time). Ms. Saunders was not able to locate the letters, however, on 20 March 201, FGI did respond to them outlining its position with respect to the request made by Mrs. A. Clarke, namely that such requested could not be implemented as a matter of law (the

20 March 2015 letter is exhibited to the affidavit); and (vi) Mrs. A. Clarke died on 10 October 2015.

[36.] The Saunders Affidavit further provides that: (i) On 06 March 2017, FGI received a letter from ICB (it is unclear who or what ICB is) sharing a legal opinion obtained on the question of whether an insured person could change the beneficiary designation of a life insurance plan captured by section 7 of the MWPA (the letter is attached to the affidavit); (ii) On 07 March 2017, representatives of ICB and FGI met to discuss the question of whether it is legally possible for an insured person to unilaterally change the beneficiary of a life insurance policy captured by section 7 of the MWPA. ICB and FGI were unable to reach an agreement; and (iii) By letter dated 23 March 2017, FGI informed the ICB that, in its view, an insured person could not change the beneficiary designation of a life insurance policy captured by section 7 of the MWPA (the letter is exhibited to the affidavit).

Law, Discussion and Analysis

Relevant Legislative Regime

[37.] The current legislative framework is integral to the issues before me. Accordingly, I shall provide and explore the relevant legislation to the actions. **Section 7 of the MWPA** states:

> "7. A married woman may, by virtue of the power of making contracts hereinbefore contained, effect a policy upon her own life or the life of her husband for her separate use; and the same and all benefit thereof shall inure accordingly.
>
> **A policy of assurance effected by any man on his own life, and expressed to be for the benefit of his wife, or of his children, or of his wife and children, or any of them, or by any woman on her own life, and expressed to be for the benefit of her husband, or of her children, or of her husband and children, or any of them, shall create a trust in favour of the objects therein named, and the moneys payable under any such policy shall not, so long as any object of the trust remains unperformed, form part of the estate of the insured, or be subject to his or her debts**:

Provided that if it shall be proved that the policy was effected and the premiums paid with intent to defraud the creditors of the insured, they shall be entitled to receive, out of the moneys payable under the policy, a sum equal to the premiums so paid. The insured may by the policy, or by any memorandum under his or her hand, appoint a trustee or trustees of the moneys payable under the policy, and from time to time appoint a new trustee or new trustees thereof, and may make provision for the appointment of a new trustee or new trustees thereof, and for the investment of the moneys payable under any such policy. In default of any such appointment of a trustee, such policy, immediately on its being effected, shall vest in the insured and his or her legal personal representatives, in trust for the purposes aforesaid. If, at the time of the death of the insured, or at any time afterwards, there shall be no trustee, or it shall be expedient to appoint a new trustee, or new trustees, a new trustee, or new trustees may be appointed by any court having jurisdiction to make such appointment. The receipt of a trustee or trustees duly appointed, or, in default of any such appointment, or in default of notice to the insurance office, the receipt of the legal personal representative of the insured shall be a discharge to the office for the sum secured by the policy, or for the value thereof, in whole or in part.

[Emphasis added]"

[38.] In my view, the purpose of the highlighted portion of this section was to create a statutory trust appropriating life insurance policy funds to the spouse and/or child/children of the insured, without any such funds forming part of the insured's estate upon his/her demise (once the insured names his/her spouse and/or child/children as beneficiaries under the insurance policy). This also obviates the need to create a trust deed in relation to such funds. For clarity, the initial reference to "objects" as mentioned in section 7 of the MWPA refers to the beneficiaries named in the life insurance policy while the latter reference to "objects" refers to the purpose(s) of the life insurance policy. This aligns with the interpretation given to section 11 of the UK's MWPA, 1882 (which mirrors our section 7 of the MWPA)

as provided by Lord Hanworth MR in **Cousins v Sun Life Assurance Society** [1933] Ch. 126 ("**Cousins**").

[39.] It is also important to note that the trust is to last until its purpose is fulfilled. What is in dispute is the efficacy (if any) of section 7 to the respective life insurance policies. This will be explored later in my judgment.

[40.] For the purposes of this ruling, the relevant portions of the **Insurance Act**, are section 158(1) and (2), 159(5) and 241. Those sections provide as follows:

> "158.(1) The provisions of this section and sections 160 to 171, subject to anything to the contrary contained in those sections, shall apply in respect of policies taken out after the commencement of this Act.
>
> (2) **A policyholder may at the time the policy is taken out or at any time thereafter by declaration in writing, designate his personal representative or a named person to be the beneficiary under his policy and may subject to section 160 alter or revoke the designation by declaration in writing**.
>
> 159.**(1) Subject to subsections (3), (4) and (5) a policyholder may, by declaration in writing filed with the company at the time the policy is taken out or at any time thereafter, designate irrevocably a named person to be the beneficiary under the policy and, in such a case** —
>
> (a) the policyholder subject to section 171 may not during the lifetime of the named beneficiary, alter or revoke the designation without the consent of the beneficiary; and
>
> (b) the moneys payable under the policy are not subject to the control of the policyholder or the creditors of the policyholder and do not form part of his estate.
>
> (5) **A designation by a policyholder shall not be regarded as irrevocable unless the words creating the irrevocable designation are clear and unequivocal and are prominently displayed on the proposal form and**

signed by the policyholder and there is sufficient evidence that it was explained to the policyholder that the designation was irrevocable

241. The MWPA or any legislation in force relating to married persons' property, insofar as it creates a statutory trust of a life policy shall have no effect in relation to sections 158 to 167 of this Act.

[Emphasis added]"

[41.] I wish to highlight the express wording of section 158(1) – section 160 to 171 of the Act (unless the aforementioned provisions state otherwise) shall only apply to policies issued ***after*** the Act. Accordingly, it would appear that the only life insurance policy subject to such provisions would be Mrs. Archer's policy as hers was initially taken out in 2009 and thereafter in 2011. In essence, the aforementioned sections permit any policy holder to alter or revoke a named beneficiary under an insurance policy and such power is reserved in the policy holder.

[42.] I also note that, according to the Act, in order for any designation (of a beneficiary) under an insurance policy to be considered irrevocable, the language used to do so must be "clear and unequivocal", prominently displayed on the proposal form ***and*** there must be evidence confirming that the irrevocable nature of the insurance policy was explained to the policy holder. In my view, "clear and unequivocal" means that it is readily understood by anyone reading the documents and there is little to no room for confusion or different interpretation of the irrevocably nature of such designation so made.

[43.] Furthermore, section 241 overtly provides that the MWPA will have no effect on sections 158 to 167 of the Act. In my view, this means that the MWPA is inapplicable to the aforementioned sections and consequently, has no impact/effect on any such policy made after 2009 (in relation to altering or revoking named beneficiaries).

[44.] Lastly, I now turn to the **Trustees Act, Chapter 176** ("**TA**"). **Sections 3(1) and (2) and 96 of the TA** provides:

"3. (1) **The retention, possession or acquisition by the settlor of any one or more of the matters referred to in subsection (2) shall not invalidate a trust or the trust instrument** or cause a trust created inter vivos to be a testamentary trust or disposition or the trust instrument creating it to be a testamentary document.

