IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

Claim No. 2021/CLE/gen/01434

IN THE MATTER of Section 7 of the Married Women's Property Act, Chapter 129, Statute Laws of The Bahamas

AND IN THE MATTER of the MetLife Insurance Policy Number 7401963 of the Late Richie Wilfred Goodman Jr.

BETWEEN

RICHIE TORI GOODMAN
And
RAJAI RICHEA GOODMAN
(as Beneficiaries of the Insurance Policy of the late Richie Wilfred Goodman Jr.)

Plaintiffs

AND

BRIGHTHOUSE LIFE INSURANCE COMPANY LIMITED

Defendant

Before: The Honourable Madam Justice Simone Fitzcharles

Appearances: Ms Cyd Ferguson for the claimants

Mrs Tara Archer-Glasgow with Mr Trevor Lightbourne for the defendant

31 August 2023, 8 and 15 September 2023, 18 October 2024.

JUDGMENT

FITZCHARLES, J.

Introduction

1. It is commonplace that in a loan transaction, the borrower may assign an insurance policy on his life as collateral to the lender. In such a case, where the borrower has named his wife or children as beneficiaries of the policy, issues may arise as to entitlement to the proceeds of such policy upon his death. In this application, the claimants, as beneficiaries of a life insurance policy so assigned, seek to challenge the

defendant insurers' payment of the proceeds of the policy to the lender, upon the death of the borrower. The central issue is whether the named beneficiaries of the life insurance policy have, or alternatively, the lender to whom the policy was assigned as loan collateral has, a superior right to the proceeds of the insurance policy upon the death of the insured borrower.

2. By their Originating Summons filed on 30 November 2021, which was amended on 01 December 2021, 16 March 2022 and 31 August 2023 (to remove the 1st defendant by consent), Richie Tori Goodman and Rajai Richea Goodman, the claimants, seek:

    1) a determination, upon the true construction of section 7 of the Married Women's Property Act, and the MetLife Insurance Policy No. 7401963 of the late Richie Wilfred Goodman Jr (the "Policy") –

        (i) whether the claimants, as beneficiaries under the Policy, are entitled to the benefit of its proceeds of One Hundred Thousand dollars ($100,000.00);

        (ii) whether, having been minors when the Policy was taken out, the funds realized upon the death of the late Richie Wilfred Goodman Jr. were to be held in trust for the claimants as beneficiaries by the defendant, and were unassignable; and

    2) an Order that the defendant immediately pay to the claimants the proceeds of the Policy, namely $100,000.00 plus interest for the period from 28 August 2020 until the defendant fully discharges its obligation to the claimants;

    3) further or other relief as deemed expedient;

    4) costs.

3. The defendant, Brighthouse Life Insurance Company Limited, defends the claim and denies that it wrongfully paid the proceeds of the Policy to the lender, Commonwealth Bank. The defendant asserts that it paid the proceeds in accordance with the provisions of the Policy and the requirements of the assignment.

Pleadings

4. The claimants set out the evidence they relied upon in the Affidavit of Richie Tori Goodman filed on 21 February 2022, the Affidavit of Candice Fraser filed on 27 June 2022, the Supplemental Affidavit of Richie Tori Goodman filed on 15 November 2022, and the Affidavit of Rajai Richea Goodman filed on 15 November 2022. The claimants, by way of argument, presented their written Skeleton Argument, Supplemental Skeleton Argument and Second Supplemental Skeleton Argument and made oral submissions to assist the Court. For the defendant's evidence, it filed the Affidavit of Greg Mirabelli on 11 October 2022, and for argument, relied upon oral arguments as

well as the written Second Defendant's Skeleton Arguments and the Defendant's Supplemental Arguments.

Relevant Events

5. There were minimal disputes as to the facts. These are the facts which the Court accepts. On 28 March 2002 the claimants' father, Richie Wilfred Goodman Jr (the "Insured") applied for the Policy on his life with The Travelers Insurance Company. Issued on 16 April 2002 to the Insured, the Policy was a flexible premium adjustable life insurance policy numbered 7401963. The beneficiaries named in the application to receive the death benefit under the Policy were the claimants, the son and daughter of the Insured, respectively. Upon the issue of the Policy, the claimants were minor children, Richie Tori Goodman having been born in 1992 and Rajai Richea Goodman having been born in 1993, according to the exhibits to their respective affidavits.

6. The death benefit, or amount payable to the beneficiaries, if the Insured died when the policy was in force, was $100,000 less payment to certain defined objects. The expiry date of the Policy was 28 March 2069.

7. The Travelers Insurance Company was subsequently acquired by MetLife Insurance Company of Connecticut, which eventually changed its name to Brighthouse Life Insurance Company, the defendant. The defendant is registered as an insurance company regulated by the Insurance Commission of The Bahamas.

8. Subsequently, the Insured assigned his right, title and interest under the Policy as loan collateral to Commonwealth Bank. In particular, there is evidence he effected such assignment some 10 days after the issue of the Policy, that is, on 26 April 2002. This is shown in a schedule produced from the defendant's administrative records. (See Tab 3 of the Affidavit of Greg Mirabelli which shows, as at 26 April 2002, Commonwealth Bank listed as the collateral assignee and the claimants as beneficiaries of the Policy). The Insured had 3 loans with Commonwealth Bank during his lifetime, one of which was a mortgage dated 19 November 2007 in which the Insured, along with Claudine Racquel Goodman, conveyed their title to Lot 23, a portion of Crown Allotment 72 in Murphy Town, Abaco, The Bahamas to Commonwealth Bank Limited, Marsh Harbour, Abaco, to secure an advance of up to $240,000.00. Commonwealth Bank remained the loss payee on the Policy at that time. The Mortgage is recorded in Book 10434 at page 193 to 212, Registry of Records, Registrar General's Department.

