IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case Number: 64222/2011
Date: 23 October 2014
Not reportable
Not of interest to other judges

In the matter between: DATE: 23/10/2014

P[…] G[…] PLAINTIFF

and

F[…] G[…] DEFENDANT

Coram: HUGHES J

JUDGMENT

Delivered on: 23 October 2014

Heard on: 7 March 2014; 11 to 20 March 2014 and 3 April 2014

HUGHES J

1. On 12 September 2007, this court dissolved the marriage union between the plaintiff and the defendant. In doing so, a decree of divorce incorporating the deed of settlement concluded by both plaintiff and defendant was made an order of court.

2. This action concerns the interpretation of one of the clauses of the settlement agreement with the heading "*MEDIESE FONDS"*. For convenience the relevant clause is set out below:

> *"4. MEDIESE FONDS:*
> *4.1 Die partye plaas op record dat man lid is van 'n mediese fonds en dat die vrou as 'n afhanklike lid op daardie fonds geregistereer is. Die partye kom ooreen dat die man sy lidmaatskap tot sy mediese fonds (of 'n ander mediese fonds van sy keuse) sal handhaaf, en sal toesien en verseker dat sodanige lidmaatskap uitgebrei bly ten einde die kinders en die vrou ook daarby in te sluit en die voordeel daaraan verbonde vir hulle beskekbaar te stel.*
> *4.2 Die partye plaas of (sic op) record dat die vrou die eienaar is van 'n hospitaalplan watook voordele vir die man en kinders insluit. Die partye kom ooreen dat die vrou die hospitaalplan in stand sal hou en sal toesien dat sodanige voordele as wat hulle tans geniet, beskikbaar bly vir die man en kinders."*

3. **<u>Background</u>**

Before the parties entered into the marriage, each had their own Liberty Life Lifestyle Plan ("LLLP"). The cover of the defendant's was more extensive than that of the plaintiff. Whilst, married the party's agreed that it would make financial sense to do away with the plaintiff's LLLP and place him as a beneficiary on the defendant's LLLP. The children born of the marriage also enjoyed the status of beneficiaries on the defendant's LLLP. Thus, the defendant remained the owner of her LLLP. During the course of their marriage, the parties referred to the LLLP as a "hospital plan". At the dissolution of the marriage, a clause pertaining to the "hospital plan" was inserted in the

settlement agreement. This appears in paragraph 2 above. I am required to interpret this clause.

4. The necessity for the interpretation of this clause arises from the plaintiff having being involved in a light aircraft accident on 28 November 2008. He suffered a fractured vertebra and was hospitalised for several days. Because of the injuries sustained by the plaintiff, his hospitalisation thereafter and treatment received, the LLLP of the defendant paid out an amount of R 179 375.00 to the defendant.

5. The plaintiff claims that he is entitled to the payment made to the defendant, as he was the beneficiary who was injured. Though the above amount was paid to the defendant, an amount of R27 351.08 ought to be subtracted, as the defendant paid this towards the plaintiff's medical bills. Therefore the ultimate amount sought by the plaintiff in this action is the balance which is R 151 998.92.

6. **The dispute**

The defendant's case is that the plaintiff is only entitled to a limited benefit these being the expenses not covered by the plaintiff's medical aid scheme. The defendant equates this amount to the sum of R27 351.08. On the other hand, the plaintiff contends that he is entitled to the full benefit paid out by the LLLP. To determine who is correct it is prudent to interpret clause 4 of the settlement agreement concluded by the parties, which is, headed "*Meidie se Fonds"*.