(2) The matters referred to in subsection (1) are —

(a) any powers to revoke the trust or the trust instrument or any trusts or powers granted thereby, or to withdraw property from the trust;

(b) any powers of appointment or disposition over any of the trust property;

(c) any powers to amend the trust or the trust instrument;

(d) any powers to appoint, add or remove any trustees, protectors or beneficiaries;

(e) any powers to give directions to trustees in connection with the exercise of any of their powers or discretions;

(f) any provisions requiring the consent of the settlor to any act or abstention of trustees;

(g) any such other powers as are referred to in subsection (2)(a) to (h) of section 81;

(h) the appointment of the settlor as a protector of the trust;

(i) any beneficial interests of the settlor (including absolute beneficial interests) in the capital or income of the trust property or in both such capital and income; and

(j) any interests of the settlor in any companies or assets underlying the trust property and any control of the settlor over such companies or assets.

96. **This Act, except where otherwise expressly provided, applies to trusts including, so far as this Act applies thereto, executorships and**

<u>administratorships, constituted or created either before, on or after the commencement of this Act</u>.

[Emphasis added]"

[45.] From these sections, I glean the following: (i) a settlor retaining the power to, inter alia, change the beneficiaries named under the trust does not invalidate the trust; and (ii) the Trustees Act applies to any trust (unless otherwise expressly stated otherwise), whether created before, on or after the commencement of the TA. Consequently, as all three policies in the instant case are statutory trusts, which all have a change of beneficiary clause the TA applies to them and the settlor (or policy holder) retaining the power to change the named beneficiary does not invalidate the trust. I shall apply the legislation accordingly.

<u>Analysis of decided cases relevant to trust law, statutory trusts and life insurance policies in favor of a spouse and/or children</u>

[46.] I shall now review and analyze the relevant case law on the subject. Counsel has provided a plethora of cases on the subject. I have read through and considered them , but will not descend into each and every one of them. I will highlight the cases I believe are most material to the issues at hand.

[47.] In the English cases which I refer to, there is discussion of section 11 of the UK's MWPA, 1882 ("**UK Act**"). Our section 7 of the MWPA mirrors that section. Thus, the interpretation and reasoning provided in the following decisions provide extremely helpful insight on the issues the Court must decide.

[48.] In the case of **In re Adams Trust** (1883) 23 Ch. D. 525 ("**Adams**"), a husband took out an insurance policy in favor of his wife and children. His wife and one child pre-deceased him. The surviving children sought from the Court the appointment of a trustee and a declaration as to their rights under the terms of the policy. The Court held that, as there was a trust either for the wife for life with remainder to the children or in the alternative for the wife and children as joint tenants, the order was made with a view that the wife took no interest and that the surviving children took as joint tenants. In this case, the UK equivalent to our

section 7 of the MWPA applied. In ***Adams***, Chitty J made the following pronouncements:

> *"The view I take of the policy is this: it is a declaration of trust operating inter vivos, and is a good declaration of trust. To avoid any question of this kind the section says: "A policy of insurance effected by any married man on his own life, and expressed upon the face of it to be for the benefit of his wife or of his wife and children, or any of them, shall ensure and be deemed a trust for the benefit of his wife for her separate use, and of his children, or any of them, according to the interest so expressed, and shall not, so long as any object of the trust remains, be subject to the control of the husband or to his creditors, or form part of his estate."*
>
> *It appears to me that the effect of the policy and the Act taken together is to constitute a declaration of an executed trust, and that all the Court has to do is to express its view of the construction of the two instruments taken together. Now upon the policy being effected the settlor does not reserve to himself any power of appointment; therefore this is not an executory trust, but a trust declared on the face of the instrument."*

[49.] In my opinion, *Adams* states that, once the constituent elements required for a trust to be formed pursuant to section 11 of the UK Act are satisfied, it shall so be formed and such trust created is to be construed based on its express terms as provided in the policy of insurance. I accept this proposition and shall apply it accordingly.

[50.] In **Equitable Life Assurance Society of the US policy and Mitchell** (1911) 27 TLR 213 ("**Mitchell**"), a husband took out a life insurance policy in favor of his wife, for her sole use, if living, and, if not living, to the children of the insured or their trustee for their use, or if there should be no such children surviving, then to the executors, administrators, or assigns of the assured. The policy had various conditions and options which the husband could exercise (once certain criteria were met). The husband assigned his house to a trustee for the benefit of creditors and the terms of the assignment were wide enough to capture the insurance policy, if it were capable of assignment. On the expiration of the dividend period, the husband was

still alive, but the wife had predeceased him leaving one daughter. The trustee for his creditors claimed the right to exercise an option and of receiving the entire assets for the creditors. According to the case note, the Court held that:

> *"(1) the options under the policy could only be exercised for the benefit of the persons for whom the trust was created; (2) so long as any objects of the trust remained unperformed the trusts could not be defeated; (3) the options must be exercised in the best manner for the benefit of those entitled, and (4) the proper course was for the insurance company to issue a paid-up policy within the meaning of option (b) for the benefit of the child or children surviving the insured, and if there should be none the benefit of it would fall into his estate."*

[51.] The Court further opined:

> *"I feel great difficulty in finding anything in this policy which enables me to distinguish it from the policy in the case before Swinfen Eady J. Mr. Greenland has pressed upon me that the presence in this policy of provisions for cash loans makes all the difference. I am unable to distinguish the case on that ground. It seems to me that the presence in the policy of powers which the insured may or may not be entitled as against the beneficiary to exercise, does not enable me to construe the policy as one which, in respect of these options gives the assured the right to destroy the rights of the beneficiary. It may be that if he had done his duty to the full, he would have exercised the option conferred upon him by electing to have the policy converted into a paid up insurance at his death; but he has not done so. In the result I think that neither of the parties are today entitled to the fund. The fund must remain in Court and be accumulated until either of the parties come to some agreement or one or other of them dies."*

[52.] According to ***Mitchell***, once an insurance policy falls within the ambit of section 11 of the UK Act (as the UK Act applied based on the circumstances), any act done in relation to the insurance policy (now a statutory trust) must be for the benefit of the trust and objects (that is, the beneficiaries). From my understanding of this case, it appears that, in such circumstances, an absolute interest vests in the

beneficiaries under the insurance policy and any purpose for which the trust is utilized must be for their sole benefit.

[53.] Another case with similar facts is the case of **Re Fleetwood's Policy** [1926] Ch. 48 ("**Fleetwood**"). There, a husband took out a life insurance policy in favor of his wife – to be paid if she were living at his death or in the event of her prior death to pay it to the insured's executors, administrators and assigns. The policy also contained a proviso which stated that, if at the end of twenty years the insured was still living, he should have the right to exercise any of six specified options. The insured, being then still living twenty years later, sought to exercise an option to receive the entire cash value of the policy with its share of accumulated profits and to discontinue the policy. The insurance company was reluctant to release the proceeds without the wife's agreement. The Court held that the policy came with section 11 of the UK Act and created a trust in favor of the wife in certain events, that the insured exercised the option for the benefit of the trust and that unless the husband and wife came to an agreement, the funds must be accumulated in Court until it could be ascertained by the death of either party who was entitled to the proceeds. The Court opined:

> *"A number of cases have been cited to me, and my attention has also been called to s. 11 of the MWPA, 1882. In my view that section applies to this policy. The policy is, in the terms of the section, a policy of assurance effected by a man on his own life, and expressed to be for the benefit of his wife.* ***It is true it is expressed to be for the benefit of his wife in a certain event only, but the fact that the benefit is of a limited or contingent character does not prevent it from being a benefit within the meaning of this Act. I think, therefore, that the policy creates a trust in favour of the wife, but only in the terms of the trust****.*
>
> ***That throws one back upon the policy for the purpose of determining what in fact is the extent of the trust created for the wife's benefit****.*
>
> *[Emphasis Added]"*

[54.] I gather from ***Fleetwood*** that the purpose of the trust is to be determined from the policy itself. Once the purpose of the trust is determined, one can confirm the extent to which the trust was created for and what benefit any named spouse and/or child (children) obtain. I also wish to highlight that the very wording of the document is of great import. As the cases so far have demonstrated, one must look at the section 7 of the MWPA ***in conjunction with*** the relevant policy/statutory trust to derive the true intention/purpose for which it was created. The terms of the trust can only be ascertained from the insurance policy itself.