9. As evidenced by pleadings filed in Supreme Court Action 2013/CLE/gen/01458, the Insured's monthly payments of the Mortgage fell into arrears over 2012 and 2013. As a result, Commonwealth Bank sought and obtained, an Order of the Supreme Court on 11 February 2014. The Order was filed on 20 February 2014. By this Order the Insured had to pay Commonwealth Bank all sums then due under the Mortgage being $224,578.20 plus interest of 6.75%. The Insured was also ordered to deliver possession of the property which was the subject matter of the Mortgage to Commonwealth Bank

within 90 days. The Insured complied with the Order to deliver possession of the property to the Bank in May 2014.

10. On 28 August 2020, the Insured passed away. Following the death of the Insured, the claimants completed forms in relation to their status as beneficiaries of the Policy and thereby claimed the proceeds of the Policy from the defendant. These forms included a U.S. Life Insurance Claim Form and a W-8 BEN Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding. One Vivian Gomez of an investigations firm called Proedge Group operating in Florida, USA, communicated with Richie Tori Goodman to verify information he provided to the insurance company. As a part of this verification for the insurance claim submitted by the claimants, Ms Gomez also required inter alia documents of identification, a death certificate of the Insured and proof of expenditure for funerary costs. (See the Supplemental Affidavit of Richie Tori Goodman filed on 15 November 2022). Additionally, Rajai Goodman had been engaged in conversations with one Ms Hall, whom she believed represented insurers, in relation to the submission of the claim on the Insured's Policy. (See the Affidavit of Rajai Goodman filed on 15 November 2022).

11. Commonwealth Bank had not been removed in the defendant's records as collateral assignee or loss payee of the Policy up to the death of the Insured. Consistent with this position, the Bank also made a claim on the defendant for the proceeds of the Policy in order to satisfy an outstanding balance which remained on its accounts in relation to loans provided to the Insured. With its claim, Commonwealth Bank provided to the defendant a payoff statement under cover of a letter dated 6 October 2020 from Matthew J Sawyer, Branch Manager, Marsh Harbour Branch. In his letter Mr Sawyer stated that the balance owing by the Insured to the Bank at that time stood at $103,298.32. In the circumstances, the Bank and the claimants filed competing claims for the proceeds of the Policy.

12. The claimants followed up with the defendant on their claim for the proceeds of their father's Policy. Dissatisfied with the responses or dearth of same, the claimants eventually retained an attorney to represent them. On 2 December 2020, the claimants received a response to their enquiries from the defendant's resident representative, Mrs Rema Martin. Mrs Martin indicated that "*Brighthouse Life Insurance (formerly known as MetLife Insurance) has advised that Commonwealth Bank is noted as the loss payee under the referenced policy.*"

13. In the Affidavit of Greg Mirabelli, Claims Director for the defendant, he explained that "*when duly notified and requested by a representative of Commonwealth Bank that it was exercising its rights to the death claim under the Assignment of the Policy on the occurrence of the death of the Insured, Brighthouse was obliged to respond to and pay the claim.*"

14. There is no evidence as to the exact date on which the defendant paid the proceeds of the Policy to the Bank as assignees of the same. The claimant, Mr Goodman, states in his Affidavit filed on 21 February 2022 that he was told the payout was made in August

2020, but produced no written proof. Since the Bank tendered support for its claim to the defendant on 6 October 2020, (which is exhibited in the Affidavit of Greg Mirabelli) the date of the payment to Commonwealth Bank is likely to have been during the period from October through December 2020, when the defendant informed the claimants of the Bank's loss payee status.

15. Mr Goodman explained that the Bank had foreclosed on the property and six years later had not removed itself as loss payee on the Policy. He holds the view that the defendant wrongfully paid out the benefit under his father's Policy, as the claimants were the named beneficiaries of that Policy and therefore entitled to receive the payment.

Issues

16. The disposal of this application requires the Court to consider whether the defendant's payment of the proceeds of the Policy to Commonwealth Bank, and not to the claimants, was lawful. This question gives rise broadly to three underlying issues, namely –

    (1) whether a trust was created for the claimants by the Insured, and if so, what were its terms;

    (2) whether the Insured could lawfully amend, revoke or assign the Policy during the subsistence of the trust, if any; and

    (3) whether the defendant's payment to Commonwealth Bank upon the death of the Insured was unlawful and ought to be reversed in favour of the claimants.

Claimants' Position

17. The pillars of argument for the claimants are set out below.

    (1) The Insured's assignment of the Policy to Commonwealth Bank as security for the mortgage is unlawful because a life insurance policy with minor beneficiaries automatically creates a trust for the minor children and cannot be assigned. This is pursuant to **s. 7** of the **Married Women's Property Act, 1884**, Chapter 129, Statute Laws of The Bahamas ("s. 7 of the MWPA"). The claimants are entitled to the proceeds of the Policy based upon a true construction of s. 7 of the MWPA, which speaks to the irrevocability of a trust in favour of a child of the Insured.

    (2) Whether there is a trust depends on whether the policy falls within s. 7 of the MWPA. The circumstances of a beneficiary's entitlement to payment under the trust is guided by the terms of the Policy.

    (3) As a result of the existence of the trust, the Insured could not change his beneficiaries or assign the benefit of the Policy unless it was beneficial to the claimants. The powers which are exercisable by an insured in a policy cannot oust

a trust created under s. 7 of the MWPA. The beneficiaries had a vested interest in the Policy from the time of its creation.

(4) Having regard to the terms of the Policy, the Death Benefit provision is contrary to s. 7 of the MWPA since it is only operational upon an assignment outside the terms of the trust created by s. 7 of the MWPA. While the Death Benefit is enforceable upon the death of the Insured, the beneficiaries' entitlement to the proceeds of the Policy is "ab initio". The claimants cited in support of their arguments s. 7 of the MWPA, ***Rooney v Cardona and ors.*** [1999] 1 WLR 1388, ***Imperial Life assurance Co of Canada v Sturrup and ors,*** [1987-88] 1 LRB 266, ***Cousins v Sun Life Assurance Society*** [1933] Ch. 126 and ***Re Fleetwood's Policy*** [1925] All ER Rep 262.

