Should an insured be penalised for untrue information supplied by another during the investigation of a claim?

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By RAEESA EBRAHIM ATKINSON

Topics Insurance Law

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Tumultuous economic conditions have resulted in insurers and the insured finding themselves before the courts more often than in previous, more certain times. However, the King Price Insurance Company Ltd v Concise Consulting Services (Pty) Ltd (1067/2019) [2021] ZASCA 42 (13 April 2021) [hereafter "King Price Case"] highlighted a point of contractual interpretation which will assist insurers and the insured in establishing more secure and certain agreements well beyond the current economic climate.

Overview: King Price Case

In the matter above, the insured was a company whose employee was involved in a motor-vehicle collision whilst driving a vehicle owned by the insured. As a result, the insured laid a claim with the insurer.

The insurer repudiated the claim and cancelled the contractual agreement with the insured on the basis that the insured supplied untrue information when making the claim.

The matter was taken to the Magistrate's Court in Pretoria, where the insurer successfully showed that it was entitled to take the actions it took against the insured. The matter went on appeal to the High Court, where the insured was successful. The insurer appealed the decision, bringing the matter before the Supreme Court of Appeal [hereafter "SCA"].

In its arguments before the SCA, the insurer made the following submissions:

- The employee was acting on behalf of the insured when he made his statements regarding the collision to the investigator;
- The insured was obligated in terms of the agreement not to supply misleading and false information to the insurer;
- The misrepresentations and untruths provided by the employee were material in nature to allow the insurer to repudiate the claim and avoid the insurance contract retrospectively.

The insured countered the submissions made by the insurer with the following:

- The insurer failed to discharge the onus to prove the allegations made in the plea regarding the information supplied by the employee. Alternatively, the false statements provided by the employees were not material to the insurer's liability to compensate the insured;
- The statements made by the employee were not attributable to the insured;
- If the employee was acting on behalf of the insured and the false information was supplied during the claim submission as opposed to during the investigation, then the contract was ambiguous regarding "acting on behalf of the insured", and the interpretation of the insured should prevail over the interpretation of the insurer.

The SCA found that the employee was not submitting a claim when the employee made statements to the investigator. The statements were made during the investigation. The employee was also not acting on behalf of the insured when he made these statements.

In addition, it was commented that "acting on behalf of" ordinarily implies a concept of agency. Although it may have alternative meanings, any ambiguity should be resolved against the insurer.
The appeal was dismissed with costs.

Conclusion

The above case is a further illustration of the requirements of certainty and clarity in contractual arrangements.

Furthermore, it must be emphasised that the repudiation of a claim and the cancelling of a contract are drastic measures. In cases of ambiguity in interpreting a term in an insurance policy, courts are likely to favour the insured's interpretation.

Both contract drafters and parties entering into contracts should always seek legal assistance when finalising contractual arrangements.

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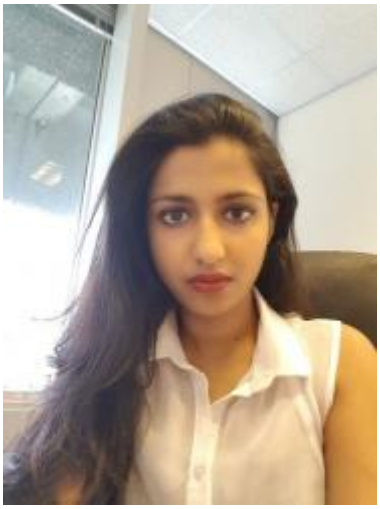

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