

IN THE SUPREME COURT OF BELIZE, A.D. 2019

CLAIM NO. 806 of 2019

BETWEEN

(LISBEY J. LEAL

CLAIMANT

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(SCOTIABANK (BELIZE) LIMITED

DEFENDANT

BEFORE THE HONOURABLE MADAM JUSTICE LISA SHOMAN

TRIAL: DECEMBER 15, 2020

Written Closing Submissions

14th January 2021 – Claimant

8th January 2021 – Defendant

APPEARANCES: Mr. Andrew Marshalleck SC for the Claimant
Mr. Edwin Flowers for the Defendant

JUDGEMENT

INTRODUCTION

1. The Claimant Lisbey Leal claims against the Defendant, Scotiabank (Belize) Limited for Orders as follows:

(1) A declaration that the Defendant held the benefit of creditor life insurance policy issued by Sagicor Capital Life and later the policy issued by Scotia Life Trinidad & Tobago Ltd. and/or Scotia Caribbean Insurance Limited over the life of Pedro Santiago Leal covering the indebtedness of the Claimant and Pedro Santiago Leal to the Defendant under and by virtue residential mortgage loan No. 199562 on constructive and/or implied and/or resulting trust for the benefit of itself, the Claimant and/or the estate of Pedro Santiago Leal.

- (2) A declaration that the Defendant terminated Sagicor Group Life Policy No GCBE200L and replaced it with a group creditor life policy from Scotia Insurance on terms detrimental to the Claimant and Mr. Leal without the knowledge or consent of the Claimant or Mr. Leal in breach of trust.
- (3) A declaration that the Defendant, in breach of trust and/or in breach of a duty of care owed to the Claimant, negligently failed to enforce and/or to take any or any sufficient steps to realize payment under the creditor life insurance over the life of Pedro Santiago Leal upon or after his death against its affiliate Scotia Life Trinidad and Tobago Limited and/or Scotia Caribbean Insurance Limited ("Scotia Insurance") for the benefit of the Claimant and/or for the benefit of the estate of Pedro Santiago Leal to the financial detriment of the Claimant and the estate of Pedro Santiago Leal.
- (4) Damages for breach of trust and/ or in negligence in an amount sufficient to satisfy the outstanding balance on Residential Mortgage Loan a/c 199562 owing to Scotiabank (Belize) Limited as of the date of death of Pedro Santiago Leal and any accrued interest and bank charges thereon.
- (5) Such further or other relief as the Court deems just; and
- (6) Costs.

FACTUAL BACKGROUND

2. Most of the factual background to this Claim is not in dispute and in the Joint Pre-Trial Memorandum which was filed by the Parties, the following facts were agreed by the Parties.
3. The Claimant, Lisbey Leal (hereinafter "Mrs. Leal") resides at 22 Regent Street West (also Lot No. 482), Belize City, Belize and was at all material times a co-borrower of a residential mortgage loan of BZ\$120,000.00, which was taken out along with her

husband Pedro Santiago Leal (hereinafter "Mr Leal"), now deceased, from the Defendant bank on or about the 14th June, 2012.

4. The Defendant is a company duly formed and existing under the laws of Belize with offices situate at 4A Albert Street, Belize City, Belize, and was at all material times carrying on banking business in Belize (hereinafter "Scotiabank").
5. On or about the 14th day of June, 2012, Mrs. Leal along with her husband Mr Leal jointly contracted a mortgage loan from Scotiabank for the principal amount of BZ\$120,000.00 repayable together with Interest at 8.75 per cent per annum in 180 months unless sooner demanded (hereinafter "the Mortgage Loan")
6. The Mortgage Loan was to be secured by a mortgage over Lot No. 482 situate at Regent Street West in Belize City, the matrimonial home of Mrs. Leal and her husband. Scotiabank designated the Mortgage Loan as account # 199562.
7. According to the loan agreement made between the Parties, the agreed principal sum of the Mortgage Loan was disbursed to Mrs. Leal and Mr. Leal and used to pay out the mortgage loan then held by them with Heritage Bank Limited and to secure the transfer of the existing mortgage over the Lot No. 482, Regent Street West in Belize City.
8. The mortgage was transferred from Heritage Bank Limited to Scotiabank on or about 15th August, 2012, in consideration of payment of BZ\$109,337.78 and then simultaneously varied to have the mortgage upstamped by \$90,000.00 so that the mortgage thereafter secured a total indebtedness of BZ\$170,000.00.
9. Prior to that transfer, on or about the 19th June, 2012, Mrs. Leal and Mr Leal applied to be enrolled in a group creditor life policy of insurance administered by Scotiabank for the benefit of itself and mortgage borrowers called the "Scotia Plan Loan" or "Mortgage Level Premium Plan" which policy was then issued by Sagicor Capital Life and designated as policy No. GCBE200L (hereinafter called "the Policy").

