

THE HIGH COURT

[2010 No.11051 P.]

BETWEEN

JOSEPH EDWARDS

PLAINTIFF

AND

ARK LIFE ASSURANCE COMPANY LIMITED

DEFENDANT

JUDGMENT delivered by Mr. Justice Michael White on the 13th day of May, 2014

1. The defendant has applied by way of notice of motion of 23rd January, 2014, to have a preliminary issue of law determined. Are the plaintiffs proceedings statute barred? The issue was heard on 14th February, 2014 and judgment was reserved.

2. The plaintiff issued plenary proceedings seeking certain declarations and orders arising from a contract of insurance of 22nd June 1999, issued under s. 60 of the Finance Act 1985. The policy was described as a life long protection plan policy schedule joint life last survivor. The first life assured was that of the Plaintiff and the second life assured was his wife Mary Edwards. The premium reserved under the policy was the sum of £827.11 (€1,050) per month.

3. The Plaintiff claims that the premium was to be reviewed after four years and reduced to £232.50 the sum initially estimated

4. Mary Edwards, the plaintiff's wife died on 22nd June, 2003.

5. The defendant alleges the plaintiff's claim arises from the date of his wife's death on 22nd June, 2003 and is a claim for breach of contract and misrepresentation, thus the statute would have expired on 22nd June, 2009.

6. The plaintiff relies on the statement of claim, and submits his claim is based on mistake or in the alternative estoppel and breach of fiduciary trust.

7. He relies on s. 72 and s 11(9) of the Statute of Limitations Act 1957. S72.- (1) states *Where, in the case of any action for which a period of limitation is fixed by this Act, the action is for relief from the consequences of mistake, the period of limitation shall not begin to run until the plaintiff has discovered the mistake or could with reasonable diligence have discovered it. Section 11(9)(e) states This section shall not apply to any claim for specific performance of a contract or for an injunction or for other equitable relief.*

8. He accepts that he is using estoppel as a sword rather than a shield and contends that he is entitled to do so.

9. He claims at 8(a) of the statement of claim that the defendant its servants or agents keyed the policy onto their system as a single life policy rather than as a joint life (last survivor) policy.

10. The plaintiff also argues that by letter of 25th September, 2009, the defendant consented to refer the matter to the Financial Services Ombudsman's Office and that the defendant is estopped from pleading the statute.

Decision.

11. The letter of 25th September, 2009, consenting to referral to the Financial Services Ombudsman's Office is not an acknowledgment, and does not restrict the defendant from pleading the statute.

12. The claim set out at para. 8(a) is a claim based on mistake where the plaintiff claims it was not discovered until receipt of a letter of 12th June, 2006, from Catherine Lewis on behalf of the defendant to the plaintiff. Section 72 applies.

13. The claims made by the plaintiff of estoppel and breach of fiduciary duty are equitable remedies and come within the meaning of s. 11(9) of the Act. The defendant is entitled to rely on the doctrine of laches in defending that claim, but is not entitled to plead the statute.

14. It is a matter for the trial judge to decide if estoppel in the circumstances can be used as a sword rather than a shield, and also to decide if the plaintiff's claim arises only in contract and or misrepresentation.

15. If the trial judge decides it is an action based on contract and/or misrepresentation, it is open to him or her to consider the statute, and to apply it or restrict the Plaintiffs claim to six years premiums calculated from the date of issue of the proceedings.