[55.] I also believe that ***Fleetwood*** emphasizes that the express wording of the life insurance policy is critical to its interpretation and the intention of the policy holder.

[56.] In **Cousins v Sun Life Assurance Society** [1933] Ch 126 ("**Cousins**"), Mr. Stanley Cousins (the plaintiff and respondent) was issued insurance policies by Sun Life Assurance Society (the defendant and appellant) in favor of his wife, Lilian Cousins. The material terms of the policy read as follows:

> *""The society will, on due proof given of the occurrence of the event described in the schedule, of the age of the life assured, and of title, pay the sum assured together with such bonus, if any, as may be due in accordance with the provisions of the Sun Life Assurance Act, 1889, and the laws and regulations made pursuant thereto, and it is hereby declared that this policy is issued for the benefit of Lilian Cousins, the wife of the life assured, under the provisions of the MWPA, 1882, provided also that this policy is subject to the terms and conditions endorsed hereon.""*

[57.] Lilian Cousins passed away in 1931 and her will was probated shortly thereafter. Consequently, Mr. Cousins sought to have the proceeds of the policies issued in his favor. At first instance, the court ruled in his favor and ordered that the proceeds be paid to him. The Court stated that the wife's interest was merely a contingent one. The executors of the wife's estate appealed that decision. On appeal, the court ruled in favor of the executors. In *Cousins*, the Court opined:

> *"But it will be observed that each of those sections [section 11 of the UK's MWPA] creates a trust in respect of the policy moneys where it has been*

expressed in the policy that it is for the benefit of the wife, or the husband or the children, as the case may be. The result is that when the policy states the purpose for which the policy has been entered into, the Act creates and declares a trust. In the present case we have the terms of the policy, which are quite unqualified, the statement simpliciter:

"This policy is issued for the benefit of Lilian Cousins, the wife of the life assured, under the provisions of the MWPA, 1882," which thus creates a trust in her favour. It would seem from those words that she took a vested interest in the policy moneys when the policy was created, and ***I have looked backwards and forwards to see if one can find any contingency which negatives the vested interest which is declared in favour of this named wife, and I cannot find it****.*

[Emphasis Added]"

[58.] Further in ***Cousins***, Lawrence LJ had this to say:

"In my opinion the passage which I have quoted applies to a policy effected under the 1882 Act, with the result in the present case that there cannot be any reasonable doubt, as the plaintiff has declared in the policy that it is effected for the benefit of his named wife simpliciter, the policy is that wife's policy. The plaintiff might, no doubt, have effected a policy under s 11 for the benefit of his wife if she should survive him (as was the case in Cleaver and others v Mutual Reserve Fund Life Association and in Re Fleetwood's Policy); or he might have taken out a policy for the benefit of any wife who might survive him and become his widow (as was held to have been the case in Re Browne's Policy); but that is not what he has done here. He has chosen to effect a policy simply for the benefit of his then living wife, and has thus created a trust, of which it cannot be said that its purpose came to an end, or that, in the words of the section, there was no longer any object of the trust remaining to be performed when his wife died in his lifetime, for, being a vested interest in the wife, it passed on her death to her executors as part of her estate."

[59.] According to *Cousins*, an absolute interest would vest in a beneficiary named in a trust (created by section 7 of the MWPA) so long as there is no contingency which negatives the vested interest which is declared in favor of the wife. The Court formed the view that the express wording of the policies themselves (in conjunction with the UK Act) make it patently clear that the policies were solely for the benefit of the wife and upon her death, to her estate.

[60.] In **Imperial Life Assurance Co of Canada v Frederick Sturrup and others** [1987-88] 1 LRB 266 ("**Imperial Life**") Georges CJ (as he then was) was tasked with determining the applicability of section 7 of the MWPA to three different life insurance policies. The first policy was issued by Imperial Life Assurance Co. of Canada ("Insurer") to the First Defendant in favor of his wife (both as beneficiary and trustee). If she predeceased him, the funds were then to be held in favor of the First Defendant, if living and to his estate, if deceased. The funds were payable upon his death and if she survived him. The policy also said, if the First Defendant was still alive at the end of 20 years he could exercise one of six options. He requested the Insurer to pay the entire cash value of the policy to him and discontinued it but the Insurer required a receipt from him issued by his wife.

[61.] In relation to the Second Defendant, she named her husband and children as beneficiaries under her life insurance policy and in each case if the beneficiaries predeceased her, the moneys would be payable to those persons or their respective estates. The Third Defendant named her mother as her beneficiary. In the First and Second Defendant's policies there were provisions for the grant of a loan on the security of the policies, payment net value, paid up policy options and the payment of dividends to the policy holder all of which were contested as they were said to be inconsistent with the existence of a trust originating from the issuance of the policies. The Plaintiff the Insurer, sought declarations from Court as to its position under each of the named policies. The Court held:

> *"(1) Where a policy is expressed in language which brings it within the ambit of s 7 of the MWPA (the Act), then the trust thereby created can only be in terms of the policy itself…*

(2) The terms of the life policy are important in determining the circumstances under which the beneficiary becomes entitled to the sum payable under the trust or the circumstances under which the objects of the trust have been performed are no longer capable of being performed, therefore, if the wife of the first defendant or the husband and children of the second defendant predeceased them, the trust would end because in the language of the Act the object of the trust could no longer be performed.

(3) Unless the language of the policy issued of itself created a trust, none would exist, therefore merely naming a person as a beneficiary of a policy where such policy does not fall within the terms of s 7 of the Act, does not create a trust in favour of that person consequently the third defendant did not fall within the terms of s 7 of the Act."

[62.] The Court also made the following pronouncements:

"…once a policy falls within the ambit of s 7 of the Act it vests in the life assured…as a trustee and not as a beneficial owner. The event which will make funds payable under the terms of the trust may not yet have occurred, but the trust exists and does not cease until it becomes clear that that event cannot take place. Until then all powers vested in the life assured by the contract of insurance as expressed in the policy and its auxiliary documents must be exercised for the benefit of the beneficiary…

…The terms of the policy are therefore important in determining the circumstances under which the beneficiary becomes entitled to the sum payable under the trust or the circumstances under which the objects of the trust have been performed or are no longer capable of being performed. Whether or not there is a trust depends entirely on whether the policy is one which falls within the terms of s 7 of the Act."