On the same day, the 19th June, 2012, Mrs. Leal and Mr. Leal were duly enrolled under the Policy and the Mortgage Loan became insured under the Policy.

10. By the terms of the Policy, Sagicor Capital Life promised to pay to Scotiabank the remaining balance on the Mortgage Loan up to BZ\$120,000.00 in the event of the death of either Mrs. Leal or Mr. Leal.
11. Pursuant to the enrolment of Mrs. Leal and Mr. Leal under the Policy, Scotiabank duly regularly debited the account of Mrs. Leal and/or Mr Leal for the amounts of the required premiums, and paid those premiums over to Sagicor Capital Life.
12. Scotiabank administered the Policy for the benefit of itself as lender and for the benefit of mortgage borrowers generally (including Mrs. Leal and Mr. Leal) so that their obligations were met in the event of death of an insured person.
13. Scotiabank, by virtue of the above described arrangement, held the Policy as trustee on constructive and/or implied and/or resulting trust for the benefit of itself and Borrowers enrolled under the Policy, including Mrs. Leal and Mr. Leal, and owed Mrs. Leal fiduciary duties as trustee of the Policy including an overall duty to act in the best interest of Mrs. Leal in the administration of the Plan.
14. Scotiabank caused the Leals to be enrolled under a New Policy (hereinafter “the New Policy”) with its affiliate, Scotia Insurance and continued to regularly debit the account of the Leals to pay the required premiums to Scotia Insurance due under the New Policy instead of to Sagicor Capital Life in accordance with the Policy.
15. By the terms of the New Policy, Scotia Insurance, as insurer, promised to pay to Scotiabank the remaining balance on the Mortgage Loan up to BZ\$120,000.00 in the event of the death of either Mrs. Leal or Mr. Leal, purportedly on condition that all representations made to Sagicor Capital Life on the enrollment of the Leals in the Scotia

Plan Loan or Mortgage Level Premium Plan were true and correct and otherwise on terms and conditions unknown to Mrs. Leal.

16. On the 16th June, 2014, while enrolled and covered under the terms of the group creditor life policy issued by Scotia Insurance, Mr. Pedro Leal died from the combined effects of hypovolemic shock, bleeding esophageal varices, portal hypertension and cirrhosis of the liver according to his death certificate.
17. Scotiabank as trustee of the New Policy owed a duty of care to Mrs. Leal to make and vigorously pursue a claim for payment of the residential Mortgage Loan from Scotia Insurance.
18. After the death of Mr Leal, Scotiabank made a claim for payment of the balance of the indebtedness of Mrs. Leal and Mr. Leal under the Mortgage Loan against Scotia Insurance; and on the 10th September, 2014, Scotia Insurance declined the claim owing to material misstatement by the insured at enrollment on the basis of a copy of the enrollment form which had been submitted to Sagicor Capital Life purportedly in accordance with the terms of the New Policy.
19. The claim of Scotiabank under the New Policy in respect on the residential mortgage loan owed by the Leals is no longer being pursued by Scotiabank who on the 31st May, 2017, instead gave notice of intention to sell the matrimonial home of Mrs. Leal pursuant to the mortgage in order to recover the debt.
20. On the 30th September, 2019, Scotiabank gave notice informing that it had sold and assigned the credit card debt of Mrs. Leal to Ascendancy Belize Limited and that payments and arrangements are to be made with Ascendancy Belize Limited for settlement of that account.

ISSUES TO BE DETERMINED

21. The Parties in their Pre-Trial Memorandum state that the following are the issues which are to be determined at Trial:
- (i) Whether the Defendant acted in breach of trust when it terminated the Group Creditor Life Policy it held with Sagicor and instead took out a new group creditor life policy with its affiliate Scotia Insurance?
 - (ii) Whether the terms of the New Policy settled by the Defendant with its affiliate Scotia Insurance were detrimental to the Claimant?
 - (iii) Whether Defendant negligently and/or in breach of trust failed to advance and/or vigorously pursue a claim for payment of the mortgage loan in accordance with the group creditor life policy it held with Scotia Insurance?
 - (iv) Whether the Claimant and/or her husband checked the boxes in Section B of the Sagicor Enrolment Form "No" when enrolling in the group creditor life policy held and administered by the Defendant?
 - (v) Whether Scotia Insurance was entitled to decline payment under the policy due to the fact that Mr Leal was treated for Cirrhosis of the liver in April 2011, a fact which he did not disclose at the time of enrollment in 2012?
 - (vi) Whether there was any factual basis for the assertions of the Scotia Insurance in denying the claim under the new Policy?