Defendant's Position

18. The defendant mounts its defence on the grounds following.

(1) The Policy contained terms which gave the Insured the express right to change the ownership of the Policy which included:

(a) A power in the Insured to change a named beneficiary listed on the Insurance Application form during the Insured's lifetime without the consent of the beneficiary;

(b) The right to affect the interest of a beneficiary by a collateral assignment of the Policy and a clear statement that ownership of the Policy is transferable by assignment; and

(c) The reservation of powers in the Insured to undertake certain actions with the Policy which could negatively impact any designated beneficiaries, such as a full or partial surrender of the Policy.

(2) Inasmuch as the claimants argue that the Policy falls within the ambit of s. 7 of the MWPA, because it is alleged to be for the benefit of the children of the Insured, the defendant contends that in such circumstance and on the language of the Policy, the resulting effect would be for the Policy to create a trust for the claimants which is capable of amendment.

(3) Further, to the extent a trust existed as contended by the claimants, the powers retained by the Insured in the Policy to amend the trust could be validly exercised and not infringe the terms of the trust. Section 3(1) and 3(2)(c) of the **Trustee Act** expressly provides that retention of such powers would not invalidate a trust or the trust instrument.

(4) Even if the Policy created a trust under s. 7 of the MWPA for the benefit of the children of the Insured, the Policy was capable of assignment by the Insured without

reference to the beneficiaries. The interest of the beneficiaries was in fact legitimately altered by the Insured when he assigned the Policy to Commonwealth Bank. The defendant cited in support of its case Underhill and Hayton, ***The Law of Trusts and Trustees*, s. 3(1)** and **3(2)(c) Trustee Act** (Ch 176 Statute Laws of the Bahamas), **Imperial Life Assurance Co of Canada v Sturrup and others** [1987-88] 1 LRB 266, and **Colina Insurance Co v Bethel Estate** [2004] BHS J No 468.

Duty of Care Argument

19. Towards the end of the trial the claimants' Counsel raised a fresh argument in oral submissions to the effect that the defendant owed and breached a duty of care to the claimants. Counsel for the claimants expressed that the mere listing in the Policy of Commonwealth Bank as the loss payee was not adequate to support the defendant's subsequent action of paying the proceeds of the Policy to the loss payee. Counsel expressed that the defendant ought to have *"[looked] further into the Policy or the obligation of the Insured or* [investigated] *whether Commonwealth Bank had already realized their assets.*" I understood the reference to realization of assets to indicate repayment to Commonwealth Bank of the loan taken out by the Insured.

20. Counsel for the defendants stated that their client's view was that it ought to comply strictly with the provisions of the Policy in making any pay out. Those provisions did not support the undertaking to conduct an investigation such as was suggested by the claimants. The Court sought submissions on the point, but did not preclude the defendant from including in their submissions the argument they foreshadowed that the point raised by the claimants was not pleaded or supported by evidence.

21. When the Court received the claimants' submissions post-trial, a different question than the one raised before the Court at the trial was addressed. Issues in connection with the investigation of the loss payee's claim and extent to which the Bank had already collected on its debt at the time the proceeds became payable were raised with the Court at the trial. However, in the claimant's Second Supplemental Skeleton the claimants instead sought to advance an argument that there was a duty owed by insurers to the dependants of the Insured not to give the Insured negligent advice when he took out the Policy. The claimants cited **Gorham and others v British Telecommunications plc and others** [2000] 4 All ER 867 to reinforce their argument. I accept that the issue as to negligent advice was not raised by the claimants in the pleadings, nor during the trial. Further, there was no evidence produced, (and no opportunity to do so), by any of the parties in relation to what advice, if any, was given to the Insured when he took out the Policy. The new argument as to negligent advice therefore lacked the essential substructure required to litigate it.

22. In **Al-Medenni v Mars UK Ltd** [2005] EWCA Civ 1041, Dyson LJ commented:

"[21] In my view **the judge was not entitled to find for the Claimant on the basis of the third man theory. It is fundamental to our adversarial system of justice that the parties should clearly identify the issues that arise in the litigation, so that each**

has the opportunity of responding to the points made by the other. The function of the judge is to adjudicate on those issues alone. The parties may have their own reasons for limiting the issues or presenting them in a certain way. The judge can invite, and even encourage, the parties to recast or modify the issues. But if they refuse to do so, the judge must respect that decision. One consequence of this may be that the judge is compelled to reject a claim on the basis on which it is advanced, although he or she is of the opinion that it would have succeeded if it had been advanced on a different basis. Such an outcome may be unattractive, but any other approach leads to uncertainty and potentially real unfairness.

"[22] **The starting point must always be the pleadings**. In Loveridge and Loveridge v Healey [2004] EWCA Civ 173, Lord Phillips MR said this at para 23:

'In McPhilemy v Times Newspapers Ltd [1999] 3 All ER 775 Lord Woolf observed:

> 'Pleadings are still required to mark out the parameters of the case that is being advanced by each party. In particular they are still critical to identify the issues and the extent of the dispute between the parties.'

It is on the basis of the pleadings that the parties decide what evidence they will need to place before the court and what preparations are necessary before the trial. Where one party advances a case that is inconsistent with his pleadings, it often happens that the other party takes no point on this. Where the departure from the pleadings causes no prejudice, or where for some other reason it is obvious that the court, if asked, will give permission to amend the pleading, the other party may be sensible to take no pleading point. **Where, however, departure from a pleading will cause prejudice, it is in the interests of justice that the other party should be entitled to insist that this is not permitted unless the pleading is appropriately amended.** That then introduces, in its proper context, the issue of whether or not the party in question should be permitted to advance a case which has not hitherto been pleaded." (Emphasis added).

23. The lateness of this last point raised by the claimants, the fact that it was different from the new point canvassed before the Court at the trial, the overall lack of pleading and evidence, (moreover the absence of an adequate opportunity to file appropriate evidence to meet the argument), collectively persuade the Court to disallow the argument. It is unsupported and, in any event, unfair to the defendant to allow it at such a late stage.

The Statutory Trust

24. The existence of a statutory trust under s. 7 of the MWPA is at the root of this claim. The relevant portion of s. 7 of the MWPA provides:

"7. ...