7. **The Liberty Life Lifestyle Plan**

This plan no longer exists as a product from Liberty Life. The name of the policy product was *"Mediese Lewenstyl"* and the policy provided various benefits inclusive of the payment of medical benefits. It is common cause that the owner of the policy was the defendant and she was responsible for paying the premium. From a reading of the policy, the defendant was entitled to nominate beneficiaries. A beneficiary is *"A person who receives or is entitled to receive a favour or benefit, especially under a trust or will or life insurance policy; someone to whom a legacy is bequeathed"* according to the **Shorter Oxford**

English Dictionary fifth Edition. The life assured was the defendant and beneficiaries nominated by the defendant were the plaintiff and their two minor children born of the marriage. The beneficiaries inclusive of the plaintiff are mention in the policy under the heading *"Voordele"* which translated means *"advantage, benefit, profit; for their advantage, in their favour or for their benefit"* see **Tweetalige Woordeboek, - Bilingual Dictionary by Bosman, van der Merwe and Hiemstra Eighth Edition**.

8. On an examination of the policy documents, of interest is the fact that the parties were married out of community of property and in 2003, the plaintiff was not cited as a beneficiary. By this time, the defendant had not nominated any beneficiary even though the elder of the two children was born in 2000. The names of the two children only appear in a print out of the policy concluded in 2009 that is after the divorce had taken place in 2007.

9. The policy also dictates how the benefits would be paid out and this appears as set out below:

"Betaling van Voordele":

"Enige Mediese Lewenstyl-voordele wat betaalbaar is sal aan die Hoof versekerde Lewe uitbetaal word. Enige ander eisuitbetaalings sal aan die Einaar of aan die Einaars se Boedel uitbetaal word met dien verstade dat waar die Einaar 'n Begunstigde benoem het die uitbetaling van enige Sterftevoordeel aan die Begunstigde gemaak sal word."

10. **Evidence of the parties**

It is clear from the evidence of both parties that they commonly referred to the LLLP as a *"hospital plan"* and this is how it was reflected in the settlement agreement. It is also common cause that the parties agreed that the plaintiff would relinquish his LLLP and the defendant would retain hers. This made financial sense for the parties. The plaintiff and their two children would receive benefits from the LLLP of the defendant. When the marriage dissolved, the parties recorded that:

"Die partye kom ooreen dat die vrou die Hospitaal Plan in stand sal hou en sal toesien dat, sodanige voordele as wat hulle tans geniet, beskikbaar bly vir die man en die kinders." (Clause 4.2).

11. It is common cause that, the LLLP paid out specific hospital expenses directly to suppliers, paid out 4% of the illustrative value for specific injuries and paid out 10% of the illustrative value for specific periods that one stayed in hospital. Thus, when the defendant submitted the claim to Liberty they made two payouts. The one payout paid directly to the suppliers, the other to the defendant, being the policyholder, in respect of the serious injuries sustained by the plaintiff, his time spent hospitalised and in intensive care. This payment totalled R179 375.00.

12. The crux of the plaintiff's evidence is that he would have never relinquished his LLLP if, he was not going to enjoy the same benefits he had been entitled to when he owned his own LLLP. Under the defendant's LLLP, which was more comprehensive than his had been, he received more benefits. He also testified that at the time when the settlement agreement was concluded, his understanding, even though the parties did not discuss this, was that he would continue to enjoy the same benefits that he had enjoyed from the LLLP of the defendant.

13. It is not in dispute, that during and after the termination of the marriage, the defendant and the two children were beneficiaries under the plaintiff's medical aid scheme. Likewise, the plaintiff and the children were beneficiaries under the defendant's LLLP. This status was retained even after their divorce.

14. The plaintiff stated that when the defendant re-married in 2009, she took out her own medical aid and plaintiff removed her off his medical aid. He also took out his own LLLP because he was removed from her LLLP when she re-married. He went on further to state that in 2010 when he was on his own LLLP he was hospitalised and received the benefits under his own LLLP. These were the same benefits that he would have received whilst he was under the defendant's LLLP, of cause, the amounts were not the same, but the benefit was received.

15. The plaintiff throughout his testimony persisted that he had cancelled his LLLP in order to be placed on the defendants LLLP, as he would still enjoy the same benefits that he had received on his own LLLP. On the other hand, the defendant testified that it was made clear to the plaintiff that the LLLP would only pay for those expenses not paid for by the plaintiff's medical aid scheme. This was the position before and after the dissolution of their marriage, and if he had the wrong impression, it was no fault of hers.

