

Fraud on another policy doesn't extinguish claim

Australian Executor Trustee Ltd v Suncorp Life & Superannuation Ltd [2016] SADC 89

Paul Angus & Isabel Myatt | March 2017 | Insurance & Financial Services

Summary

On 17 March 2008, a house owned by Mr and Mrs Humby was destroyed by a fire lit deliberately by Mr Humby. Mr Humby was accidentally killed in the fire.

Mrs Humby made a claim on a home and contents insurance policy and on Mr Humby's life insurance policy which was held with the defendant, Suncorp.

The Claims

The investigation revealed that the fire had been deliberately lit with the use of an accelerant. The investigation also revealed that most of the contents had been removed from the house prior to the fire, that Mrs Humby had purchased 5 litres of petrol the day before the fire and that the Humbys were under significant financial pressure, with the bank in the process of repossessing their house.

Following the outcome of these investigations, Mrs Humby withdrew the home and contents claim, but maintained the claim on Mr Humby's life insurance policy.

Suncorp refused the life insurance claim on the basis that it had been made fraudulently and that Mrs Humby had breached her duty of utmost good faith. Suncorp also argued that it was against public policy to allow a person who caused or conspired to cause the loss by wrongful means to obtain a benefit under the life insurance policy arising out of that wrongful act.

Mrs Humby died a year after making the claim and her estate sued Suncorp for payment under the life insurance policy.

Decision

The court found that Mr and Mrs Humby were involved in a plan to burn down the house for the purposes of obtaining the benefit of the home and contents insurance policy.

The court did not find that the claim on the life insurance policy had been made fraudulently as Mr Humby's death was an accident and it was not a part of any plan to obtain a benefit under the life insurance policy. Further, Mrs Humby was not a party to the life insurance policy and did not owe a duty of utmost good faith.

The court was not persuaded by the public policy defence and found that it was not against public policy to allow Mrs Humby's estate the benefit of the life insurance policy.

In making its decision, the court noted the important role that life insurance plays in society and that the observation of these contracts of insurance is in the public interest. Particular weight was given to the fact that the claim under the life insurance policy was being made by the Humbys' children, who were blameless in respect of the fire, and that it was unlikely that by granting the life insurance claim it would encourage the commission of similar crimes.

The court did not speculate on what the outcome might have been had the claim been made by Mrs Humby.

Implications

- Whilst on first view this decision allowing the family of a fraudster to benefit from the consequences of the fraudulent act seems unjust, the decision is in line with previous cases dealing with fraud that establish that for a claim to be denied there must have been an

intention to commit a fraud on the particular insurer of the particular policy. In this case the fire was never intended by the Humbys to result in a claim being made on the life insurance policy held with Suncorp.

- The case also serves as an example of the difficulty that insurers can face in running a public policy defence in support of a denial of a claim. The weight of a public policy defence will depend largely on the circumstances of the claim, the nature of the insurance benefit being sought and the likelihood that a payment will encourage the commission of similar crimes.
- It remains to be seen how this reasoning would be held to apply to cases where a fraud on a general insurance policy results in a claim on another general insurance policy for property that was not intended to be damaged by the fraudulent act, such as if the Humbys, having deliberately set fire to the house, had accidentally destroyed a motor vehicle parked next to the house and claimed for the loss of the motor vehicle with a different insurer.
- While policy exclusions and conditions regarding illegal acts and failure to take reasonable care might have some role to play in such a claim, it is not clear whether a court would find that the fraudulent act committed to obtain a benefit under one policy will preclude cover under the other policy (on the basis of fraud) if the damage claimed is to property and not for the loss of a life.
- Insurers should take care to consider the particular circumstances of a loss and the evidence available to establish intention or reckless disregard on behalf of the insured before denying a claim for fraud where damage to property arises out of a deliberate act of the insured to some other property insured with a separate insurer.

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*TurksLegal understands the decision is currently being appealed by the insurer.