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, ... 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 ... debts:

... 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...and may make provision for the appointment of a new trustee...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...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).

25. The emphasized portion of s. 7 of the MWPA mirrors section 11 of the English Married Women's Property Act 1882. The English legislation was also adopted in other Commonwealth Caribbean countries, such as Trinidad and Tobago, where section 11 of the Married Persons Act Chapter 45:50 duplicates section 11 of the English Act.

26. It is accepted that generally s. 7 of the MWPA creates a trust of a life assurance policy where, in the policy, the insured has expressed that it is for the benefit of his wife or children, or for his wife and children – simpliciter. For the purposes of this case, the only requirement to create the statutory trust is that a man names his children or spouse in a policy of assurance on his life as his beneficiaries. The Court accepts that this criterion has been met and, as such, the Insured created a s. 7 statutory trust when he named his children as beneficiaries of his life Policy.

27. Generally, the statutory trust provides protection against the insured's creditors and the insured is restricted from altering or cancelling the benefit. This is recognized in cases such as **Rooney v Cardona and Others** [1999] 1 WLR 1388 and **In re Equitable Life Assurance Society of the United States & Mitchell** 27 Times L R 213 and others helpfully referred to by Counsel for the parties. As succinctly stated by Georges CJ in **Imperial Life Assurance Co of Canada v Sturrup and others**, [1987-88] 1 LRB 266,

"...[O]nce 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."

28. This broad proposition notwithstanding, one must also carefully consider the terms of the insurance policy to determine the extent to which any such trust operates. This narrows the scope for introducing any argument that a policy is contrary to a s. 7 statutory trust, for the former defines how the latter operates. If, indeed, there were such a dispute, it would raise the question whether a statutory trust exists at all. Authorities from both home and abroad present instances in which the words used in a life policy of the insured have defined the corpus (trust property) and operation of the statutory trust.

29. In **Imperial Life** the Court also observed,

> **"Where a policy is expressed in language which brings it within the ambit of s 7 of the Act, then the trust thereby created can only be in terms of the policy itself. One must go back to the policy for the purpose of determining what in fact is the extent of the trust created in favour of the named beneficiary. This was decided by Tomlin J in *Re Fleetwood's Policy* [1926] 1 Ch. 48 at 53-54, [1925] All ER Rep 262 at 264-265 particularly in relation to s 11 of the English 1882 Act. This seems to me eminently correct and I accept it as the correct way of approaching s 7 of the Act."** (Emphasis added).

30. The matter must also be considered in the context of modern legislation in the Bahamas. As the **Married Women's Property Act** of the Bahamas is legislation from 1884, some relevant cases are older or significantly predate relevant statutes currently governing trusts and insurance in this jurisdiction. Modern legislation (such as the **Trustee Act 1998**, Chapter 176, LRO 1/2017 and parts of the **Insurance Act 2009**), signal the approach courts adopt in determining questions of the very kind before this Court. There is no contradiction between the approach which accentuates the primacy of the terms of the policy and that which is prescribed by **section 170(2)** of the **Insurance Act 2009**, Chapter 347, Statute Laws of The Bahamas. As **section 170** expressly applies to life policies made before and after the commencement of the Insurance Act, it is relevant to the Policy taken out by Richie Wilfred Goodman Jr.[1] **Section 170** of the **Insurance Act** provides:

> **"170 (1)The property and interest of any person in a policy effected, whether before or after the commencement of this Act, upon the life of that person shall not be liable to be applied or made available in payment of the debts of that person by any judgment, order or process of any court.**
>
> **(2) In the event of a person who has effected a policy on his own life dying after the commencement of this Act, the moneys payable upon the death of that person under or in respect of the policy shall not be liable to be applied or made available in payment of his debts by any judgment, order or process of any court**

[1] While section 158(1) of the Insurance Act 2009 specifies that sections 158 and 160 to 171 shall apply in respect of policies taken out *after* the commencement of the Insurance Act, such provision only applies where there is nothing to the contrary stated in any one of those sections. Section 170 does contain a statement to the contrary inasmuch as it provides that it expressly applies to life policies taken out both before and after the commencement of the Insurance Act. Moreover, as the Insured died after the Act's commencement, 170(2) applies.

or by retainer by an executor or administrator or <u>in any other manner whatsoever, except by virtue of</u> –

(a) <u>a contract or charge made by the person whose life is insured</u>...". (Emphasis added).

31. An example of how a benefit under the statutory trust may be limited by the terms of a life policy is found in **Re Fleetwood's Policy.** In that case, a husband named his wife as beneficiary of the proceeds of a policy he took out on his life. However, in the terms of the policy it was stipulated that the wife's benefit was only payable to her if she were living at the time of the husband's death. In the event of her prior death, the insurance company was to pay the proceeds of the life policy to the husband's executors, administrators and assigns. Also, provided the husband was still alive after 20 years of the inception of the policy, he could exercise one of 6 options set out in the policy. After 20 years, the husband exercised an option to cash in the policy and receive its entire value with accumulated profits. He sought to thereby discontinue the policy. The insurance company refused to pay over the proceeds to the husband except if they received a joint receipt from the husband and his wife, who was still alive. Insurers did not get the joint receipt and as such, paid the money into court. In the court's ruling, the limited extent of the wife's benefit under the policy was fully recognized by the court, but the court stated that this limited benefit formed her entitlement under the statutory trust created by s 11 of the Married Women's Property Act. The husband could not extinguish the same by exercising any powers he had been given pursuant to the terms of the policy. Tomlin J. opined:

"...A number of cases have been cited to me, and my attention has also been called to s 11 of the Married Women's Property Act, 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."