EVIDENCE FOR CLAIMANT

22. The single witness for the Claimant was Mrs. Lisbey Leal, widow of Pedro Leal and the co-borrower of a residential Mortgage Loan taken out along with him from the Defendant Scotiabank. Her evidence was clear, forthright and convincing and the relevant details will be reviewed under the heading of the issues to be decided.

EVIDENCE FOR DEFENDANT

23. The Defendant's sole witness, Ms. Harlesha Blades was not in fact, the Mortgage Loan Officer who assisted Mrs. Leal and Mr. Pedro Leal in completing the required enrolment form to opt for life protection, and was never present during that process. That Mortgage Loan Officer, Ms. Martha Burrows was not a witness in these proceedings.
24. Ms. Blades could not and did not give any evidence as to how the said form was completed. There were significant gaps in her knowledge of this particular matter and Ms. Blades could not say why it was in the best interest of borrowers of Scotiabank, such as the Leals (or indeed if it was in their interest at all) that the original group creditor life insurance policy with Sagicor Capital Life was terminated, and replaced with the New Policy administered by Scotia Insurance, an affiliate of Scotiabank (Belize) Limited.
25. Ms. Blades confirmed that the permission of creditors was not secured by the Bank in order to effect the change from Sagicor Capital Life to Scotia Insurance, and while she said that that a letter "was supposed to be sent to Mr. and Mrs. Leal" to inform them of the same, she could not say if any such letter was in fact sent.
26. Ms. Blades also confirmed that Scotia Insurance did not require or request new enrolment forms from insured persons and admitted that Scotiabank simply chose to rely on the forms signed and provided by insured persons to Sagicor Capital Life.

27. Under cross-examination, Ms. Blades was obliged to admit that declarations made on the enrolment form was to Sagicor Capital Life, and that the Leals never gave any such declaration to Scotia Insurance.

THE ISSUES

1. DID THE DEFENDANT ACT IN BREACH OF TRUST?

28. According to Mrs. Leal, Scotiabank acted in breach of trust when it terminated the Group Creditor Life Policy that was held with Sagicor Capital Life and instead took out a new group creditor life policy with its affiliate Scotia Insurance in terms detrimental to her.
29. The sole witness for Scotiabank, Ms. Blades, conceded that Scotia Insurance was “a subsidiary” of Scotiabank, although she could not say, even when vigorously cross-examined why the Group Creditor Life Policy was moved from Sagicor to its affiliate, Scotia Insurance.
30. Mrs. Leal was most adamant in her evidence that neither she nor her husband, Mr. Leal was ever informed of the decision by the Defendant Bank to switch the Insurer of the Group Creditor Life Policy from Sagicor Capital Life to Scotiabank’s affiliate company, Scotia Insurance.
31. Ms. Blades, the sole witness for Scotiabank, confirmed that the permission of creditors/insured persons such as Mr. and Mrs. Leal was not secured by Scotiabank prior to changing the Group Life Policy provider from Sagicor Capital Life to Scotia Insurance. Furthermore, Ms. Blades was unable to provide evidence to show that the Leals were ever notified of the change by the Bank.
32. Scotiabank did not in fact offer any explanation to the Court as to why it did not secure the consent or approval of the Leals as beneficiaries of the Group Creditor Life Policy

that was held with Sagicor Capital Life, before terminating that policy and taking a new policy with Scotia Insurance.

33. It is settled between the parties that after the Leals had been enrolled under the Sagicor Capital Life Policy, Scotiabank as trustee, regularly debited the account of the Leals to pay for the required premiums and paid the same over to Sagicor, and after the Bank had made the change from Sagicor to Scotia Insurance, it continued to debit the account and paid the required premium to Scotia Insurance.
34. In addition thereto, Scotiabank has conceded that it was, in fact a trustee of the group creditor life policy and that it owed fiduciary duties as trustee of the Policy including an overall duty to act in the best interest of Mrs. Leal (and other beneficiaries) in the administration of the plan.
35. Scotiabank had such a duty to the Leals from the time when its Mortgage Officer, Ms. Marta Burrows assisted the Leals to fill out the declaration form for Sagicor Capital Life and they were enrolled in the plan.
36. It is common ground, held by both Parties, that the policy of life insurance was administered by the Bank for the benefit of itself and mortgage borrowers, and that therefore the Bank held the Policy as Trustee. Scotiabank does not dispute this at all.
37. Section 27 (1) of the Trusts Act, Chapter 202 of the Laws of Belize states that: *“A trustee shall in the execution of his functions, (a) act with due diligence; (b) observe utmost good faith; (c) act to the best of his skills and abilities; and (d) exercise the standard of care of a reasonable and prudent man of business.”*
38. Section 27 (3) provides that *“A trustee shall owe a fiduciary duty to the beneficiaries of the trust, the members of a class for whose benefit the trust was established, or the purpose for which the trust was established.”*