[63.] Georges CJ (as he then was) in ***Imperial Life*** formed the view that, once the life insurance policy fell within section 7 of the MWPA a statutory trust was created and any acts does must be for the benefit of the named beneficiaries under the statutory trust. This case is distinguishable as the Court did not have to address a

Change of Beneficiary clause. What is of great import, however, is that Imperial Life highlights that certain criteria must be satisfied before a life insurance policy is considered a trust pursuant to section 7 of the MWPA and that one must look at the life insurance policy itself to determine its extent and when a beneficiary becomes entitled to funds under the policy.

[64.] In the case of **Rose v Rose** [1991] BHS J. No. 96 ("**Rose**"), a husband and wife respectively took life insurance policies out in favor of the other. They named each other as the sole beneficiary of each other's life insurance policy. A group insurance policy, in favor of the wife as one of the husband's dependents, was also taken out by the husband. At no time before the death of the husband did he relinquish any rights under the terms of the insurance policy. **Thereafter, the husband and wife became estranged and the wife (prior to her passing) sought to exercise her power under certain clauses of her insurance policy to remove her husband as the named beneficiary, however the criteria to effect such change were not satisfied**. Under the terms of the wife's probated will, she had "*a "desire" that "all monies from my insurance policies be put in trust" for the four children of her marriage to Mr. Rose in equal share.*" The salient portions of the wife's insurance policy read as follows:

> *""Any request, notice or proof required hereunder must be made in writing and mailed in writing or given to the Company at its Home Office by the persons legally entitled to exercise such right.*
>
> ***Subject to any statutory restriction and subject to the rights of any assignee or any irrevocably appointed beneficiary, the owner shall have and exercise all rights, powers and privileges under this policy.***
>
> ***Insofar as the laws governing this policy allow, the owner may, from time to time, by a declaration in writing appoint one or more beneficiaries to whom the insurance proceeds shall be payable and may alter or revoke any prior designation or reapportion the insurance proceeds****. The Company will not be charged with notice of such a declaration until filed at its home Office and will not assume any responsibility for the validity thereof. The interest of any beneficiary who may predecease the life insured will vest in the owner,*

unless provision to the contrary is made in the policy or in the declaration appointing the beneficiary."”

[65.] The husband then sought declarations confirming that he is entitled to the proceeds under the terms of the insurance policy. Strachan J, ruling in favor of the husband, made the following pronouncements:

> *“12 It has been settled for a long time that for policies caught by the Act, the legislative intention is to provide a mechanism whereby a separate fund could be created for the insured's immediate family which would be secured from the claims of creditors and beyond the insured's ability to destroy unilaterally. (See Halsbury's (supra)).*
>
> *13 There is therefore authoritative support for the contention made on behalf of Mr. Rose that his interest to the proceeds of the Policy vested from its inception, with the effect that his wife, as owner of the policy, could not, without his consent, which was never given, remove him as beneficiary or add beneficiaries. Thus any declaration in the will, purporting to create a trust for the children has no effect.*
>
> *14* ***So that the proceeds of the policy never were part of the deceased's estate and nothing has occurred to lead to a resulting trust. They are held for the named beneficiary, the husband****.*
>
> *[Emphasis added]”*

[66.] It is to be noted that in ***Rose***, the terms of the clause that permitted a change of beneficiary were not satisfied. Furthermore, the Court wishes to highlight that in the ***Rose*** case, the policies were taken out in favor of the spouse as the sole beneficiary.

[67.] Also, Strachan J, at paragraph 14 of his decision, seems to suggest that there was ***no express language in the policy which could be interpreted to create a resulting trust***. I form the view that, if there was such language in the relevant policy that permitted a change of beneficiary (which were satisfied) or created any contingent trust or otherwise, the Court would likely accede to such intention/instruction.

[68.] In **Colina Insurance Co. v Bethel Estate** [2004] BHS J. No. 468 ("**Colina**"), Lyons J had to determine a similar issue. The case is distinguishable from the instant case, but I still find the pronouncements from the learned judge quite helpful. In that case, the Plaintiff brought an interpleader application and joined the second wife and first wife of Mr. Bethel (the deceased life insurance policy holder). The Plaintiff approached the Court in order to determine who is entitled to the proceeds under the life insurance policy of the deceased. Initially, the life insurance policy was in favor of the first wife (the second defendant), but Mr. Bethel subsequently changed the beneficiary to his sister, and again to his estate. The second defendant's claim was pursuant to section 7 of the MWPA. The Court determined that the first defendant (who was the second wife of the deceased and the executrix of his estate) was entitled to the proceeds as the named beneficiary under the life insurance policy was Mr. Bethel's estate.

[69.] In examining the law in that case and the relevant provisions of the insurance policy, Lyons J made the following pronouncements at paragraphs 14-18 and 20:

> *"14. The second defendant's argument does not take into account the essential point that* ***the trust created by the policy of insurance must be determined by reference to the terms of that trust. Indeed any trust must be determined by reference to its terms, whether created by contract of insurance or otherwise****.*
>
> *15. In short, a contract of life assurance creates a trust between the owner (insured as settlor, the company (as trustee) and the beneficiary of the policy proceeds.*
>
> *16.* ***When determining a dispute concerning the disposition of the proceeds of this trust one must refer to the terms of the trust. (See Georges C.J. in Imperial Life Assurance Co. v F. Sturrup and others EQ 169 of 1987 accepting In re Fleetwood [1926] 1 Ch. 48). Where the policy comes within the ambit of Section 7 of the Act"…then the trust thereby created can only be in the terms of the policy itself" (Georges CJ at p4)***
>
> *17. Turning to the policy, it reads:*

BENEFICIARY TRUST

…

The owner, as trustee, or where a trustee has been appointed, the Owner and trustee, may, without the consent of any other party, exercise every right and privilege provided by this policy except that ***only the Owner shall have the right, by a memorandum, to appoint or change the beneficiary or apportion the benefits among beneficiaries provided the Owner or estate of the Owner is not so named****…*

18. ***Very clearly the trust is what is termed a revocable trust. The power to change the beneficiary without the consent of any other party was specifically reserved to the owner (settlor) – in this case Mr. Bethel. Whilst it may not be the usual case that a trust deed reserves the power of revocation or variation to the Settlor, it is an acceptable provision so long as that power is clearly expressed in the trust deed*** *(See Principles of the Laws of Trusts by Ford and Lee, Law book Co., 1st Ed. Paras 115 & 116)…*

20. ***If I may express it this way. Due to the power of revocation/variation reserved for the Settlor (owner), then the trust is one "expressed to be for the benefit of the beneficiary so appointed and so surviving as at the time of the death of the owner of the policy holder"*** *(to paraphrase section 7).*

[Emphasis added]"

[70.] Lyons J also noted that section 7 of the MWPA did not apply as the named beneficiary was his estate and not his spouse. Had the insurance policy named his spouse, section 7 would apply. Lyons J ordered that the plaintiff company pay the proceeds of the life insurance policy to the first defendant as executrix of Mr. Bethel's estate.

[71.] It is important to note the rationale and reasoning employed by Lyons J in ***Colina***. He highlighted elements of the life insurance policy that expressly indicated that it was a revocable trust:

(a) The policy holder reserving the right to revoke/vary the beneficiary without the consent of the beneficiary; and

(b) Such power being expressly stated within the insurance policy/trust deed.

[72.] I agree with and indorse the pronouncements of Lyons J. Once a trust deed/statutory trust expressly permits the settlor to change the named beneficiary, it is indeed a revocable trust and no interest in the proceeds of said trust is irrevocably vested in any beneficiary. No absolute interest is created.