32. **In re Fleetwood's Policy** illustrates a trust the benefit of which was limited by the occurrence of a specific event defined in the policy: only if the wife had pre-deceased her husband would she have lost the benefit of the statutory trust created in her favour. That is why the husband could not take the cashed in value of the policy for himself without reference to his living wife. In a later English case, **Cousins v Sun Life Assurance Society** [1933] Ch 126, a husband named his wife as his beneficiary in policies of assurance on his life by use of the words simpliciter, "*This policy is issued for the benefit of Lilian Cousins, the wife of the life assured, under the provisions of the Married Women's Property Act, 1882.*" On the death of the wife, the insured claimed the beneficial interest in the policies. Executors of the wife's estate contested the husband's claim. The husband prevailed at first instance and the executors appealed.

33. The Court of Appeal found that a trust was created in favour of the wife, and that she took a vested interest in the policy moneys when the policy was created. So, too, did

her estate after her death as there had been no provision in the policy which limited the gift to her as payable only during her life or which reserved to the husband a right to appoint the trust property to another person. Lord Hanworth Mr opined:

"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 in vain for any statement introducing a contingency to negative the creation of a vested interest in favour of this named wife." (Emphasis added).

34. It is relevant to note from the first instance judgment of Eve J, the fact that in the covenant to pay under the policies, the words "*to the person to whom this assurance is granted or his executors or assigns*" were struck out and no other payee was substituted. Lilian Cousins, the wife of the assured, was therefore listed as the only payee on the relevant policy. The outcome of this case was shaped by the terms of the policy which included no other payee than Mrs Cousins, as well as the vesting of her interest which remained unperformed even upon her death. Lawrence LJ aptly observed that the husband did not reserve for himself a power to appoint the beneficial interest of the trust to anyone else or to make his wife's benefit contingent upon her surviving him. Hence the outcome of the case.

35. The Policy of Richie Goodman Jr. in the instant case is markedly distinguishable from those considered in **Cousins**, as Mr Goodman, the Insured, included other payees, specified contingencies which would affect payment to beneficiaries and reserved rights for his exercise. The comments of the Court of Appeal in **Cousins** helpfully demonstrate that a court will apply the express terms of the policy of assurance, including contingencies and reservation of rights to the insured therein.

36. There appears to be no fetter on the right of the insured to define the limits of that which he intends to place on trust (the corpus) for the benefit of his wife or child under s 7 of the MWPA. Indeed, it must be so as there is no law which compels an insured to confer any benefit at all under a policy of assurance on his life for any person including his immediate family members. Therefore, if a settlor wishes to create a s. 7 trust for the benefit of his wife or child, he may limit the amount of the property to be held on trust for that person's benefit.

37. The malleability and use of a statutory trust, and in particular the ability to assign, amend or revoke such a trust, must also be examined. With the advent of the **Trustee Act 1998**, the Bahamas embraced a modern code to govern all trusts created before, on or after the commencement of the **Trustee Act**, except where otherwise expressly provided (as per **section 96**). The Court accepts that a settlor, in accordance with the modern regime, may retain for himself in the trust instrument a power to amend or revoke a trust or to withdraw the property or dispose of it in accordance with a reserved power of appointment or disposition. A power of appointment includes a power to assign ownership to a chosen recipient, such as a collateral assignee, as it allows the holder of the power to designate who will receive the asset. It is key to note that the retention of the powers to amend, revoke and exercise a power of appointment are not

mutually exclusive to the existence of a valid trust. **Section 3** of the **Trustee Act** provides in part,

> **"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...**
>
> **(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."**

38. Further, there is authority which supports the position that the statutory trust created for the beneficiaries under s. 7 of the MWPA may be revoked, assigned or amended to exclude the benefit initially conferred by the insured, provided the language of the policy of assurance is appropriately fashioned to reserve and support these actions on the part of the insured. In Underhill and Hayton, ***Law of Trusts and Trustees*** (Art. 9.91), the Learned authors, speaking generally of trusts of policies of assurance, stated:

> **"The fact that rights under the policy can be varied without the consent of the third party does not mean that no trust can exist...: after all, a beneficiary can have an interest that is defeasible upon revocation of the trust or upon the exercise of a power of appointment in someone else's favour."**

39. As a matter of general law there are instances in which a policy which creates a s. 7 statutory trust may not be assigned to a lender. In **Twaddell and Others v New Oriental Bank Corporation Limited (in liquidation)** (1895) 21 VLR 171, the plaintiff took out a policy on his life for the benefit of his wife, if living, or if she were not living, for the benefit of his children, or if no such children survived then for the insured's personal representatives. The insured had the option after a certain period of cashing in the policy provided it had not terminated sooner. He pledged the policy to the defendant bank to secure an overdraft facility. Upon the death of his wife, (his children then still living) the insured sued the bank to release the pledged policy although he did not repay the overdraft. Hodges J in the Supreme Court of Victoria found that this policy could not be assigned by the insured so as to create a lien in favour of the bank. The judge reasoned that where no trustee is appointed, such a policy vests, for the purposes of the Act, in the insured in trust for the persons mentioned in the policy.

40. In a case like **Twaddell**, logically the consent of a beneficiary may be necessary to effect such assignment to ensure its validity. From a reading of the case, it appears the entirety of the proceeds were left to the beneficiaries, there was no reservation of a right for the insured to assign the benefit of the policy in the contract, or otherwise deal with

the proceeds to pay anyone other than the beneficiary. There were no contingencies specified or rights reserved to change a beneficiary, and no listing in the policy of an assignee as a payee in priority to the statutory beneficiary or at all. Therefore, based on the terms of the particular policy under consideration in **Twaddell**, an assignment of its benefit was reasonably ruled out.

41. The Court finds useful the discussion by Dr Claude H Denbow S.C., in his treatise, ***Life Insurance Law in the Commonwealth Caribbean, 2nd*** Edition (2009) p. 124 on *Beneficiaries under the Married Women's Property Act*. There, the Learned author observes:

> **"The life policy normally by its terms grants certain powers to the assured. Since a policy coming under the Married Persons Act is subject to a trust all the powers and options of the insured under the policy must be treated as exercisable by him as trustee for the benefit of those entitled as beneficiaries under the policy. <u>However, there is nothing in the legislation which precludes the assured from expressly reserving to himself under the terms of the trust the right to enjoy privileges and exercise rights under the policy for his own personal use</u>."** (Emphasis added).