39. Therefore, as a consequence which flows from that trust, Scotiabank was a fiduciary of Mr. and Mrs. Leal, and owed them a duty of care, and concomitantly, an obligation of loyalty.
40. As a consequence, Scotiabank should have, at a minimum, ensured that Mr. and Mrs. Leal were informed about the change in its Group Life Policy from Sagicor Capital Life before that change was made, and ought to have disclosed to them the relationship between Scotiabank and Scotia Life. It should have disclosed to the Leals any changes, risks or drawbacks possible due to any proposed change, and ought to have provided the Leals with an adequate opportunity to give informed prior consent to that change.
41. There is no evidence adduced by the Defendant to show, in relation to Mr. and Mrs. Leal, that Scotiabank did any of those things prior to unilaterally entering into an agreement on May 6, 2013 with Scotia Insurance Caribbean Limited for an “Optional Participation Group Credit Insurance covering eligible borrowers of the Defendant in Belize for Credit Life and Health Credit Insurance in respect of Scotia Plan Loans and Residential Mortgages.”
42. In fact, Ms. Blades admitted under cross-examination that Scotiabank did not secure the permission of creditors to the termination of the Policy with Sagicor or the agreement with Scotia Life. She exhibited a form letter in her witness statement at Exhibit **HB9** which she said was sent to inform creditors of the Bank, but admitted that she did not have a copy of any such letter being sent to the Leals, and that proof of the same did not appear to be in the records of Scotiabank.
43. Under cross-examination, Ms. Blades was obliged to concede that Scotia Insurance was engaged in the conduct of insurance business more than likely to make a profit on premiums paid to it.
44. It is not disputed that those premiums which paid to Scotia Insurance by Scotiabank included those paid by withdrawals from the accounts of the Leals.

45. Section 27 (6) of the Trust Act of Belize provides that *“Except with the approval of the Court or in accordance with the terms of the trust or the provisions of this Act, a trustee shall not, (a) derive, directly or indirectly, any profit from his trusteeship; (b) cause or permit any other person directly or indirectly to derive any profit from his trusteeship; or (c) on his own account enter into any transaction with his co-trustees or relating to the trust property which may result in any such profit.”*
46. It is Section 27 (6) (b) that concerns the Court in respect of the agreement made by Scotiabank and Scotia Life without the prior consent or even the knowledge of the Leals, particularly given the admitted relationship between Scotiabank and Scotia Life as being affiliated companies.
47. Scotiabank does not, in its evidence or their submissions to the Court seek to deny their fiduciary responsibility to the Leals. That fiduciary responsibility meant that Scotia had particular responsibilities to them.
48. Lord Justice Millett in the UK Court of Appeal case of **Bristol and West Building Society v. Mothew** [1998] Ch. 1 set out the extent of such responsibility as follows: *“A fiduciary is someone who has undertaken to act for or on behalf of another in a particular matter in circumstances which give rise to a relationship of trust and confidence. The distinguishing obligation of a fiduciary is the obligation of loyalty. The principal is entitled to the single-minded loyalty of his fiduciary. This core liability has several facets. A fiduciary must act in good faith; he must not make a profit out of his trust; he must not place himself in a position where his duty and his interest may conflict; he may not act for his own benefit or the benefit of a third person without the informed consent of his principal. This is not intended to be an exhaustive list, but it is sufficient to indicate the nature of fiduciary obligations. They are the defining characteristics of the fiduciary. (Emphasis added)*

49 In the circumstances, Mrs. Leal is entitled to a declaration that Scotiabank acted in breach of trust when it terminated the Group Creditor Life Policy it held with Sagicor and instead took out a new group creditor life policy with its affiliate Scotia Insurance without the knowledge or consent of either Mrs. Leal or Mr. Leal

2. WHETHER THE TERMS OF THE NEW POLICY WERE DETRIMENTAL TO THE CLAIMANT

50. The second issue at stake is whether the terms of the New Policy settled by the Defendant were detrimental to the Claimant.

51. The evidence of Mrs. Leal (which was not refuted) shows that in June of 2012, the Leals filled out the required enrollment form Sagicor Capital Life opting for life protection under Group Policy N. GCBE200L for insurance on the lives of Lisbey J. Leal and Pedro S. Leal with the assistance of the Scotiabank Loan Officer Ms. Martha Burrowes and were duly enrolled in 2012 under the Policy.

