Re Crown Life Insurance Co. and Friedman et al.

[Indexed as: Crown Life Insurance Co. v. Friedman]

16 O.R. (3d) 244
[1993] O.J. No. 3049
Action No. RE2600/93

Ontario Court (General Division),
Rosenberg J.

December 15, 1993

Insurance — Life insurance and accidental death benefit policy — Application for payment of insurance proceeds into court — Insured murdered — Beneficiaries under policy suspects in murder investigation — Beneficiary under insured's will requesting trial of issue to claim proceeds on ground that beneficiaries under policy had no entitlement to proceeds — Insurance company may interplead insurance proceeds — Appropriate case for trial of an issue despite hearsay evidence supporting the request — Insurance Act, R.S.O. 1990, c. I.8, s. 214.

In 1987, while a resident in Mexico, AF purchased from Crown Life Insurance Co. a U.S. $750,000 life insurance policy with an additional U.S. $250,000 accidental death benefit. Crown Life executed the policy at its head office in Ontario. AF paid premiums from Mexico. The policy, which was written in Spanish, provided that amounts payable under it would be paid in U.S. dollars in the United States. In 1989, AF named his three sons, Daniel, Andres, and Ron as the beneficiaries under the policy.

On October 1, 1991, AF was murdered in Mexico City. Crown Life paid Ron his share of the insurance proceeds, but did not pay Daniel and Andres because it had information that, unlike Ron, Daniel and Andres were suspects in the ongoing criminal investigation by Mexican authorities. Daniel and Andres, who were not Ontario residents, brought an action in Ontario claiming their share of the proceeds.

In the immediate proceedings, Crown Life applied for an order for payment of the insurance funds into court. Andres and Daniel applied for an order requiring the insurance funds to be paid to them. They were opposed by JF, who was the executrix and sole beneficiary under AF's will; she applied for an order staying the proceedings, directing a trial of an issue, or for a declaration as to her own entitlement to the funds, which part of the application was not argued.

Held, the insurance moneys should be paid into a joint trust account and there should be a trial of an issue on terms.

Ontario was a proper place to have the court resolve the issues between the parties, and there was no juridical disadvantage to any party having the matter heard here. Andres and Daniel, by their action, and Crown Life, by this application, had attorned to the jurisdiction of the Ontario court. Although the evidence of any involvement by Daniel and Andres in the murder was unsupported hearsay, JF's request for a trial of an issue was not frivolous and vexatious and she did not have to prove her claim at the time of asking for the trial of an issue; there was at least the possibility that Andres and Daniel might be charged in the murder of their father. If convicted of murder, they would not be entitled to the proceeds of the policy. Although she would be taking on a very heavy onus of establishing that they were not

entitled to the proceeds, she should be given the opportunity to try by an order directing a trial of an issue on terms.

Cases referred to

Bloomfield v. Monarch Overall Manufacturing Co., [1927] 4 D.L.R. 1137, [1927] 3 W.W.R. 502, 37 Man. R. 125 (C.A.); Demeter v. British Pacific Life Insurance Co. (1984), 48 O.R. (2d) 266, 8 C.C.L.I. 286, 13 D.L.R. (4th) 318, [1985] I.L.R. 1-1862, 7 O.A.C. 143 (C.A.); Hanes v. Wawanesa Mutual Insurance Co., [1963] S.C.R. 154, 36 D.L.R. (2d) 718, [1963] 1 C.C.C. 321; Lundy v. Lundy (1895), 24 S.C.R. 650; Nordstrom v. Baumann, [1962] S.C.R. 147, 31 D.L.R. (2d) 255, 37 W.W.R. 16; Scibetta v. Phoenix Assurance Co. of Canada (1984), 7 C.C.L.I. 188 (Ont. H.C.J.); Smith v. Smith, [1952] 2 S.C.R. 312, [1952] 3 D.L.R. 449; Standard Life Assurance Co. v. Trudeau (1900), 31 S.C.R. 376

Statutes referred to

Insurance Act, R.S.O. 1990, c. I.8, s. 214

Rules and regulations referred to

Rules of Civil Procedure, R.R.O. 1990, Reg. 194

APPLICATION for an order under s. 214 of the Insurance Act, R.S.O. 1990, c. I.8, and the Rules of Civil Procedure for the payment of monies into court.

Jamie Mason, for applicant.

Keith Landy, for respondents, Andres M. Friedman and Daniel H. Friedman

Richard Storrey, for respondent, Jacqueline Ripstein Friedman.

ROSENBERG J. (orally): —

Nature of the Application

The applicant, Crown Life Insurance Company ("Crown Life"), brought this application pursuant to s. 214 of the Insurance Act, R.S.O. 1990, c. I.8, and pursuant to the Rules of Civil Procedure with regard to interpleader for an order for payment of the insurance proceeds into court. Crown Life admitted liability for payment of the insurance proceeds, but, because of competing claims, made this application.