42. There, the Learned author cited as an example the Trinidadian case of **Etta Verselles v New York Life Assurance Co** (1919-1922) 4 T & T LR 161. A similar conclusion as to the ability to revoke a statutory trust was arrived at by Lyons J. in **Colina Insurance Co v Bethel Estate** [2004] BHS J No 468 as he considered that a reservation of rights to revoke or vary trust terms is encountered more often in modern times. Both of these cases will be examined in due course, but first, I turn to consider the Policy.

Salient Terms of the Policy

43. According to the General Provisions of the Policy, the entire contract between the Insured and the defendant consisted of both the application (proposal form) for the Policy completed by the Insured before its issue (the "Application"), and the Policy itself. In the Application in which the Insured named his minor son and daughter as beneficiaries, there are, in part, the following terms:

> **"BENEFICIARY**
>
> **"Payment due to two or more beneficiaries or to the survivor(s) of them will be in equal shares, unless otherwise requested. <u>The right to change a beneficiary is reserved</u>."** [Emphasis added].

44. Notably, these terms appear just above the spaces in the Application in which the Insured wrote the claimants' names to appoint them beneficiaries of the death benefit. The presence of those terms in the Application alerted the reader to an immediate and unqualified right reserved to a subscriber to the Policy to change his beneficiaries without reference to anyone.

45. The Policy was issued on 16 April 2002. Its terms are expressed, in part, as follows:

"DEFINITIONS

"Beneficiary(ies): the person(s) named to receive the benefits of this policy at the Insured's death.

"Death Benefit: the amount payable to the Beneficiary if the Insured dies while the policy is in force.

"Insured: the person on whose life this policy is issued. Shown on the Policy Summary."

...

"BENEFITS - BASIC POLICY

"Death Benefit

"Upon receipt at Our Office of Due Proof of the Insured's Death while the policy is in force, we will pay to the Beneficiary the Death Benefit of the policy. The Death Benefit will be the Amount Insured at the time of death, less any:

1. **Indebtedness; and**
2. **amount payable to an assignee under a collateral assignment of the policy; and**
3. **monthly Deduction Amount due but not paid...".**

"POLICY VALUES

"Cash Surrender

"At any time during the lifetime of the Insured and while the policy is in force, you may request, In Writing, a full or partial surrender. You may do so without the consent of any Beneficiary, unless irrevocably named...".

...

"OWNERSHIP RIGHTS

"Ownership

"The original owner(s) is (are) shown on the application. During the Insured's lifetime, you may, without the consent of any Beneficiary unless irrevocably named, exercise all rights and options that this policy provides and that we permit.

"Ownership is transferable by assignment. No assignment is binding on us until we receive a copy of the written assignment at Our Office. We will not determine if an assignment is valid. Proof of interest must be filed with any claim under a collateral assignment.

"Beneficiary

"The original Beneficiary is stated in the application. You may name a new Beneficiary during the Insured's lifetime and while this policy is in force.

> **Any change will be effective from the date you signed the notice of change, even if the Insured is not living when we receive the notice. We will have no further responsibility for any payment we had made before we received the notice at Our Office.**
>
> **"If no Beneficiary survives the Insured, you will be the Beneficiary. If you are the Insured, your estate will be the Beneficiary. The rights of any collateral assignee may affect the interest of the Beneficiary.** (Emphasis added).

Further Discussion and Disposition

46. Readily it is seen that the Insured reserved certain rights to himself under the Policy. He reserved a right to fully or partially surrender the Policy for cash. He reserved the right to transfer the ownership of the Policy by effecting a collateral assignment of the same. Additionally, the Insured reserved to himself the right to exercise all of these rights and options provided by the Policy without the consent of the beneficiary. Essentially, all of these rights, such as the defendant would permit, were exercisable by the Insured without the permission of the beneficiaries, except if they were irrevocably named. He reserved for a second time the right to change a beneficiary and this appears to be an unqualified right of the Insured. It is a right to amend the Policy as to its beneficiary, which, if exercised, essentially amounts to revocation of the designation and any trust benefit the person was to receive.

47. An inspection of the entire contract between the Insured and the defendant reveals no statement that the beneficiaries were irrevocably named, and there is no evidence the Insured intended this. In fact, the immediate and unqualified reservation of the right to change a beneficiary in the Application and again in the Policy supports this interpretation.

48. I consider further the impact of **section 159** of the Insurance Act 2009 on the issue of revocability of the designation of the claimants as beneficiaries in the Policy. **Section 159** applies to life policies made prior to the commencement of the Insurance Act (not being expressly exempted from such application).[2] Further, by **section 241** of the

[2] Note that by section 158(1), section 158 and sections 160 to 171 only apply to life policies made after the commencement of the Insurance Act, unless the contrary is stated in those sections.

Insurance Act, the Married Women's Property Act, insofar as it creates a statutory trust of a life policy has no effect, *inter alia*, on **section 159**. I take this to mean that the effect of **section 159**, which does apply to the Insured's Policy, is not impeded by s. 7 of the MWPA. **Section 159** of the Insurance Act provides in part:

> **"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...**
>
> ...
>
> **"(4) An irrevocable designation may be made by a policyholder only in favour of a spouse or a child.**
>
> **"(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).

49. By **section 159**, the Insured could have, from the commencement of the Insurance Act in 2009 up to the time of his death in 2020, approached the defendant to designate his children as irrevocable beneficiaries in the Policy had he chosen to do so. There being no clear, unequivocal and prominently displayed words in the Policy to the effect that the claimants were irrevocably named as beneficiaries, I do not accept they could be regarded as such. What is conspicuously presented in the Application and in the Policy is the right of the Insured to change any beneficiary. In my judgment, there was no intention on the part of the Insured to name, nor did he name, his children irrevocably as beneficiaries. Consequently, according to the terms of the Policy, in naming beneficiaries who could be removed, the Insured did not require their consent (or, as minors, that of a guardian or next friend) to exercise any of the rights he reserved expressly in the Policy for his use, including the right to assign the Policy to a collateral assignee.

