



IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

FSD CAUSE NO: 229 OF 2021 (ASCJ)

IN THE MATTER OF THE INSURANCE ACT, 2010

BETWEEN:

(1) PREMIER ASSURANCE GROUP SPC LTD. (IN OFFICIAL LIQUIDATION)

PLAINTIFF

AND:

(1) PROVIDENCE INSURANCE COMPANY I.I FOR AND ON BEHALF OF PREMIER ASSURANCE SEGREGATED PORTFOLIO PUERTO RICO SAP

(2) PREMIER ASSURANCE GROUP LLC

(3) AMS TRUSTEES LIMITED (AS TRUSTEE OF THE PREMIER TRUST)

DEFENDANTS

Before: Hon. Chief Justice Anthony Smellie

Heard: On the papers on 27th April 2022

Application on the papers by the Plaintiff (acting through its Joint Official Liquidators "JOLs") for:

- (a) permission to make a minor amendment to the name of the Third Defendant in the Amended Originating Summons (re-dated 1 February 2022) as a consequence of a recent change of name of that entity pursuant to O.20, r 5(1) and r 7 of the Grand Court Rules 1995 (Revised Edition) "GCR" that is now reflected in the proposed Re-Amended Originating Summons (the "Re-Amended OS").
- (b) leave to serve the Re-Amended OS (and ancillary documents) on the First, Second and Third Defendants (together, the "Defendants") out of the jurisdiction as follows:
 - (i) on the First Defendant Providence Insurance Company I.I ("Providence") for and on behalf of its protected cell, Premier Assurance Segregated Portfolio Puerto Rico SAP ("**PAPR**") in Puerto Rico pursuant to Order II rule 1(1)(c) of the GCR;
 - (ii) on the Second Defendant, Premier Assurance Group LLC, ("**Premier LLC**"), in Florida, United States ("US") pursuant to Order 11, rule 1(1)(c) and (H) of the GCR; and
 - (iii) on the Third Defendant (the "Trustee") as trustee of the Premier Trust, in the British Virgin Islands ("BVI") pursuant to Order 11, rule 1(1)(c) and (d) of the GCR.



RULING

By way of brief summary, these proceedings relate to the purported transfer of the interests of 3,221 participants (referable to a segregated portfolio of the Plaintiff, Premier Assurance Segregated Portfolio (“PASP”) to PAPR on or around 15 June 2020. This transfer was effected by the Trustee purportedly surrendering the insurance policies of those participants, the transfer of the amount of USD34 million from the Plaintiff to an account held by Premier LLC with Insigneo Financial Group or its affiliate (“Insigneo”) (which was said to represent part of the surrender value of those policies) and the affected participants being issued with new policies with PAPR. A further sum of USD2.2 million was transferred from the Plaintiff to Premier LLC’s account with Valley National Bank.

The Re-Amended OS seeks various declarations as to the legal effect of the purported transfer of USD34 million and, specifically, whether the failure to obtain the approval of the Cayman Islands Monetary Authority (the “Authority”) for:

- (a) the transfer if its long-term business is in breach of Section 31(1) of the Insurance Act, 2010 (the “Insurance Act”); and
- (b) a change of its approved business plan in breach of Section 8(1)(a) of the Insurance Act, results in the purported transfer business being void ab initio, void, voidable and/or otherwise of no legal effect.

Decision

The application for leave to amend is formal in nature, should be uncontroversial and is therefore granted.

On the authority of the settled case law, in particular in this jurisdiction *AHAB v SICL Ors* [2010] 2 CILR Note 6¹, on an application for leave to serve a foreign defendant out of the jurisdiction, a plaintiff must satisfy the following four requirements:

¹ See also: *Torchlight GP Ltd v Millinium Asset Services Pty Ltd and others* [2018] CILR 244 at [84] *Cowan et al v Equis Special LP* (unreported, Grand Court, Mangatal J 3.10.19 and *Raiffeisen International Bank AG v Scully Royalty Ltd et al* (unreported), Grand Court Parker J, 7.7.20 at [162]

- (a) the plaintiff must satisfy the Court that in relation to the foreign defendant there is a serious issue to be tried on the merits, i.e. a substantial question of fact or law, or both. The test is whether there is a real (as opposed to fanciful) prospect of success;
- (b) the plaintiff must satisfy the Court that there is a good arguable case that the claim falls within one or more of the classes of cases in which leave to serve out may be given (often referred to as one of the “gateways”). In this context “good arguable case” connotes that one side has a much better argument than the other;
- (c) the plaintiff must satisfy the Court that in all the circumstances, the Cayman Islands is clearly or distinctly the appropriate forum for the trial of the dispute, and that in all the circumstances the Court ought to exercise its discretion to permit service of the proceedings out of the jurisdiction; and
- (d) GCR, O.11.r 4(2) provided that no leave shall be granted unless it shall be made sufficiently to appear to the Court that the case is a proper one for service out of the jurisdiction under Order 11.

Having read the very detailed written submissions presented on behalf of the Plaintiff, as well as much of the material filed in support of their submissions by the JOLs as is necessary to inform my decision (the First and Fourth Affidavits of Jason Robinson, one of the JOLs) I am satisfied that leave to serve out should be granted and I so order.

This being an *ex parte* application in which the duty of full and frank disclosure must be fulfilled on behalf of the Plaintiff making the Application, I note for the record that I also read and considered the detailed written submissions insofar as they addressed the possible defences or contentions which the Defendants might raise.


Hon Anthony Smellie
Chief Justice

27 April 2022.