52. The evidence of Ms. Blades (which was not controverted) was that the terms of the New Policy issued by Scotia Life, were the same as the Policy issued by Sagicor Capital Life. Under cross-examination, although she said she did not know what were the terms of the agreement between Scotiabank and Scotia Insurance, she was adamant that the terms were the same, to the point that Scotia Life did not require new enrollment forms to be filled out by creditors already insured by Sagicor Capital Life, but they relied on the very same forms that had been filled out.

53. While there was no evidence adduced to show what terms of the New Policy were detrimental to the Claimant, it is clear that Scotiabank as a trustee owing fiduciary responsibilities to the Leals should have, at least sought to verify the information on the Sagicor enrollment form with the Leals prior to terminating the Sagicor Policy and replacing it with the New Policy issued by Scotia Life; or to have given the Leals the opportunity at the time to fill out a new insurance form in favor of Scotia Life.

54. Instead, as the evidence of Mrs. Leal shows, Scotiabank simply terminated the Policy held with Sagicor, caused the Leals to be enrolled under the New Policy and continued to regularly debit the account of the Leals to pay the required premiums under the New Policy to its affiliate Scotia Life. Both Scotiabank and Scotia Life seem to have assumed the risk under the terms of the enrollment form made to Sagicor, and indeed, the Defendant provided no evidence otherwise, and did not seek to deny that fact.

3. WHETHER THE DEFENDANT FAILED TO ADVANCE/VIGOROUSLY PURSUE THE CLAIM WITH SCOTIA LIFE

55. The evidence of Mrs. Leal (which was not negated by Scotiabank) was that as trustee of the New Policy issued to her and Mr. Leal, Scotiabank owed a duty of care to make and vigorously pursue a claim for payment of the residential housing mortgage loan from the insurer, Scotia Life, upon the death of Mr. Leal.

56. Both parties agree that while enrolled and covered under the terms of the group creditor life policy issued by Scotia Insurance, Mr. Pedro Leal died on 16th June 2014 from the combined effects of hypovolemic shock, bleeding esophageal varices, portal hypertension and cirrhosis of the liver, according to his death certificate.

57. Both parties agree that after the death of Mr. Pedro Leal, that Mrs. Leal obtained and provided to Scotiabank several medical documents pertaining to the death of her husband, exhibited as **HB10** to **HB15** of the witness statement of Ms. Blades.

58. The evidence of Ms. Blades is that on the 5th September 2014, Scotiabank submitted a claim against Scotia Insurance for payment of the balance of indebtedness of Mr. and Mrs. Leal under the Mortgage Loan.

59. According to Ms. Blades, Scotiabank received a letter from Scotia Insurance dated 10th September 2014, that the claim was denied “due to material misstatement by the insured at the time of enrollment”. That letter is exhibited to her witness statement as **HB16**.
60. Under vigorous cross-examination, Ms. Blades said that Scotiabank did seek the assistance of Mrs. Leal in prosecuting the claim to Scotia Insurance, and that the physician’s statements obtained were provided by Mrs. Leal.
61. Ms. Blades also admitted under cross that the Bank did notice that there were inconsistencies between the supplemental physician’s statement dated June 23, 2014 provided by Dr. Daniel Godinez and exhibited as **HB13** and the statement dated December 14, 2014 signed by Dr. Godinez and exhibited as **HB 14**.
62. The supplemental physician’s statement made on a Scotia Insurance form and exhibited as **HB13**, was dated June 23, 2014 was signed by Dr. Daniel Godinez. At section 4, the causes of death were listed as ***“1. Hypovolemic shock 2. Bleeding esophageal varices 3 Liver encephalopathy”*** On the form, on the section marked 7, Dr. Godinez stated the ***“Antecedent cause of death”*** as ***“Cirrhosis of Liver”***. In his remarks at section 12, Dr. Godinez states that the patient developed ***“Cirrhosis of Liver, following an attack of Leptospirosis. He was never an alcohol imbibor”***.
63. The “Medical Report of Pedro Santiago Leal” dated 3rd December 2014 and made by Dr. Daniel Godinez on letterhead from Belize Healthcare Partners Limited, explained that ***“MR. LEAL HAD DEVELOPED DENGUE FEVER IN 2011 AND THEN IN OCTOBER 2013 HE WAS DIAGNOSED WITH LEPTOSPIROSIS SINCE THEN HE DEVELOPED SIGNS AND SYMPTOMS OF CHRONIC LIVER DYSFUNCTION. MR. LEAL WAS NOT AN ALCOHOL IMBIBER AND THE TESTS FOR HEPATITIS B AND C WERE NEGATIVE”***.
64. In the same report Dr. Godinez states that ***“CIRRHOSIS OF THE LIVER CAN DEVELOP DUE TO MANY CONDITIONS SUCH AS HEART FAILURE, LIVER***

INFECTIONS AND BILIARY DISEASE. IN HIS CASE, PREVIOUS INFECTIONS MAY HAVE CONTRIBUTED TO THE DEVELOPMENT OF LIVER DISEASE.”.