16. The defendant further testified that the benefits offered to the plaintiff under her LLLP were *limited* and she had discussed this aspect with the plaintiff. She persisted that the LLLP was to be used to pay out the shortfall that the plaintiff's medical aid scheme failed to pay. However, under cross- examination and questions posed by the court, she testified as follows: *"Sorry, if I understand correctly I did not use the word 'I limit you' I said 'it will cover medical expenses not covered by the medical aid'."* The issue of the discussion of the limitation of the plaintiff's benefits under her LLLP was pursued further and the defendant said that in her mind, even though she did not expressly say it to the plaintiff, the benefit offered by her was limited. This benefit was limited to medical expenses not paid for by the plaintiff's medical aid scheme.

17. Her evidence is that this was the first claim of such a nature, that is, a claim for benefits, from injuries, sustained by the plaintiff. The benefit being payment for the type of injury, the period spent by plaintiff being hospitalised and in the ICU.

18. She never considered that a situation such as this would arise, when they discussed the terms of the settlement agreement. The administration of the policy was discussed, for the first time, when they concluded the settlement agreement. As such, there had never been discussions about limitations of benefits on her LLLP.

19. **The Law on interpretation**

Wallis JA in ***Natal Joint Municipal Pension Fund v Endumeni Municipality 2012 (4) SA 593 (SCA)*** *at paragraph* ***[18]*** had the following to say about interpretation of statutes, statutory instruments and documents in general:

"[18] Over the last century there have been significant developments in the law relating to the interpretation of documents, both in this country and in others that follow similar rules to our own. It is unnecessary to add unduly to the burden of annotations by trawling through the case law on the construction of documents in order to trace those developments. The relevant authorities are collected and summarised in ***Bastian Financial Services (Pty) Ltd v General Hendrik Schoeman Primary School****. The present state of the law can be expressed as follow: Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose of which it is directed and the material known to those responsible for its production. Where more than one meaning is possible, each possibility must be weighed in light of these factors. The process is objective, not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document. Judges must be alert to, and guard against, the temptation to substitute what they regard as reasonable, sensible or businesslike for the words actually used. To do so in regard to a statute or statutory instrument is to cross the divide between interpretation and legislation; in a contractual context it is to make a contract for the parties other than the one they in fact made. The 'inevitable point of departure is the language of the provision itself, read in context and having regard to the purpose of the provision and the background to the preparation and production of the document."*

20. **<u>Analysis</u>**

The fact that the parties called the LLLP a *"hospitaalplan"* hospital plan is of no consequence and does not affect the context within which they sort to agree in respect of this policy in the settlement agreement. Both have conceded that they called the LLLP a hospital plan. They are thus *ad idem* concerning what the hospital plan was.

21. To my mind this case deals with one of the essentials of a valid contract and this is, the meeting of minds or the coincidence of the wills of the contracting parties, or *consensus ad idem*. The dispute surrounds the interpretation of clause 4.2 of the settlement agreement. As was stated by Wallis JA in the case above, one needs to examine the reasons for the existence of the settlement agreement, the outward manifestations of the parties, and the purpose of the settlement agreement. The approach to be adopted is that of a generally objective approach.

22. In doing so, specifically in this case, one should bear in mind the principle as was stated in the case of ***Pieters v Salomon 1911 AD 121*** *at* ***130*** De Villiers CJ said :

"… if their course of dealing with the defendant was such as reasonably to lead him to believe that they intended to pay him the full amount of his claim, the plaintiffs' unexpressed intention to pay the lesser sum cannot avail them."

