Utmost Good Faith in Claims Handling

Sharma v Insurance Australia Limited t/as NRMA Insurance [2017] NSWCA 55

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Summary

The New South Wales Court of Appeal recently considered the duty of utmost good faith set out in section 13 of the *Insurance Contracts Act 1984* (Cth) (the Act). The decision confirms that the courts will take a wide view of the reciprocal obligations imported by the duty of utmost good faith owed by parties to an insurance contract. In this instance the focus was on an insurer's obligation to respond to a claim for indemnity in a timely manner.

Facts

Mr Sharma's property was insured by NRMA under a building and contents policy (the Policy). On 29 December 2009, Mr Sharma lodged a claim for storm damage to his carport. On 30 December 2009, a builder appointed by NRMA attended to inspect the damage. On 12 January 2010, an assessor employed by NRMA also attended the property to inspect the damage. On 12 January 2010, the assessor reported that the damaged structure was not 'built to standard' and that he had explained to Mr Sharma that the Policy did not 'pay for structures that are not built to standard'.

On 14 January 2010, before any decision was communicated to Mr Sharma by NRMA, Mr Sharma fell from a ladder while attempting to repair damage to the carport. He claimed to have suffered significant injuries to his hands and wrists. On 18 January 2010, NRMA issued a denial in respect of Mr Sharma's property claim on the basis that the damage did not occur as a result of an 'insured event' under the Policy as the carport was subject to wear and tear and faulty design and workmanship, all of which were excluded under the Policy.

Mr Sharma made a complaint to the Financial Ombudsman's Service (FOS). Consequently, NRMA paid $11,000 in respect of the property damage, but Mr Sharma was not satisfied and he commenced court proceedings, alleging breach of contract. He also argued in the proceedings that NRMA had breached its duty of utmost good faith. He claimed damages in respect of the alleged injuries and the sum of $18,800 for the costs of repairing the carport, in addition to the $11,000 already paid by NRMA.

Trial Judge

In rejecting Mr Sharma's case, the trial judge held, amongst other things, that the fact that NRMA did not admit liability or pay the claim before 18 January 2010 was not a sufficient basis on which to establish that NRMA had breached its duty of utmost good faith. His Honour found that NRMA had acted reasonably and promptly and that it had advised Mr Sharma of the reasons for its decision. The trial judge was also not satisfied that Mr Sharma was entitled to the additional cost of repairs.

In relation to the alleged injuries, his Honour found that the alleged fall preceded any supposed breach of contract arising from the decision to deny indemnity. His Honour also held that loss and damage arising from the fall was too remote and not available in any action for damages for breach of the insurance contract; it was neither within the normal course of things, nor within the contemplation of the parties to the contract that someone might suffer personal injury as a result of the insurer's failure to indemnify under a property damage policy.

Appeal

The Court of Appeal dismissed Mr Sharma's appeal and found that the trial judge did not err in relation to his ruling to the effect that the personal injury claim fell outside any assessment of damages that might be undertaken for breach of the insurance contract.

With respect to the duty of utmost good faith, the Court of Appeal confirmed that an insurer's duty of utmost good faith is not limited to acting honestly, and extends to determining a claim for indemnity in a timely manner and without undue delay.

In considering the principles set out in *CGU Insurance Limited v AMP Financial Planning Pty Ltd* [2007] HCA 36, the Court held that the trial judge had not erred in failing to find a breach of the duty by NRMA.

In particular, it was noted that in the two-week period from when the claim was submitted to when the decision on indemnity was made, NRMA had worked diligently to put itself in a position to make a decision about cover under the Policy. In the circumstances, it was considered not unreasonable for the NRMA to consider its position for just over two weeks (which included the holiday period between 29 December and 14 January).

Implications

This decision primarily concerned a claim for breach of contract but it also illustrates how courts will have regard to commercial standards of decency and fair dealing when considering whether there has been any breach of the duty of utmost good faith.

The case is also a reminder that the duty of utmost good faith applies pre- and post-contractually and that it is important for insurers when determining a claim to act promptly and reasonably and to ensure that once all relevant information is received, any delay in reaching and communicating a decision on indemnity is kept within reason.

In some respects, as mentioned in the *CGU Insurance* case, the obligations of fair dealing and reasonable conduct encompassed by the duty of utmost good faith might be viewed as analogous to aspects of equitable doctrine, such as the concept of 'clean hands'.

Finally, while this case was not one focused on the reciprocal nature of the obligations of utmost good faith, it is a reminder that all parties to an insurance contract owe the duty of utmost good faith. Subsection 13(3) of the Act expressly provides that even third party beneficiaries are included in the parties to which the duty applies.

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