[73.] Lastly, in **Banque Privée Edmond de Rothschild Ltd et al v Tomasso Queirazza** 2013/CLE/gen/01699 ("**Banque Privée**"), the Court had to determine the applicability of Bahamian law to a trust created in The Bahamas, which was alleged to be subject to Italian law. Essentially, the case addressed the English common law and the Bahamian trust law statutory regime. The trust expressly stated that it was for the benefit of the settlor's wife and it said that, upon the death of the settlor, Banque Privée (the "**Bank**") would be the Successor Trustee and the assets remaining in the trust account should be paid to the wife absolutely. The Settlor passed away and the trust account contained both cash and securities. In accordance with the trust deed, the Bank made arrangements to transfer the assets of the trust to the settlor's wife. By his son's (Tomasso Queirazza – "**Tomasso**") counsel, it was argued that, under the Italian Will of his late father, assets contained in the trust account were devised in equal parts to first his wife and their son, Tomasso and a forced heirship regime existed under Italian law. The significance of this decision is Issacs Snr. J's application of section 3 of the Trustees Act to the trust deed. At paragraphs 13 and 27, His Lordship opined:

> *"13. As Mr. Moree indicated Francesco* ***retained the right as Settlor to revoke the trust, transfer or dispose trust property, increase the assets in the trust and invest income and capital of the trust. These powers may be lawfully retained by the Settlor under Section 3 of the [Trustees] Act and do not invalidate the trust****.*
>
> *27. As to retention of wide powers in the Settlor, that is authorized by Section 3 of the [Trustees] Act, and does not affect the basic requirement that the trustee holds the trust assets for the sole benefit of the beneficiaries. Section*

3 provides that retaining wide powers in the Settlor "shall not invalidate a trust or the trust instrument or cause a trust created inter vivos to be a testamentary trust or disposition or the trust instrument creating it to be a testamentary document.

[Emphasis added]"

[74.] The Court also addressed the issue of intention of the Settlor. At paragraphs 25 and 26 of ***Banque Privée***, the Court stated:

"25. Mr. Turnquest has brought into question the intention of Francesco but there is no admissible parole evidence on which to ground such a submission. ***The only document that expresses Francesco's intention is the Settlement itself****. There is nothing in the settlement that can reduce it to a testamentary disposition.*

26. In Halsbury's Laws of England 4th Ed. Paragraph 1478, the author writes:

*…****where the intention of the parties has been reduced to writing it is, in general not permissible to adduce extrinsic evidence, whether oral or contained in writings such as instructions, drafts, articles, conditions of sale or preliminary agreements, either to show that intention to contradict, vary or add to the terms of the document…***

Extrinsic evidence cannot be received in order to prove the object with which a document was executed; or that the intention of the parties was other than that appearing on the face of the instrument*.*

[Emphasis added]"

[75.] As the Italian will was never admitted into evidence, the applicability of Italian law fell away. The Court ultimately ruled that, inter alia, based on the clear and unambiguous wording of the trust deed, the wife was entitled to the assets under the trust and the Bank could validly and legally effect the transfer of the assets out of the trust account to the wife.

[76.] Intention is critical in any trust deed. Where the words are clear and unequivocal, the Court will honor and apply such intention from the trust instrument itself. Furthermore, the mere existence of wide powers of the settlor in a trust deed in no way invalidates that trust. This includes a settlor's retained power to change the named beneficiaries under the trust. Such powers are provided for and enshrined under section 3 of the Trustees Act, Chapter 176. It is also noted that such powers are to be exercised for the benefit of the beneficiaries.

[77.] Whereas the case did not descend into the revocable nature of trusts, it still provides helpful insight and I shall apply the principles to the instant case accordingly.

[78.] I now turn to the issues of this trial.

(i) Whether any of the policies fall within the ambit of section 7 of the MWPA?

[79.] In order for any life insurance policy to fall within the ambit of section 7 of the MWPA, the following criteria must be met:

(a) The policy must be a life insurance policy;
(b) The policy must be taken out by a man or woman; and
(c) The proceeds under such a policy must be for the benefit of a married person's spouse, or for any man or woman's child/children.

Mertis Archer ("Mrs. Archer")

[80.] According to the evidence, Mrs. Archer converted her Term Policy (issued on 28 July 2009) to the SL Policy on 28 December 2011. Also, Mrs. Archer took out the SL Policy (which is a life insurance policy) in favor of her husband and children. As it is a life insurance policy issued by a married woman for the benefit of her spouse and children, section 7 of the MWPA applies. It is, however, important to note the express wording of section 241 of the Insurance Act, Chapter 347:

"241. The MWPA or any legislation in force relating to married persons' property, insofar as it creates a statutory trust of a life policy **shall have no effect in relation to sections 158 to 167 of this Act**.

[Emphasis added]"

[81.] The Insurance Act came into effect on 02 July, 2009. As the SL Policy was issued after the Insurance Act, section 241 applies. Accordingly, section 7 of the MWPA applies, to the extent that it does not impact sections 158 to 167 of the Insurance Act.

Ms. Pamela Russell ("Ms. Russell")

[82.] On 13 November 1989 Ms. Russell took out a life insurance policy in favor of her daughter. The life insurance policy was expressed to be for the benefit of her daughter. As this policy was issued prior to the Insurance Act, section 241 does not apply. I agree with FGI's counsel's submissions that, in the absence of any express retroactive effect in the Insurance Act, there is a presumption that the Insurance Act, only applies to insurance policies created after the Insurance Act came into effect. (***Plewa v Chief Adjudication Officer [1995] 1 AC 249; L'Office Cherifien des Phosphates and another v Yamashita-Shinnihon Co. Ltd [1994] 1 All ER 20)***. Accordingly, the life insurance policy falls squarely within the ambit of section 7 of the MWPA and sections 158 to 167 and 241 of the Insurance Act do not apply.

Ms. Nicolette Clarke ("Mrs. Clarke")

[83.] On 16 October 1995, Mrs. Clarke's mother was issued a life insurance policy in favor of her son. Based on the evidence, a life insurance policy was taken out be married woman for the benefit of her child. This too falls under section 7 of the MWPA. Also, this policy was also pre-Insurance Act. Accordingly, sections 158 to 167 and 241 do not apply to this insurance policy either.

[84.] Having now satisfied myself that all insurance policies fall within the scope of section 7 of the MWPA, I shall now move to the other issues.

(ii) Whether section 7 of the MWPA vests an absolute interest in favor of the originally named beneficiary under the respective life insurance policies?

(iii) What impact (if any) the 'Change of Beneficiary' clauses have on the respective life insurance policies?

(iv) What impact (if any) the "Conformity with Statutes" clauses have on the respective life insurance policies?