65. Ms. Blades admitted under cross that there were inconsistencies between the statements of Dr. Godinez in the exhibits attached to her Witness Statement as **HB13** and **HB14**; and said that this was why Scotiabank made the appeal to Scotia Insurance. When questioned, she identified the inconsistencies as being to the dates when Mr. Leal was identified with Dengue and Leptospirosis. She also admitted that the exhibit at **HB 13** states that the date of diagnosis for Cirrhosis was 2011, but that at **HB14** states that chronic liver dysfunction developed after the 2013 diagnosis of leptospirosis.
66. Ms. Blades under further questioning by Mr. Marshalleck SC said that these inconsistencies “raised concerns” to Scotiabank which concerns were relayed to Scotia Insurance who recommended that the parties go to mediation and that the doctor’s information should be clarified. She also said that the Bank would have sat with Mrs. Leal and reached out to the doctor in order to submit again to the insurance, and insisted that the Bank did try to assist Mrs. Leal to reach out to the doctor and said that this would have been done via phone call.
67. While Ms. Blades said that she made a call to Dr. Godinez, she also acknowledged under cross that she did not make calls to Dr. Godinez, that she did not know if this was done and had no evidence that calls were made, even though she was present when one call was made to Dr. Godinez who was unavailable.
68. Ms. Blades also said that the bank clerk who actually made the call was trying to reach Doctor Godinez in order to get clarification as to the issue regarding the dengue fever suffered by Mr. Leal in 2011.
69. The evidence for the Defendant per Ms. Blades, as to its efforts after the refusal of Scotia Insurance is that even though Scotiabank had “concerns” and saw that the information provided by the doctor contained inconsistencies; and knowing that it needed to get

clarification regarding the pertinent medical history of Mr. Leal, in fact did not provide evidence to the Court that it did anything substantial to alleviate those concerns or obtain the necessary clarification.

70. This is not the kind effort that either Mr. or Mrs. Leal was entitled to expect from Scotiabank as trustee for the Group Life Policy, or under the Bank's fiduciary responsibility to them. In fact, it fell far (and painfully) short. As counsel put it in written submissions, *"a claim was made and there was some attempt at an appeal. There was nothing to suggest that any legal advice or any assistance of the Claimant was ever sought to advance the claim or appeal. The efforts to advance the claim were all done by the officers of the Defendant in the course of their banking duties"*. I agree.
71. The evidence for the Defendant bank is that while it did get medical documentation from Mrs. Leal, Scotiabank did not obtain the necessary clarification from Dr. Godinez. Nor did Scotiabank ever claim to have gotten any legal advice or any professional assistance in addressing the allegation of Scotia Insurance made in declining the claim.
72. Mrs. Leal averred in her witness statement at paragraph 22, that Scotiabank *"failed to inform me of the decision taken by Scotia Insurance to decline the claim and or to seek any assistance in any way addressing the allegation of misstatement by Scotia Insurance"* She goes on to say that *"The misstatement was never in fact confirmed by me and the Defendant never sought any such confirmation."* According to Mrs. Leal, *"...neither my husband nor I was ever aware that my husband had been diagnosed with cirrhosis of the liver at any time prior to his death."* None of this evidence of Mrs. Leal was negated by Scotiabank.
73. To perhaps make matters even more confusing, a further medical report in respect of Mr. Leal was issued on Karl Heusener Memorial Hospital Authority letterhead, signed by Dr. Jorge Gomez dated "17th December 2018" and exhibited to the Witness Statement of Harlesha Blades as **HB15**. That report stated that Mr. Leal *"was admitted to the General Medical Ward on February 25, 2011 during which he was diagnosed with*

Leptospirosis.” It also states that “he also presented with a hepatorenal syndrome during the diagnosis. He was treated and discharged with good evolution on February 28, 2011.”