At **137**, Innes J expressed the same:

"When a man makes an offer in plain and unambiguous language, which is understood in its ordinary sense by the person to whom it is addressed, and accepted by him bona fide *in that sense, then there is a concluded contract. Any unexpressed reservations hidden in the mind of the promisor are in such circumstances irrelevant. He cannot be heard to say that he meant his promise to be subject to a condition which he omitted to mention, and of which the other party was unaware."*

23. It is clear, that the language and the context must be considered at the same time and on the same level, the one not being superior to the other. I have already set out above the benefits set out in clause 4 of the settlement agreement, which were set out in the LLLP document under the section *"Voordele"* which loosely translated means for "their benefit". In addition, the plaintiff was nominated as a *"beneficiary"*, which means "one who receives a bequest". The language in the LLLP under "*Voordele"* and that as regards beneficiaries, spells out that, a bequest in terms of the LLLP, is for the *beneficiaries*, benefit.

See **Barko Financial Services (Pty) Ltd v National Credit Regulator (415/13) [2014] ZASCA 114 (18 September 2014) para [16]** where Ponnan JA said:
*"The normal and permissible method available to a court to ascertain the ordinary meaning of words is to turn to authoritative dictionaries for aid (**Association of Amusement and Novelty Machine Operators v Minister of Justice 1980 (2) SA 636 (A) at 660F-G**)."*
However, my view is that it is does not end here. I need to look at the language together with the context in which the document came into existence.

24. The evidence is that each party had their own LLLP prior to their marriage. It made sense to retain only one LLLP. As the defendant's LLLP provided more cover than that of the plaintiff, her LLLP was retained and the plaintiff, together with the two children, were added as beneficiaries. The plaintiff retained his medical aid scheme and the defendant together with the two children derived benefit therefrom.

25. The plaintiff testified that he only moved over to the defendant's LLLP because he would still be covered and entitled to the benefits as he had been entitled to on his own LLLP, with the additional benefits that the defendant's LLLP catered for, that were not catered for on his LLLP. His medical aid scheme would cover the entire family inclusive of the defendant and the children. When the settlement was concluded, he states that the *status qua* was maintained.

26. He said this is clear and evident from the wording of the "*MEDIESE FONDS"* clause. At the dissolution of their marriage, the parties, retained the *status qua* and documented this in their settlement agreement as is set out in clause 4, under the heading "*MEDIESE FONDS"*.

27. From the evidence, it is clear to me that the parties did not discuss what the benefits would entail under the LLLP at the time of the dissolution of the marriage and the conclusion of the settlement agreement. Even though the defendant contends that to her understanding it was a known fact to the parties that her LLLP would only cover those payments that the medical aid did not

cover or pay for. Likewise, the issue of the plaintiff's benefits being limited was not discussed and this much has been conceded by the defendant.

28. On an examination of the language and the context of clause 4 as it appears within the settlement agreement, to me there were no prior discussions of what clause 4 would entail. The parties did what made logical business sense when they abandoned the plaintiff's LLLP. How the LLLP and the medical aid scheme operated whilst they were married, is documented in clause 4. The defendant's concession that in her mind she perceived that the plaintiff's benefit derived from her LLLP would be limited and he should have been aware of this, is indicative of the fact that they did not discuss the limitation of the plaintiff's benefits. The question to be asked and answered is why she would have this notion in her mind when this aspect was not discussed between the parties, when plaintiff relinquished his LLLP and when they entered into the settlement agreement, at the least.

29. This is a classic case were the parties omitted to deal with what the benefits under clause 4 would entail. As such neither of the parties can now come forward and say they meant the policy to only cover a limited aspect when they did not set it out from the onset.

30. It is apparent that from the language, context and purpose, for which the settlement was crafted, the contention of the defendant cannot, in my mind, be a reasonable and sensible meaning preferred to clause 4.

31. In the circumstances following order is made:

    31.1 The defendant is ordered to pay an amount of R151 998,92 to the plaintiff, together with interest, calculated at a rate of 15,5% per annum from 28 February 2009, to date of final payment;

    31.2 The defendant is ordered to pay the costs on a party and party scale.

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W. Hughes Judge of the High Court

Delivered on: 23 October 2014

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