50. The clause in the Policy to the effect that during the Insured's lifetime, he may, without the consent of any Beneficiary exercise all rights and options that the policy provides, bears some likeness to a clause in the policy in the Bahamian Supreme Court case of **Colina Insurance Co v Bethel Estate** [2004] BHS J. No. 468. In that case the insured took out a policy on his life with Dominion Life Assurance Company and named his

then wife, as his beneficiary in the policy. Subsequently, the insured changed the beneficiary to his sister, and later, again changed his beneficiary to his estate. The insured and his first wife were eventually divorced. The insured passed away, but left a will leaving the proceeds of the policy to his two children. Competing claims were made for the proceeds of the policy by the first wife of the insured pursuant to s. 7 of the MWPA, and his estate. Lyons J in his judgment, after rehearsing the principles applicable to determining a dispute concerning the disposition of the proceeds of a s. 7 trust, examined the relevant terms of the policy. The Court, in part, stated:

"17. **Turning to the policy, it reads:**

...

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). The practice is not uncommon. Indeed it is being encountered more often in more modern times, particularly where a settlor makes use of a framework of trusts as a means of estate planning."** (Emphasis added).

51. Lyons J went on to hold that s. 7 of the MWPA had no effect. The Court was of the view that s. 7 required that the policy be one expressed to be for the benefit of the insured's wife at the time of the death of the insured. The policy did not meet this criterion because the settlor had legitimately exercised the power of revocation of the trust which he had reserved for himself in the terms of the policy. So, on the death of the insured the beneficiary was his estate, a change which took the policy outside the

terms of a s. 7 statutory trust. In the circumstances, the executrix of the insured's estate was awarded the proceeds of the policy.

52. This case illustrates also that there is no inherent irrevocability in a trust created under s. 7 of the MWPA. Certainly there are no words in the statute to that effect. Moreover, the provision that the trust endure until its objects are performed must necessarily be construed as applicable so long as a spouse or child of the insured remains a beneficiary of the trust, and has not been removed by a reserved right of the insured.

53. In the case before this Court, the trust of the 'death benefit' as defined by the Policy is expressed in plain language to bestow upon the claimants that portion of the proceeds of the Policy which remains after 3 named objects are paid, one of which was a collateral assignee. This language and other parts of the Policy are supportive of assignment. These 3 objects, which rank in priority to the beneficiaries' pay out, are listed in the following order in the Policy:

    (1) any Indebtedness, which refers to any loan the defendant may have made to the Insured;
    (2) any amount payable to an assignee under a collateral assignment of the policy; and
    (3) any monthly Deduction Amount due but not paid, which refers to premium payments.

54. A useful analysis of a similar situation and life insurance policy is found in **Etta Verselles v New York Life Assurance Co.** (1919-1922) 4 T & T LR 161, a judgment of Deane, J sitting in the High Court of Trinidad and Tobago. In this case George Verselles effected 3 policies on his life for the benefit of his daughter, Etta Verselles, under what was then the Married Women's Property Ordinance of Trinidad and Tobago. The sums assured under the policies were stated to be payable less any indebtedness thereon due to the insurance company. Mr Verselles reserved the right, without the consent of any beneficiary, to receive every benefit, exercise every right and enjoy every privilege conferred by the policies. New York Life Assurance Co, insurers, lent to Mr Verselles under the terms and on the security of the policies certain monies for payment of premiums on the policies and so by way of loan for his own purposes amounting to £60 11s. 1 ½ d.

55. On the death of George Verselles insurers deducted the said sum of £60 11s. 1 ½ d from the total amount payable to Etta Verselles under the policies. In an action by Ms Verselles to challenge insurers' deduction, the court decided that pursuant to the terms of the policy, George Verselles had made a settlement upon his daughter only of such amounts due on the policies as should be left after deducting sums lent to him. So far as Etta Verselles was concerned, "the moneys payable under the policy" was the ultimate balance due thereunder. The defendant insurers were therefore entitled to make the above deductions.

56. In his judgment, Deane J, reasoned:

> **"With regard to the amounts deducted by way of loan to George Verselles with interest thereon, the matter is not so clear and requires some consideration. Under Ord. No. 65 s. 13 it is enacted that a policy of insurance effected by any man on his own life and expressed to be for the benefit of his child shall create a trust in favour of the said child 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. The object of this section is of course to protect a *bona fide* settlement of this nature from the claims of creditors of the person taking out the policy, but it is necessary to point out that there is no compulsion in law upon any parent, whatever his moral duty may be, to settle any sum upon his wife and children. There is therefore no provision in the law regulating the kind of contract which a parent shall enter into for such a purpose, or compelling a parent so to insure his life as to make a certain provision for his children. All that the law does is to see that if a person does effect an insurance for the benefit of his child, any monies payable under such insurance shall not be diverted to other purposes. It therefore becomes of importance to determine what monies are payable under this policy. The wording of the policies made it quite clear that the Company did not promise to pay on the death of the Insured the sum of $3,000, but $3,000 less any sum which might be due to them for indebtedness on premiums for monies advanced to the Insured by way of loan under the policy. The Insured in fact made a settlement upon his**

daughter of whatever sum was left over after deducting sums due on these several counts. Such a gift might be valuable or, by deductions, might be reduced to very small proportions; such as it was[,] it was settled upon his daughter. It is argued that to allow a man to borrow against a sum settled on his daughter is to allow a breach of trust. I agree, if the sum of $3,000 had in fact been settled on his daughter the Court could not possibly allow the Insured to borrow against it; but in the very instrument of settlement it is expressly stated that the daughter shall receive such sum as is payable under the policy after deduction of loans to himself under it, and therefore I do not think this can fairly be held a breach of trust. Similarly with regard to the power of revocation; had the money been settled absolutely there can be no doubt the Insured as trustee of the settlement could not have revoked it; but it was not so settled, the power of revocation being expressly reserved under the settlement.

