CREDIT SUISSE LIFE (BERMUDA) LTD V IVANISHVILI

[2025] UKPC 53

KEY TAKEAWAYS:

1. In a claim for fraudulent misrepresentation, there is no legal requirement that the claimant was aware of the representation and understood it to have been made.
2. The correct start for the assessment of damages was the date at which the policy, and so the contractual obligations to invest the premium, commenced.

ISSUES

On the correct interpretation of the policies, what contractual obligations were owed?

Did the respondents choose a discretionary mandate as their investment alternative?

What measure should the Chief Justice have adopted as the measure of investment performance if the contractual duty of investment had been complied with?

What were the correct start and end dates for the assessment of damages for breach of the contractual duty of investment?

Were fiduciary duties owed after the policies commenced?

FACTUAL BACKGROUND

The former Prime Minister of Georgia, Mr Bidzina Ivanishvili, formed a private banking relationship with Credit Suisse AG (the Bank) and, on the Bank's advice, transferred over US$750 million, held on trusts for the benefit of himself, his wife and children, to Credit Suisse Life (Bermuda) Ltd (CS Life), a wholly owned subsidiary of the Bank, as premiums under two life insurance policies. Mr Ivanishvili discovered that his relationship manager at the Bank had been dealing fraudulently with the policy assets. The relationship manager had misappropriated assets, transferred assets from the policy accounts to those of unrelated clients, transferred assets into the policy accounts at an overvalue to hide losses of those unrelated clients and enriched himself by making investments of policy assets on which he received secret commissions. Mr Ivanishvili, members of his family and two companies which are the named policy holders began proceedings against CS Life claiming damages for breach of contractual and fiduciary duties, and for fraudulent misrepresentation.

FIRST INSTANCE

[2022] SC (Bda) 19 Civ

Chief Justice Hargun

The Chief Justice decided almost every contested point in Mr Ivanishvili's favour, with CS Life refusing even to admit the relationship manager's admitted fraudulent conduct for which he had been criminally convicted.

CS Life also failed to disclose, and was found to have deliberately withheld, many highly relevant documents and chose not to call witnesses.who were involved in managing CS Life and/or had known of the fraud.

The Chief Justice drew adverse inferences from CS Life's conduct ("quite properly" in the eyes of the Privy Council) and held that CS Life was in breach of contractual and fiduciary duties owed to Mr Ivanishvili, and that Mr Ivanishvili had been induced to enter into the policies by fraudulent misrepresentation.

Damages were awarded to put Mr Ivanishvili in the same position financially as if the policy assets had been professionally managed, as opposed to fraudulently mismanaged.

BERMUDA COURT OF APPEAL

[2023] CA (Bda) 13 Civ

Sir Christopher Clarke P, Bell JA and Smellie JA

The Court of Appeal dismissed CS Life's appeal in relation to the claims for breach of contractual and fiduciary duty. However, the Court of Appeal allowed the appeal in relation to the misrepresentation claim.

The findings of fact made by the Chief Justice were affirmed by the Court of Appeal (and, therefore, not reviewed by the Privy Council, as per Devi v Roy [1946] AC 508).

PRIVY COUNCIL

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Lord Hodge, Lord Briggs, Lord Leggatt, Lord Richards and Lady Simler

CS Life further appealed to the Board as of right, arguing that the Court of Appeal was wrong to uphold the award of damages for breach of contractual and fiduciary duty.

The Privy Council unanimously DISMISSED CS Life's appeal on all issues, except the start date for the assessment of damages.

Mr Ivanishvili cross-appealed the misrepresentation claim and the Board DISMISSED the cross-appeal.

BREACH OF CONTRACT

The Privy Council held that, on the correct interpretation of the policies, CS Life owed contractual obligations to invest the policy assets in accordance with the chosen investment alternative and that Mr Ivanishvili had chosen the option of discretionary management of the assets by the Bank.

The Board found that the choice was not overridden by Mr Ivanishvili signing a document signifying his acceptance of the risks associated with investments.

Although the Board upheld the measure of damages awarded by the Chief Justice, the Privy Council held that the courts below were wrong in holding that damages should run from when the assets were transferred to CS Life before the policies commenced.

The Board considered the correct start date for the assessment of damages was the date at which the policy, and so the contractual obligations to invest the premium, commenced.

BREACH OF FIDUCIARY DUTY

The Board reserved its opinion on whether CS Life owed fiduciary duties in relation to the policy assets as it would not make any difference to the damages awarded or affect the result of the appeal.

MISREPRESENTATION

The fraudulent misrepresentations giving rise to the alleged tort were made in Georgia.

It was common ground that the misrepresentation claim would only succeed if the misrepresentations were actionable under both the law of Bermuda and the law of Georgia.

BERMUDIAN LAW

The parties recognised that, in Bermuda, the "double actionability rule" applies. A common law claim in tort arising from an act done in a foreign country is generally "actionable" only if the act gives rise to liability under both (1) the law of the forum where the claim is brought and (2) the law of the foreign country where the act was done.

The only issue in dispute was whether the claim should fail as there was no finding that Mr Ivanishvili was aware of and understood the relationship manager to be making the representation on which the claim was made.

The Privy Council held, contrary to the suggestion in recent cases and the findings of the Court of Appeal, that there was no such legal requirement and the suggestion that there was stemmed from various misconceptions.

GEORGIAN LAW

The Privy Council upheld the conclusion of the Court of Appeal that the claim was not actionable under Georgian law as it was brought after the Georgian limitation period had expired.

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