Mertis Archer ("Mrs. Archer")

[85.] These issues are intimately connected, thus, I will address them all under the same heading. As I have ruled that Mrs. Archer's life insurance policy does fall (to an extent) within section 7 of the MWPA, I need only look to the statutory trust itself to determine her intention (which is critical to determining its purpose). The significance of the settlor's intention was observed by Georges CJ in ***Banque Privée***, as mentioned above. Mrs. Archer's life insurance policy expressly states that it is for her husband and children, issued by FGI with a face value of $100,000.00. She sought to have her husband removed and replaced as he has pre-deceased her. According to the 'Owner and Beneficiary' clause of the SL Plan:

> "…The named Beneficiary will receive the proceeds of this policy when the Insured dies. If all named beneficiaries die prior to the death of the Insured, the Company will pay the proceeds in one sum to the Executor or Administrator of the Insured's estate or as permitted by law.
>
> **The Owner may change any Beneficiary without the written consent of such Beneficiary, unless otherwise herein or by law provided. This change may be requested on forms provided by the Company. The request must be filed and recorded at the Corporate Office of the Company. When filed and recorded, the change will take effect on the date of the request, whether or not the Insured is still living on the date it is recorded, except it will not apply with respect to any payment made before the change was recorded.**
>
> [Emphasis added]"

[86.] In my view the ability to change a beneficiary is expressly retained by Mrs. Archer. Not only that, but her intention, from this clause, is abundantly clear – if I so choose, I wish to change my listed beneficiaries. I also note that a resulting trust is contingent on all named beneficiaries pre-deceasing Mrs. Archer (by virtue of the funds reverting to her estate should all the beneficiaries pre-decease her). According to the evidence, she attempted to change one of the named beneficiaries, however, FGI, refused to comply with her instruction. It is patently clear that it was in the

contemplation of the parties that Mrs. Archer would be empowered to change her beneficiaries (without the consent of any beneficiary), as long as she complied with the terms of her policy.

[87.] Furthermore, section 7 of the MWPA does not apply with respect to sections 158 to 167 of the Insurance Act. This proposition is fortified not only by the clear and unequivocal language of the insurance policy, but captured and protected by sections 158 and 241 of the Insurance Act.

[88.] Consequently, this has created a revocable trust. I draw counsel's attention to the express language provided at section **159(5) of the Insurance Act**:

> "(5) **A designation by a policyholder shall not be regarded as irrevocable unless the words creating the irrevocable designation are clear and unequivocal and are prominently displayed on the proposal form and signed by the policyholder and there is sufficient evidence that it was explained to the policyholder that the designation was irrevocable**.
>
> [Emphasis added]"

[89.] Based on the evidence before me, there is no document where the word 'irrevocable' was prominently displayed. In fact, no such language is 'prominently displayed' on any form completed by Mrs. Archer, nor is there any evidence that the irrevocable nature of a trust was ever explained to her. I am therefore, satisfied that, not only by the express wording of the life insurance policy itself, but by virtue of sections 158(2), 159(5) and 241 of the Insurance Act, Mrs. Archer has wide powers to change (or even remove) any beneficiary named under her insurance policy, so long as she complies with the terms expressed in the life insurance policy.

[90.] More so, there is an option under the policy by virtue of the 'Settlement Option Provisions'. It reads:

> "ELECTION OF OPTION
>
> All rights of the Owner, as provided in the Owner and Beneficiary provision, apply to any election or change of election of a Settlement Option. If the Beneficiary is not an individual receiving payment in his or her own rights

any option other than a lump sum payment requires the consent of the Company. A change of beneficiary revokes a prior election option. The beneficiary has no right to change or revoke an election unless this right was given by the Owner and agreed to by the Company in writing. If the Owner does not elect an option, the Beneficiary will have the right at the time of settlement.

If all named beneficiaries die prior to the death of the Insured, the Company will pay the proceeds in one sum to the Executors or Administrators of the Insured's estate."

[91.] The provision not only seems to create an option that Mrs. Archer may exercise to obtain a settlement, but it even contemplates the impact of a change of beneficiary and indicates that there is a resulting trust in the event all beneficiaries pre-decease her. If all beneficiaries pre-decease Mrs. Archer, the insurance funds reverts to Mrs. Archer's estate. Thus, a resulting trust could arise by virtue of this clause as well.

[92.] Accordingly, I rule that Mrs. Archer's SL Policy is revocable and that no absolute interest vested in her late husband. Furthermore, I rule that, based on the express language of the policy, any named beneficiary has a defeasible interest as at any time, they may be removed and replaced. Though it may appear that this interpretation defeats the trust in favor of the initial beneficiary, it is permitted by section 3 of the Trustees Act (which applies to all trusts so created prior to or after commencement of the Trustees Act) and section 158(1) and 159(5) of the Insurance Act. I therefore rule that Mrs. Archer is entitled to change the named beneficiaries, in accordance with the SL Policy.

Pamela Russell ("Ms. Russell")

[93.] As I have ruled that section 7 of the MWPA applies, I shall interpret Ms. Russell's statutory trust in that light. The policy was issued by FGI to Ms. Russell in favor of her daughter with a face value of $10,000.00. Her daughter pre-deceased her. Consequently, Ms. Russell sought to use her powers as contemplated under the policy's 'Change of Beneficiary Clause' to remove and replace her. FGI, however,

refused to comply with the request based on section 7 of the MWPA. The 'Change of Beneficiary' clause reads as follows:

> "**CHANGE OF BENEFICIARY – The Beneficiary hereunder may be changed upon written request of the Insured, such change to take effect when so endorsed on the policy by the Company**.
>
> [Emphasis added]"

[94.] There is also a 'Conformity with Statutes Clause' which reads:

> "**CONFORMITY WITH STATUTES – Any provision of this policy which on its effective date is in conflict with the statutes of the country or colony in which the Insured resides on such date is hereby amended to conform with the requirements of such statutes**.
>
> [Emphasis added]"

[95.] Further and interestingly, there is also an assignment clause, which provides:

> "This policy may be assigned but no assignment shall be binding on the Company unless and until the original assignment or an executed copy thereof has been filed with the Company at its Corporate Office. The Company, by receiving or filing any assignment, does not assume any responsibility as to its validity, sufficiency or effect. Any claim made under an assignment is subject to proof of interest and extent thereof. **The interest of any revocable beneficiary shall be subordinate and inferior to the interest of any assignee or assignees, whether such beneficiary be designated prior to or subsequent to the assignment of the policy or any interest therein.**
>
> [Emphasis added]**"**

[96.] At first glance, it would appear that ***Cousins***, ***Fleetwood*** and ***Mitchell*** apply, thus any powers exercised by Ms. Russell is to be exercised for the benefit of the original and sole beneficiary. As the initial beneficiary pre-deceased Ms. Russell, the proceeds would then go to the deceased's estate. This would mean that the original beneficiary had an absolute vested interest in the trust. I however, must

highlight the fact that none of those cases ever addressed or examined a life insurance policy which contained a 'Change of Beneficiary' clause or the implications such a clause would have. On that basis alone, the aforementioned cases are distinguishable.

[97.] Furthermore, I note a development in the Bahamian trust statutory jurisprudence that has heralded a departure from the UK case law position. The current legislative regime widens the powers of a trustee, while preserving the trust (section 3 of the Trustees Act, Ch. 176). Furthermore, as mentioned earlier, there were amendments that restricted the effect that the MWPA would have on insurance policies executed after the **Insurance Act** came into effect.

[98.] Though Ms. Russell's statutory trust is not subject to sections 158(1) and 241 of the **Insurance Act**, it appears that the legislature sought to remedy the 'mischief' of the **MWPA** and other Acts that would impact all statutory trusts post the **Insurance Act**, (***Heydon's Case [1584] 76 ER 637 3 CO REP 7a***).

[99.] From a reading of all the relevant legislation together, it appears that Parliament sought to cure a glaring issue with the present statutory trust and insurance law regime and has moved in a manner which no longer fully aligns with ***Fleetwood***, ***Adams*** and ***Mitchell***.