74. It must be noted with care that nothing at all in that report, (which was purportedly issued in 2015 and not 2018) - whatever its true date - says anything at all about Mr. Leal suffering or being treated for cirrhosis of the liver. This is critical, especially on careful examination of the reasons given by Scotia Insurance for denying the appeal of Scotiabank in declining the Claim.
75. In any event, by its own evidence, Scotiabank did not appeal the declination of Scotia Insurance made on September 10, 2014 - until six and a half months later - on March 31, 2015. Ms. Blades at paragraph 16 of her witness statement says that the report of Dr. Gomez was produced *as “the other Medical Reports it had received namely HB14 and HB15* “in its appeal to Scotia Insurance.
76. Two weeks later, on April 16, 2015, Scotia Insurance by letter exhibited at **HB18** denied the appeal. The letter curiously never cited the report of Dr. Jorge Gomez at all, and simply notes that it “received an appeal request” and that *“Provided along with the request was a Medical Report from the Belize Healthcare Partners Limited which sort(sic) to provide further medical information from Mr. Leal”*.
77. Scotia Insurance, in that April 16, 2015 letter stated that *“...the claim status remains that of “Declined” due to the fact that Mr. Leal was treated for cirrhosis of the liver in April 2011, a fact he did not disclose at the time of his enrollment in 2012.”*. The report of Dr. Jorge Gomez which was said by Ms. Blades to have been provided to Scotia Insurance, was not cited, and the letter discloses nothing of the Dr. Gomez report.
78. When asked under cross-examination, what was done by the Bank after that rejection of the appeal by Scotia Insurance on April 16, 2015, Ms. Blades was not able to provide any

evidence of what was done, other than to say that they tried to follow up with Mrs. Leal and with “the Doctor” and had “several meetings” with her.

79. There is absolutely no evidence that Scotiabank made any reply at all to the Scotia Insurance letter of 16th April 2016, despite the evidence of Ms. Blades that Scotiabank was aware that there was a time limit to do so. There is no evidence that Scotiabank sought legal advice in respect of the same, or did anything else to try to resolve its own admitted concerns there was conflicting medical reports in respect of Mr. Leal. In fact, Scotiabank did not provide any evidence that it did anything at all in the aftermath of that refusal, and eventually, as Ms. Blades confirmed, the time period expired and the refusal became final and the doubts as to Dr. Godinez’s statements were never clarified.
80. The duty of care that Scotiabank as trustee should have exercised in regard to the Leals where this is concerned was the very same duty of care as expressed in Section 27 of the Trusts Act of Belize which provides that *“A trustee shall in the execution of his functions, (a) act with due diligence; (b) observe utmost good faith; (c) act to the best of his skills and abilities; and (d) exercise the standard of care of a reasonable and prudent man of business.”*
81. I am satisfied on the evidence adduced that Scotiabank, as an admitted trustee of the group creditor life policy under which the Leals were duly enrolled, and a fiduciary, failed Mrs. Leal in taking the necessary standard of care. Scotiabank did not observe utmost good faith. Scotiabank did not act with the necessary due diligence; and Scotiabank did not act with the best of skill or ability or exercise the standard of care of a reasonable person of business to pursue the claim of Mrs. Leal against Scotia Insurance.

THE OTHER ISSUES

82. The issue of whether the Claimant and her husband in fact checked the boxes in section B of the Sagacor Enrollment Form “No” when enrolling in the group creditor life policy held and administered by the Defendant, is one to be determined by the evidence before

the Court and the only evidence that they did not do so, comes from the testimony of Mrs. Leal that they did not.

83. Mrs. Leal was vigorously questioned by Mr. Edwin Flowers SC, but was adamant that the document was prepared by the Bank's own mortgage loan Officer, Ms. Martha Burrowes and that she assisted them in completion of the enrollment form. Mrs. Leal was a clear and credible witness and I accept her account of what she and Mr. Leal did not do at that time.
84. In any event, as Mrs. Leal testifies in paragraph 8 of her witness statement, "***Section B only applied to an interim period pending medical evaluation. We were never required to submit to any medical evaluation prior to or after enrollment in the plan***". As already accepted above, she also testifies at paragraph 22 that "***...neither my husband not I was ever aware that my husband had been diagnosed with cirrhosis of the liver at any time prior to his death.***" None of this evidence was controverted.
85. The Defendant bank while disputing this and providing a document purporting to show otherwise, could not provide any testimony to contradict Mrs. Leal and its sole witness, and Ms. Blades could not negate her evidence, having admitted that she was not present at all when the enrollment took place in 2011.
86. I find that not only were the Leals properly enrolled under the Sagicor Capital Life Policy, but on the transfer to Scotia Life, the Leals were also properly enrolled under the New Policy.
87. Scotia Life on issuing the New Policy without requiring any new enrollment forms (as Ms. Blades confirmed under cross-examination) to be completed by insured persons, must be taken to have accepted those insured persons under the same enrollment terms and risks as did Sagicor Capital Life. That is, Scotia Life issued the group life insurance policy to Scotiabank and the existing insured persons under the same enrollment terms of

the Sagacor Policy, and in the case of the Leals as they had stated on the enrollment form signed by them in 2012.