The respondents Andres M. Friedman ("Andres") and Daniel H. Friedman ("Daniel") brought a motion within the application seeking an order requiring Crown Life to pay the insurance proceeds to them.

The respondent Jacqueline Ripstein Friedman ("Jacqueline") brought a motion within the application seeking to stay the proceedings or, alternatively, to obtain a declaration that Jacqueline is entitled to the insurance proceeds and, alternatively, to obtain a trial of the issue as to who is entitled to the insurance proceeds. No case having been made out, as yet, that Jacqueline is entitled to the insurance proceeds, no argument was directed towards that part of the application.

The Facts

The insurance proceeds in question are derived from the Crown Life policy issued to Alain J. Friedman ("Alain"), the policyholder and life insured, on December 9, 1987. The policy is in the principal amount of U.S. $750,000 plus U.S. $250,000 in accidental death benefits.

Alain was resident in Mexico when he purchased the policy. He negotiated the purchase of the policy through an insurance agent residing and doing business in Houston, Texas. Transactions involving the policy were effected in Mexico, and premiums were paid from Mexico. The policy is in Spanish.

The policy stipulates that any amounts payable to or by the insurer under the policy "will be payable in United States dollars . . . at office in the United States of America".

On December 10, 1989, Alain submitted to Crown Life a Policy Title Request form in order to change the beneficiaries under the policy. This was submitted from Mexico. The new beneficiaries were Daniel, Andres and Ron Friedman ("Ron"), a third son of Alain, whose mother was the second wife of Alain.

On October 1, 1991, Alain was murdered in Mexico City. Mexican police are investigating Alain's murder and have cleared the third son, Ron. One third of the policy amounts have been paid to Ron. They have, however, determined that Andres and Daniel are suspects in the murder and have referred to them as being "implicated" in the murder.

Jacqueline has sworn as follows:

> I was informed by Armando Victoria, the police official in Mexico City in charge of investigating the murder, that Daniel and Andres Friedman are suspects in the murder, and are being investigated for their knowledge of the circumstances surrounding the murder. I have been informed by Mr. Victoria and do verily believe that the investigation has not yet been completed.

All of the information with regard to whether or not Andres and Daniel are suspects and may be implicated, is hearsay and is not supported by an allegation in which the deponent states that, to the best of his knowledge and belief, the hearsay is accurate. Ordinarily, the application for the trial of an issue might fail on those grounds alone. I will deal with that aspect in my reasons.

Jacqueline is one of the potential claimants. She is the executrix of Alain's estate and sole beneficiary under his will and is asserting the right to receive the proceeds in these proceedings.

On October 9, 1992, Andres and Daniel commenced an action in the Ontario Court (General Division) to assert their claim to the insurance proceeds. Neither Andres nor Daniel resides in Ontario.

Decision

Firstly, are these proceedings within the jurisdiction of the Ontario courts? The policy itself has a number of references to Ontario. It appears to have been executed in Ontario by the officers who were then at the head office in Ontario. Besides that, Andres and Daniel have brought this action in Ontario and, accordingly, attorn to the jurisdiction of the Ontario courts.

Crown Life has also attorned to the jurisdiction of the Ontario courts by bringing this application.

There is no evidence of any juridical disadvantage to any of the parties by having the matter heard in Ontario. If, as Jacqueline alleges, there is some tax exposure to her in certain eventualities, she can take whatever steps she is advised to take to bring in the Internal Revenue agency of the American government who may choose to intervene in any ultimate trial of an issue. Nothing in the material that has been filed on her behalf discloses that any potential tax liability to her is dependent upon where the trial of an issue takes place.

Accordingly, I am of the view that Ontario has jurisdiction and is the proper place to have the court deal with the resolution of the issues between the parties. The major question is whether or not there should be a trial of an issue as to whether or not Andres and Daniel are disentitled to receive the insurance proceeds by virtue of some criminal acts on their part. Where rights rest upon the suggestion that conduct is criminal, the court must be satisfied not only that the circumstances are consistent with the commission of the criminal act, but that the facts are such as to make it reasonably probable, having due regard to the gravity of the suggestion, that the act was in fact committed: Hanes v. Wawanesa Mutual Insurance Co., [1963] S.C.R. 154, 36 D.L.R. (2d) 718; Smith v. Smith, [1952] 2 S.C.R. 312, [1952] 3 D.L.R. 449; Scibetta v. Phoenix Assurance Co. of Canada (1984), 7 C.C.L.I. 188 (Ont. H.C.J.). In this regard, Mr. Landy, on their behalf, has argued that the evidence is not sufficient to justify the trial of an issue. In order to qualify to have the issue tried, it is not necessary that the applicant, who disputes the right of Daniel and Andres to the insurance proceeds, prove the claim to the satisfaction of the court or, even on the balance of probabilities, at the time of asking for the trial of an issue.