[100.] In any event, I do not agree that the 'Conformity of Statute Clause' automatically invalidates the 'Change of Beneficiary Clause' as I do not see any inconsistency with the law. The significance of the settlor's intention was observed in ***Banque Privée***. One must look at the trust deed to obtain the intention of the settlor.

[101.] As stated by the Court in the ***Rose*** decision, upon reviewing the 'Change of Beneficiary' clause it was noted that ***the criteria to effect such change were not satisfied***. Accordingly, the Court was unable to sanction such change in that case. In the instant case however, prior to Ms. Russell conforming to the terms of the 'Change of Beneficiary Clause', she was debarred from doing so by FGI. Based on FGI's counsel's interpretation of section 7 of the MWPA, an absolute vested interest was created in favor of the original beneficiary, and could not be changed.

[102.] I do not accept this submission. It fails to consider the express intention of the Settlor in the statutory trust itself. In my view, the intention of the Settlor is crucial to its purpose. In this scenario, the express intention is clear and unequivocal – I wish to change my beneficiary if I so choose. This was expressly stated and provided for in the life insurance policy. Thus, it was clearly in the contemplation of the parties that such a clause was to be exercised at the will of the Insured, without regard to the beneficiary or the need for any consent from a beneficiary. The wording of the 'Change of Beneficiary Clause' has no qualification or restriction (save and except that the requested change must be in writing and endorsed on the policy by FGI) and, by virtue of **section 3 of the Trustees Act**, the power to amend/vary named beneficiaries is preserved. Indeed, this gives Ms. Russell very wide powers. She retains the right to change her beneficiary. She merely needs to comply with the terms of the 'Change of Beneficiary Clause' to effect the change.

[103.] FGI's counsel asserts that the wording of section 7 of the MWPA creates an absolute trust in favor of any originally named beneficiary. I will extract a portion of section 7 of the MWPA and highlight the words I believe counsel is relying on:

> "A policy of assurance effected by any man on his own life, and expressed to be for the benefit of his wife, or of his children, or his wife and children, or any of them, or by any woman on her own life, and expressed to be for ethe benefit of her husband, or of her children, or of her husband and children, or any of them, shall create a trust in favor of the objects therein named, and the moneys payable under any such policy shall not, **so long as any object of the trust remains unperformed**, form part of the estate of the insured, or be subject to his or her debts…
>
> [Emphasis added]"

[104.] Courts must adopt a more robust approach to statutory interpretation on occasions where rigid or strict adherence to express wording would create an absurdity or create circumstances which clearly is the opposite to what a private individual intended to do with his assets – particularly when a statute may not necessarily reflect modern commercial practices, and the intentions of parties under a private contract. There are several forms of statutory interpretation which have

been created to help Courts of law best interpret statutes. In this context, I am referring to the Golden Rule of statutory interpretation.

[105.] The use of the Golden Rule of statutory interpretation permits the Court to apply the literal or ordinary meaning of the words unless the result would lead to an absurdity. Should this happen, the Court is permitted to modify the ordinary meaning to avoid the absurdity. The rule was formulated by Parke B (later Lord Wensleydale) in the case of **Grey v Pearson** (1857) 10 ER 1216; [1843-60] where he said:

> *"I have been long and deeply impressed with the wisdom of the rule now, I believe, universally adopted, at least in the courts of law in Westminster Hall, that in construing wills and indeed, statutes and all written instruments, the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid the absurdity and inconsistency, but no farther."*

[106.] Accordingly, I can only interpret the 'object to be performed' as the purpose of the trust. The purpose of the trust can only be determined from the trust itself – in its full context. Based on the evidence before me and the facts, it is only the trust itself that can reveal the purpose and true intention of the settlor at the time the trust was created.

[107.] In my view, reading section 7 of the MWPA together with section 3 of the Trustees Act (which applies to all trusts so created, whether created prior to or after the Act's commencement) along with the express wording of the trust itself, a settlor is empowered to change a beneficiary and the trust would still remain valid.

[108.] I find it difficult to accept that it was in the contemplation of the settlor that she intended a deceased beneficiary's estate (who pre-deceases her) to benefit from the proceeds of a life insurance policy and the insured is expected to continue paying for said policy. That, in my view, cannot be the true intention of the settlor/insured or the purpose of the trust. I do not believe this is a true reflection of the legislative

regime together with the express terms of the statutory trust. It goes against the very nature and tenor of the trust.

[109.] Specifically, the presence of the 'Change of Beneficiary' clause speaks to the revocable nature of the trust deed. I do not glean any irrevocable trust being established, having read section 7 of the MWPA coupled with the relevant life insurance policy. Indeed, the very presence of a "Change of Beneficiary Clause" strongly suggests a revocable trust. As stated earlier, this was observed in ***Colina*** at paragraph 18:

> "18. **Very clearly the trust is what is termed a revocable trust. The power to change the beneficiary without the consent of any other party was specifically reserved to the owner (settlor) in this case, Mr. Bethel. Whilst it may not be the usual case that a trust deed reserves the power of revocation or variation to the Settlor, it is an acceptable provision so long as that power is clearly expressed in the trust deed**…
>
> [Emphasis added]"

[110.] Though the above passage emanated from a decision which did not examine an insurance policy which fell within the ambit of section 7 of the MWPA, I find the rationale of great import, relevant and applicable - to the extent that one can glean certain characteristics which makes a trust revocable.

[111.] Furthermore, the presence of the assignment clause also strongly implies the revocable nature of the trust. In fact, that very clause states that the interest of a revocable beneficiary (whether designated so prior to or subsequent to the assignment) is subordinate and inferior to the interest of any assignee. Although section 7 of the MWPA creates the trust, it is the terms of the trust itself which confirm and where one derives its purpose and objects. In my view, this appears to create a contingent interest for any named beneficiary. For clarity, this would mean that (based on the express wording of 'Change of Beneficiary' and 'Assignment' clauses along with my interpretation of the said clauses), in order for any existing beneficiary to benefit from the proceeds, the following criteria must be met: (a) the beneficiary survived the insured (unless the insured elected not to or failed to

remove a pre-deceased beneficiary prior to the insured's own death); (b) the beneficiary remained a named beneficiary under the terms of the policy; and (c) the beneficiary's interest has not been assigned to another. Consequently, the interest is merely a contingent one.

[112.] From my understanding of the law and section 7 of the MWPA, the purpose of that section was merely, inter alia, to confirm the necessary criteria that would establish a statutory trust, which does not form part of the settlor/insured's estate, and the said trust is to last until its purpose is fulfilled. I do not believe it goes any further than this. In order to determine whether the interest of the named beneficiary/beneficiaries is absolute or defeasible, one would have to look at the insurance policy itself. I believe the purpose of the trust, according to its terms, was to establish funds for the benefit of persons so named after the death of the settlor/insured – subject to the terms of the trust.

[113.] Accordingly, I rule that: (a) Ms. Russell's life insurance policy permits her to vary the beneficiaries named; (b) the beneficiaries have contingent trusts by virtue of the language of the life insurance policy which expressly provides for the insured/settlor to change the beneficiary (by virtue of section 3 of the Trustees Act, the trust will remain valid and binding in favor of any new beneficiary so named) or assign their interest to another. Their interests are thus defeasible; and (c) FGI must comply with such instruction, so long as it is in accordance with the precise terms of the 'Change of Beneficiary Clause'.