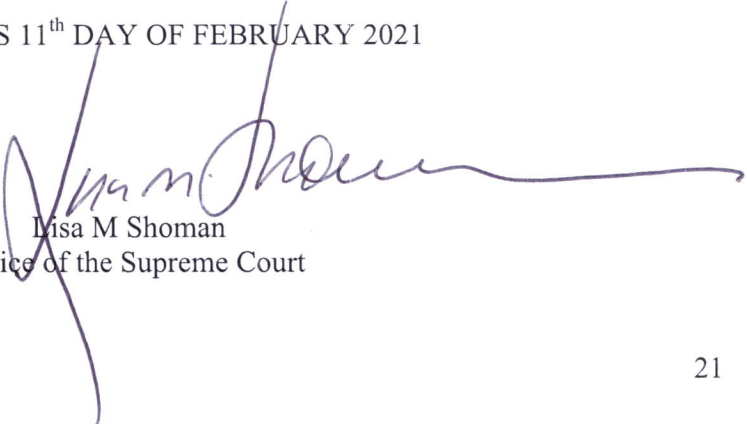
88. The Court does not consider that it must address the issues raised under (v) and (vi) in the Pre-Trial Memorandum because there is simply insufficient evidence led by either party to make any such determination one way or another.
89. As Counsel for the Claimant says in his submissions ***“there continues to date significant discrepancy in the medical certificates and records as to whether or not Mr. Leal was in fact diagnosed with cirrhosis of the liver in 2011 prior to enrollment under the original policy”***. And as Ms. Blades concedes, the Defendant Bank even shared those doubts.

RULING

90. I am grateful to both Mr. Flowers SC and Mr. Marshalleck SC for their assistance in determining the issues in this case. Having carefully reviewed the evidence in this claim, and the helpful written submissions by both counsel, I find that the Claimant is entitled to declarations as set out below.
91. Under Section 50 (1) of the Trusts Act, ***“Subject to the provisions of this Act and to the terms of the trust, a trustee who commits or concurs in a breach of trust is liable for, (a) any loss or depreciation in value of the trust property resulting from the breach; and (b) any profit which would have accrued to the trust had there been no breach.”***
92. I find that Scotiabank, in respect of Mrs. Leal is a trustee that breached its trust and is liable to her for the loss in the value of the trust property resulting to the breach. That value was the sum of the claim made to Scotia Insurance, which was not pursued by the Defendant Bank under its obligations to the Leals as trustee under fiduciary obligations.
93. I therefore grant the following Orders:

- (1) A declaration that the Defendant held the benefit of creditor life insurance policy issued by Sagicor Capital Life and later the policy issued by Scotia Life Trinidad & Tobago Ltd. and/or Scotia Caribbean Insurance Limited over the life of Pedro Santiago Leal covering the indebtedness of the Claimant and Pedro Santiago Leal to the Defendant under and by virtue residential mortgage loan No. 199562 on trust for the benefit of itself, the Claimant and/or the estate of Pedro Santiago Leal.
- (2) A declaration that the Defendant terminated Sagicor Group Life Policy No GCBE200L and replaced it with a group creditor life policy from Scotia Insurance without the knowledge or consent of the Claimant or Mr. Leal in breach of trust.
- (3) A declaration that the Defendant, in breach of trust and/or in breach of a duty of care owed to the Claimant, negligently failed to enforce and/or to take any or any sufficient steps to realize payment under the creditor life insurance over the life of Pedro Santiago Leal upon or after his death against its affiliate Scotia Life Trinidad and Tobago Limited and/or Scotia Caribbean Insurance Limited ("Scotia Insurance") for the benefit of the Claimant and/or for the benefit of the estate of Pedro Santiago Leal to the financial detriment of the Claimant and the estate of Pedro Santiago Leal.
- (4) Damages for breach of trust is awarded to the Claimant in an amount sufficient to satisfy the outstanding balance on Residential Mortgage Loan #199562 owing to Scotiabank (Belize) Limited as of the date of death of Pedro Santiago Leal and any accrued interest and bank charges thereon.
- (5) Costs are awarded to the Claimant to be paid by the Defendant as agreed or taxed

DATED THIS 11th DAY OF FEBRUARY 2021


Lisa M Shoman
Justice of the Supreme Court