The independent study ordered by Crown Life discloses that the investigator retained by Crown Life was of the opinion that the Mexican authorities were still investigating the murder, that they had eliminated the son, Ron, from the list of suspects and they were of the opinion that Daniel and Andres were implicated.

While the evidence is far short of that which will be necessary to determine the issue, it is clear, on the evidence that is before me, that this is not a frivolous and vexatious allegation. There is at least a possibility that Andres and Daniel may be charged in the murder of their father. It would be inappropriate to have the funds paid to them if there is the possibility that, within a reasonable period of time, some charges may be laid. On the other hand, by asking for the trial of an issue, even though it would not be necessary to prove the guilt of Andres and Daniel beyond a reasonable doubt, Jacqueline would be taking on herself a very heavy onus to attempt to establish, even on the appropriate balance of probabilities for a serious crime of this nature, that Andres and Daniel were not entitled to the insurance proceeds. Counsel, on her behalf, however, has asked for that opportunity and it is appropriate that it be granted to her.

If it is found that Andres and Daniel murdered their father, they will not be entitled to the proceeds of the policy: Demeter v. British Pacific Life Insurance Co. (1984), 48 O.R. (2d) 266, [1985] I.L.R. 1-1862 (C.A.); Nordstrom v. Baumann, [1962] S.C.R. 147, 31 D.L.R. (2d) 255; Bloomfield v. Monarch Overall Manufacturing Co., [1927] 4 D.L.R. 1137, 37 Man. R. 125 (C.A.); Standard Life Assurance Co. v. Trudeau (1900), 31 S.C.R. 376; Lundy v. Lundy (1895), 24 S.C.R. 650.

Accordingly, there will be an order that Crown Life pay the insurance proceeds in U.S. currency into a joint interest-bearing account in the names of Landy, Marr & Associates and Goodman and Goodman, to remain there until further order of the court and, upon doing so, Crown Life will be discharged from any further liability pursuant to policy number 2,408,372. There will be the trial of an issue directed. The plaintiff in the action will be Jacqueline Ripstein Friedman and the defendants will be Andres M. Friedman and Daniel H. Friedman. The plaintiff will deliver a statement of claim by no later than January 21, 1994. The defendants will deliver a statement of defence by no later than February 21, 1994. The plaintiff will deliver a reply, if any, by March 11, 1993. Examinations for discovery shall be

completed by no later than July 31, 1994. A trial of the action will be fixed to commence on October 3, 1994, or such other date as may be agreed to by the parties. Any trial dates are subject to the dates being acceptable to the court. This order is without prejudice to the right of any of the parties to appeal the decision on this application and the motion brought by Andres and Daniel Friedman and the cross-motion by Jacqueline Friedman. This decision is also without prejudice to the rights of the U.S. tax authorities, if so advised, to move to be added as a party to these proceedings with regard to any alleged tax ramifications in connection with any payment of the policy that may be made.

The plaintiff Jacqueline Friedman in the trial of an issue, is required, at this stage, to post security for costs in the amount of $25,000 to cover the costs of Andres and Daniel who have a prima facie right to the proceeds of the insurance and who are being delayed in receiving those proceeds by the flimsiest of evidence of any involvement by them in the murder. If the said security for costs is not posted by March 1, 1994, the monies in the said trust account are to be paid to Andres and Daniel Friedman.

After receiving the other side's pleading, either party to the stated case is free to bring such motion for summary judgment on the stated case as they may be advised to bring. At the present stage, all that has been shown is that there are, in fact, adverse claimants. On a motion for summary judgment, the parties will have to "put their best foot forward".

Crown Life has asked for costs in the amount of $9,500, representing their solicitor-and-client costs to date. On the other hand, Mr. Landy argues that Andres and Daniel, as the beneficiaries under the policy, were entitled to be paid and that Crown Life did nothing for a year until Andres and Daniel commenced action on October 9, 1992. Under the circumstances, it appears to at least be arguable that Crown Life, if they were not paying two of the three beneficiaries under the policy, had an obligation to do something to bring the matter before the courts to determine whether they were properly holding the funds, or to apply to pay the funds into court, as they have now done. However, a major portion of the expense is as a result of the contest between Andres and Daniel on the one hand and Jacqueline on the other. The trial of the issue between them may well determine who is at fault and what the cost burden of each party should be. In the meantime, in order that Crown Life can make payment into the trust accounts, I fix a portion of the costs that they are entitled to deduct from the proceeds of the policy at $5,000; the balance to be paid into the account as provided. I make no disposition of the costs of the other parties to these applications and motions. This will be dealt with as part of the trial of the issues.

Order accordingly.