Nicolette Clarke

[114.] FGI issued a life insurance policy to Ms. Almanda Clarke in favor of her son, with a face value of $5,000.00. Her son pre-deceased her and, similarly to the other two named Claimants, sought to invoke the 'Change of Beneficiary Clause', in compliance with the said clause. FGI did not honor this request either and stated section 7 of the MWPA creates an absolute trust in favor of the deceased's estate. Ms. Almanda Clarke, unfortunately, passed away prior to the change of beneficiary as she desired. The relevant 'Change of Beneficiary Clause' reads as follows:

"**CHANGE OF BENEFICIARY – The Beneficiary hereunder may be changed upon written request of the Insured, such change to take effect when so endorsed on the policy by the Company**.

[Emphasis added]"

[115.] Similarly, there is also a 'Conformity of Statutes Clause' which provides:

"Any provision of this policy which on its effective date is in conflict with the statutes of the country or colony in which the Insured resides on such date is hereby amended to conform with the requirements of such statutes."

[116.] There is also an "Assignment" clause (which mirrors the assignment clause contained in Ms. Pamela Russell's policy):

"This policy may be assigned but no assignment shall be binding on the Company unless and until the original assignment or an executed copy thereof has been filed with the Company at its Corporate Office. The Company, by receiving or filing any assignment, does not assume any responsibility as to its validity, sufficiency or effect. Any claim made under an assignment is subject to proof of interest and extent thereof. **The interest of any revocable beneficiary shall be subordinate and inferior to the interest of any assignee or assignees, whether such beneficiary be designated prior to or subsequent to the assignment of the policy or any interest therein**.

[Emphasis added]"

[117.] Ms. Clarke's evidence demonstrates that the insured attempted to comply with the terms of the insurance policy, but sadly passed away without her instructions being followed.

[118.] In the premises, I apply and adopt the same reasoning for Ms. Russell's matter to this case and rule that there is no absolute vested interest – the interest is defeasible - the statutory trust is a revocable trust and that the insured was indeed entitled to change her beneficiary by virtue of the express wording of the statutory trust.

Miscellaneous

[119.] The Claimants have provided submissions on the Rule against Perpetuities. The Claimants' counsel advances submissions on the point due to a letter dated 23 March 2017 from an agent of FGI to the Superintendent of Insurance at the Insurance Commission of The Bahamas which objected to the validity of the 'Change of Beneficiary' clauses in the policies on the basis that their operation offended the rule against perpetuities FGI's counsel, however, asserts that such an argument was not advanced by it in its primary submissions in the substantive trial.

[120.] It appears that FGI's counsel did not expound on or pursuit the point as it does not seem to be a submission or position it wishes to advance. As it does not appear to be a matter in dispute, I see no reason to traverse the issue in great depth. For completeness, I rule that none of the policies offend the rule against perpetuities based on sections 3(2), 6(4) and 18 of the Perpetuities Act, Ch. 114.

[121.] I believe it is time for the Legislature to revisit the statutory regime currently in place to avoid any potential claims for breach of contract or breach of trust that may arise based on differing interpretations of existing laws. Express language should be used so there is no confusion as to how and when section 7 of the MWPA applies (if at all).

[122.] Until section 7of the MWPA is cured, this is bound to cause future issues and the legislature should do everything in its power to provide express terms that are not open to any other interpretation.

Conclusion

[123.] Based on the aforementioned principles, and my interpretation and construction of the relevant legislation and trusts/life insurance policies, I make the following orders and declarations:

Mertis Archer

(a) A declaration that under the terms of (i) the Policy of Insurance issued by the Defendant to Mertis Blackwood Archer designated as No. 20955581 effective

as of 28 July 2009 and (ii) section 7 of the MWPA, the SL Policy created a statutory trust in favor of her husband, Bertram Archer and her children, Karla Prince, Karie Prince, Damian Tomlinson and Karow Prince revocable in nature or alternatively rendered the interests (if any) of Betram Archer, Karla Prince, Karie Prince, Damian Tomlinson and Karow Prince as beneficiaries under the trust defeasible and revocable.

(b) A declaration that in the premises set out in paragraph (a) above and upon the said Bertram Archer predeceasing Mrs. Archer for FGI to remove Bertram Archer as a beneficiary under the Policy leaving her four children to remain as the sole beneficiaries ("**Instructions**") is valid and fully effective under the statutory trust created under section 7 of the MWPA.

(c) Pursuant to section 159 of the Insurance Act, a declaration that having not expressed the designation of the beneficiaries under the SL Policy as irrevocable, the Instructions are valid and fully effective.

(d) A declaration that upon the death of the Insured the death benefit payable by FGI under the SL Policy will be payable to Mrs. Archer's four children as identified in paragraph (a) above.

(e) The Court will hear the parties on the issue of costs.

Pamela Russell

(a) A declaration that under the terms of (i) the Policy of Insurance issued by FGI to Ms. Russell designated No. 9303983 effective as of 13 November, 1989; and (ii) section 7 of the MWPA, ("MWPA") the WL Policy created a statutory trust in favor of Arimentha Clarke revocable in nature or alternatively rendered the interest (if any) of Arimentha Clarke as a beneficiary under the trust defeasible and revocable.

(b) A declaration that in the premises set out in paragraph (a) above and upon the said Arimentha Clarke predeceasing Ms. Russell on 5 June 2008, the subsequent

instructions by Ms. Russell to FGI to change the beneficiary under the WL Policy to her grandchildren, Rikera Shavonne Ingraham and Michael Cleon Xavier Bain Jr. dated 24 October 2013 was valid and fully effective thereby designating the said Rikera Ingraham and Michael Bain Jr. as the sole beneficiaries.

(c) A declaration that upon the death of Ms. Russell the death benefit payable by the Defendant under the WL Policy will be payable to Rikera Ingraham and Michael Bain Jr.

(d) The Court will hear the parties on the issue of costs.

Nicolette Clarke

(a) A declaration that under the terms of (i) the Policy of Insurance issued by FGI to Ms. Clarke's mother, Almanda M. Clarke (now deceased) designated as No. 9216275 effective as of 16 October 1995 and (ii) section 7 of the MWPA, , the Policy created a statutory trust in favor of Simeon L. Clarke revocable in nature or alternatively rendered the interest (if any) in Simeon L. Clarke as a beneficiary under the trust defeasible and revocable.

(b) A declaration that in the premises set out in paragraph (a) above and upon the said Simeon L. Clarke predeceasing Ms. Almanda Clarke on 22 December 2014, the subsequent instructions by Ms. Almanda Clarke to FGI to change the beneficiary under the terms of WL Policy 2 to Ms. Clarke dated 09 February 2015 was valid and fully effective thereby designating Ms. Clarke as the sole beneficiary under the statutory trust created under section 7 of the MWPA.

(c) A declaration that upon the death of Ms. Almanda Clarke on 10 October 2015 the death benefit payable by FGI under the WL Policy 2 is payable to Ms. Clarke

(d) An order directing FGI to pay the death benefit under the WL Policy 2 in the sum of B$5,000.00 to Ms. Clarke.

(e) The Court will hear the parties on the issue of costs.

[124.] Lastly, I wish to thank counsel for their comprehensive and very helpful submissions in this matter.

Dated this 13th day of September 2024

Deborah E. Fraser
Acting Chief Justice