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DISPUTE RESOLUTION ALERT

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INSURANCE:
TILL DEATH DO US PART

Intersecting insurance law and matrimonial property law, the judgment of *Naidoo v Discovery Life & others* (202/2017) ZASCA 88 (31 May 2018) proves an interesting read. Mr Merglen Naidoo (Deceased) and Mrs Vasanthi Naidoo (Spouse) were married in community of property in July 1996. During the marriage, the Deceased became the principal life insured and owner of a life assurance policy with Discovery Life and he nominated his Spouse as the beneficiary of the policy proceeds upon his death. However, on 11 October 2011 and unbeknown to his wife, the Deceased instructed Discovery Life to change the beneficiary details to reflect his parents, brother and sister.

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On the death of the deceased, the proceeds of the policy would not fall into the joint estate but pass to the nominated beneficiaries.

On March 2012, the Deceased tragically committed suicide, leaving behind his Spouse and two young children with a heavy financial burden to carry. Discovery Life duly complied with the Deceased's policy by paying the proceeds to the nominated beneficiaries, being the third parties to this matter. The Spouse challenged the validity of the substitution of beneficiaries without her prior written consent and subsequently made an application to court seeking to hold Discovery Life liable for the alleged unlawful payments.

Issues before the court

The trial raised two main questions for the court's consideration: Firstly, was the policy considered an asset of the policyholder during his lifetime? Secondly, was the nomination of a beneficiary an alienation that required the prior written consent of the spouse in terms of s15(2)(c) of the Matrimonial Property Act, No 88 of 1984?

Court a quo

The court a quo primarily focused on the contract of life insurance, with the nomination of a beneficiary to the proceeds, being a stipulatio alteri (a contract for the benefit of a third party). Flowing from this, on the death of the deceased, the proceeds of the policy would not fall into the joint estate but pass to the nominated beneficiaries. The court referred to the unreported judgment in the case of *PPS Insurance Limited v Mkhabela* (159/200) [2011] ZASCA 191 (14 November 2011), where the court described the beneficiary's entitlement to the policy proceeds as a mere spes (expectation) until the actual death of the insured (proposer). Hence, the court held that the policy of the Deceased was not an asset and therefore could not be an asset of the joint estate. The court further held that the aggregate rights and obligations flowing from the policy could not in any way be regarded as property in the sense of enhancing the value of the insured's estate, or if married in community of property, the value of the joint estate. The court characterised the nomination and substitution of beneficiaries as a personal right which the Deceased could exercise until his death. The court held further that the substitution would not constitute an alienation of property that required the Spouse's prior written consent in terms of the Act. On this basis, Discovery Life's proceeds payment to the third parties was lawful.

The Supreme Court of Appeal

The Spouse's case failed on largely the same grounds as it did in the court a quo. The Supreme Court of Appeal (SCA) added

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CONTINUED

A spouse married in community of property, who obtains a risk-only life assurance policy, cannot be required to seek consent from their spouse in nominating beneficiaries of the policy.

that the proceeds of a "risk-only policy" could never be paid to the policyholder or the beneficiary during the lifetime of the insured life and therefore the only rights a policyholder has during his lifetime are those contractual rights to nominate a beneficiary, change a nominated beneficiary, cede the policy and terminate the policy. Consequently, the policy could not be an asset in the estate of the policy holder. In interpreting s15(2)(c) of the Act, the SCA held that the term "insurance policies" could not be read in isolation but had to be interpreted in context and consistently with the other financial instruments listed in the section. The court held that a clear distinction should be drawn between insurance policies, which have a current value, like an endowment policy, and a pure risk policy, such as a life policy. Therefore, a risk-only policy would not constitute an "insurance policy" in terms of s15(2)(c) of the Act. The court reasoned that, by virtue of the life policy, the Deceased never lost the rights to cancel his nomination of the beneficiaries up until his death. The restrictions imposed by s15(2)(c) only apply to the alienation of insurance policies, which are considered as assets of the joint estate. Accordingly, the court dismissed the appeal.

The spouse's comparison of a risk-only policy to a pension interest

It is interesting to take note of the spouse's "misplaced" reliance on case law dealing with a pension interest. The SCA explained that a "risk-only policy" has no monetary value until the death of the person insured. Furthermore, there is no investment portion, surrender value and/or benefits payable upon cancellation of the said policy. In contrast, a pension interest encompasses the right to be paid a surrender value under an insurance policy with an investment portion and is therefore distinguishable from the present risk-only policy.

Concluding remarks

Both courts categorically held that s15(2)(c) did not apply to the life policy in this matter. In considering the status of a risk only policy, the courts came to largely the same conclusion: a spouse married in community of property, who obtains a risk-only life assurance policy, cannot be required to seek consent from their spouse in nominating beneficiaries of the policy. Upon the death of the insured, the proceeds of an insurance policy do not fall into the deceased estate (nor the joint estate) but go directly to the nominated beneficiaries prior to winding up of the estate.

Luanne Chance and Sian Williams

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