"As I have stated above, the law does not prescribe in any way the form which a settlement of this kind shall take – it leaves it to the parent, guided by his own sense of moral duty and of his ability to provide, to decide the magnitude of the gift which he is making to his child. In this case, as it turns out, the gift was of considerable value. It might have been much less. Whatever it is the law protects it, but does not interfere in any way to regulate the contract which has made it possible. The contract, as set forth in the policy, was in my opinion therefore a valid contract, and the Company were entitled to make the deductions they claim to make...There must be judgment for the Defendants with costs." (Emphasis added).

57. Denbow's view of this case as expressed in ***Life Insurance Law in the Commonwealth Caribbean, 2nd*** Edition (2009) p. 124, is that it "**illustrates that there is nothing to stop the assured from revoking the statutory trust of a life policy provided that those powers are expressly reserved at the time that the trust is created.**" Additionally, the Learned author opined that the insurance company had not participated in a breach of trust in permitting the assured to borrow on the policies without the consent of the beneficiary. This was because what had been settled under the policy was the sum assured less any indebtedness incurred by the assured.

58. Both cases, **Verselles** and **Colina**, reinforce the point that the extent to which beneficiaries of the statutory trust partake in the benefit is defined by the terms of the relevant policy. Additionally, **Colina** demonstrates that the statutory trust in and of itself is not irrevocable. If the intention of the settlor is to reserve to himself a power to change a beneficiary without the permission of that beneficiary, which may be tantamount to revocation vis-à-vis the gift to that beneficiary, he may do so where the terms of the policy express that power.

59. In my judgment, it is clear that pursuant to the terms of the Policy, the sum of the claimant beneficiaries' interest is confined to any funds remaining *after* all debts of the Insured, all collateral assignees and all premiums remaining due are paid. In other words, the gift for the children of the Insured could not be quantified or determined until the death of the Insured and until those objects given express priority were paid. This is quite similar to **Verselles**, and in my opinion, the import is that the funds that Commonwealth Bank received as assignee was not the corpus of the trust under s. 7 of the MWPA.

60. Another way to express the true arrangement is that the corpus of the trust which vested in the beneficiaries at the establishment of the s. 7 trust was the opportunity to share in the proceeds of the Policy to the extent any remained after the prescribed payments were made, and only then could the amount of the trust property be ascertained. This is precisely what was defined as the 'death benefit' in the Policy. For the claimants, this could amount to the whole, a fraction or none, of the proceeds of the Policy, depending on how much of the proceeds was necessarily paid out to satisfy the 3 objects which were given priority. It appears the intention of the Insured in subscribing to a Policy in those terms was to ensure first that his obligations were paid, and if any sum remained of the proceeds that sum was intended to be settled on trust for the claimants.

61. With the right reserved in his contract with insurers to assign the Policy without the consent of the beneficiaries, within 10 days after its issue, the Insured did so in favour of his preferred lender, Commonwealth Bank, which then became the loss payee on the Policy. The Insured also had the right under the contract to change a beneficiary and thereby revoke a gift without consent of the beneficiaries. Upon the death of the

Insured, the Bank not having been fully repaid the sum owed to it by the Insured, claimed the proceeds of the Policy as loss payee. The claim was paid by the defendant insurers in the priority stipulated in the Policy. In the Court's view, this was done lawfully and in accordance with the terms of the Policy the Insured entered into with the defendant – the terms which governed the extent to which the claimants would benefit under the statutory trust. Purely because the Insured owed Commonwealth Bank on the date of his death a sum in excess of the proceeds of the Policy, the priority payment in favour of the collateral assignee expunged the claimants' opportunity to partake. The debt was $103,298.32 and the proceeds of the Insured's Policy was $100,000; as such no property remained to comprise the death benefit. The result was that the objects of the statutory trust were rendered incapable of performance, which ended the trust under s. 7 of the MWPA.

62. Having regard to the evidence, the law and the foregoing findings and reasons, I further find:

(1) upon the true construction of s. 7 of the MWPA and the terms of the Policy, the claimants, when named as beneficiaries of the Policy by the Insured, became beneficiaries of a trust under s. 7 of the MWPA;

(2) the trust under s. 7 of the MWPA was governed by, and could only be in terms of the Policy;

(3) the Policy (inclusive of the Application) was a valid contract between the Insured and the defendant;

(4) upon the true construction of s. 7 of the MWPA and the terms of the Policy, the corpus of the statutory trust under s. 7 of the MWPA for the claimants was not $100,000 of the proceeds of the Policy, but rather, the 'death benefit' as described in the Policy;

(5) upon the true construction of s. 7 of the MWPA and the terms of the Policy, by virtue of what constituted the 'death benefit' in the Policy, the claimants were entitled to only so much of the proceeds of the Policy of $100,000 as remained after satisfaction of the outstanding amounts owing to the defendant for any loans

(Indebtedness), the collateral assignee, Commonwealth Bank, and the defendant for any outstanding premiums (Deduction Amount), which all ranked in priority to the ascertainment of claimants' 'death benefit' under the Policy;

(6) upon the true construction of s. 7 of the MWPA and the terms of the Policy, that the Policy was assignable without the consent of the beneficiaries, and was lawfully assigned by the Insured to the collateral assignee, Commonwealth Bank, pursuant to the terms of the Policy;

(7) upon the true construction of s. 7 of the MWPA and the terms of the Policy, the Insured validly had the right, as reserved in the Application and the Policy to change a beneficiary and change ownership of the Policy without reference to the beneficiaries;

(8) in the circumstances, the Death Benefit of the Policy in the amount of $100,000 was lawfully paid by the defendant to the collateral assignee, Commonwealth Bank, pursuant to the claim made by the latter,

(9) by virtue of the lawful assignment of the Policy, the collateral assignee was capable of giving, and did give, the defendant a valid discharge in relation to the obligations of the defendant to pay the proceeds under the Policy.

63. Based on my findings, I order that the application of the claimants be dismissed. The claimants and defendant shall be heard on the issue of costs, and in relation thereto, the parties shall proffer their written submissions to the Court within 30 days.

Dated 18 October 2024

Simone I. Fitzcharles

Justice