



Dissecting Decisions

Risk Management & Insurance

Australian Executor Trustee Ltd v Suncorp Life & Superannuation Ltd

Arson by Deceased Leads to Claim on Life Insurance Policy

By Debra Lane

Summary

In 2008 a house on the outskirts of Renmark in the South Australian Riverland belonging to a Mr and Mrs Humby burnt down and Mr Humby was killed.

Mrs Humby lodged a claim on the couple's home and contents insurance and also on Mr Humby's life insurance policy.

The home and contents insurance claim was vigorously investigated by the relevant insurer; Mrs Humby was put under some pressure and eventually withdrew that claim. However, Mrs Humby maintained the claim under the life insurance policy, and after she too died the claim was pursued by her Estate, for the benefit of the couple's children.

The life insurer refused to pay on the basis that the Humbys had concocted and pursued a scheme to burn the house down in order to make a fraudulent property insurance claim and alleged that in those circumstances Mrs Humby's claim on the life insurance policy was also fraudulent, in breach of her duty of utmost good faith to the insurer and further that it was against public policy to allow Mrs Humby to benefit from her wrongful act by claiming on Mr Humby's life insurance.

The insurer relied on circumstantial evidence, including the family's dire financial straits and forensic evidence that the fire was deliberately lit while Mr Humby was alone in the house along with various other matters.

The Decision

Judge Stretton held:

- The plaintiff executor was entitled to claim the benefit under the policy for the accidental death of Mr Humby;
- The Humbys did concoct and pursue a scheme to burn down the house for the purposes of a claim under the house and contents insurance. However, Mr Humby was accidentally killed when the house ignited prematurely;
- In the circumstances, the claim on the life insurance policy was not made fraudulently nor had there been a breach of the duty of utmost good faith to the life insurer.
- The plaintiff was entitled to be paid the claim under the life insurance policy and judgment was entered for the in the agreed sum of \$519,500.

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Issues

It was not in dispute that the fire was deliberately lit by someone, nor that Mr Humby was killed in the fire and that the life insurance policy was in force at the time of his death.

Because both Mr and Mrs Humby were deceased by the time of trial, direct evidence from them was unavailable.

It was also not in dispute that the Humbys were under great financial pressure and the bank was in the process of repossessing their house. The Judge considered it likely the fire was set for the purposes of addressing the family's financial woes; however, it was disputed that Mrs Humby was involved in any scheme to set the fire. It was contended by the plaintiff that, even if Mrs Humby was involved in a scheme to burn the house down in order to claim on the house and contents insurance, she ought still to be able to claim on the life insurance as Mr Humby's death was an unintended consequence of the scheme, there being no evidence of any intention to cause Mr Humby's death in order to claim on the life insurance.

The primary factual dispute was whether Mrs Humby was involved in any scheme to burn the house down. The primary legal dispute was whether, in light of whatever factual finding was made as to her involvement in the fire, Mrs Humby's estate could claim on her husband's life insurance.

The Decision

The Judge considered the circumstantial evidence that Mr Humby was involved in a plan to burn down the house to be overwhelming and so found. He also found that Mr Humby's death was accidental, when the accelerant used ignited prematurely, exploded and killed him.

The circumstantial evidence also strongly supported the contention that Mrs Humby was involved in the plan to burn down the house. However, His Honour found that Mrs Humby did not intend, nor consider that Mr Humby might or would be killed in the course of that endeavour.

It was not in dispute that Mr Humby's life was insured and that he had died. It was also not in dispute that Mrs Humby was the sole beneficiary and that following her death her estate could legally maintain the claim.

The Judge found that Mr Humby's death was an accident in every sense of the word and was not part of any fraudulent plan related to the life insurer. Further, regardless of anything that may have happened in the context of the home and contents insurance claim, Mrs Humby did not provide any false or misleading information to the life insurer in pursuit of that claim.

There was nothing in the life insurance policy or any of the insurance materials provided to Mrs Humby which would infer or connote to the reader that the policy did not or would not necessarily cover her husband's death -even in the circumstances that actually did transpire, that is to say his accidental death in the course of a plan to defraud another insurer.

A failure to provide information (which had not been requested) concerning the cause of the fire which accidentally resulted in death did not, in those circumstances necessarily connote an intention on the part of the claimant to mislead (by omission) a life insurer who had not indicated either by way of the policy wording or on the claim form that such information would be relevant to any obligation or willingness to pay the claim. Accordingly, the Judge concluded the life insurance claim made by Mrs Humby originally and then pursued by her estate was not made fraudulently within the meaning of the Insurance Contracts Act.

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The Judge also concluded that Mr and Mrs Humby had not breached an implied term in the life insurance policy that each party would act towards the other with the utmost good faith. Mrs Humby was not a party to Mr Humby's life insurance policy so the terms of the policy including any implied term of utmost good faith did not bind her. It was further held that Mr Humby owed the life insurer no duty to disclose that he was planning to burn his house down and make an unrelated property damage claim to another insurance company which happened to insure his house. At no stage prior to his death did Mr Humby intend or contemplate he would be killed or that a claim would be made under his life insurance policy as a result.

As to the life insurer's public policy defence, the Judge noted it is trite law that where an insured deliberately performs an unlawful or criminal act for the purpose of themselves claiming on insurance they have taken out against the occurrence of that act, the insurer is not liable to pay the claim. That principle also precludes recovery by a third party claimant beneficiary under a policy of insurance where the claimant is part of the scheme to perform an unlawful or criminal act for the purposes of claiming on the insurance in question; however, the Judge found that principle had no application in this case. Neither the insured nor Mrs Humby deliberately killed Mr Humby nor indeed intended or took any action for the purposes of fraudulently claiming on the life insurance.

The Judge noted that the general principle considered together with the primary criteria by which the test is to be applied (and the commonly cited authorities from whence they are drawn) were succinctly expressed by the South Australian Full Court in *FAI General Insurance Co Limited (in Liquidation) v Sherry & Ors*,¹. Whereas in this case the claimant was involved in the unlawful and criminal act which ultimately occasioned the loss, the authorities approach the issue of the viability of the claim in the following ways:

¹ 2002] SASFC 431.

- For the claim to be defeated on the grounds of public policy there must be a causal connection between the unlawful and criminal act and the injury and loss. Where that injury or loss is foreseeable, this condition will be plainly satisfied by not necessarily so where the injury or loss were not foreseeable. Where the event and the consequential loss was not an intended result of the unlawful and criminal act in the context of a joint criminal enterprise (as in this case) the causal link is said to be established where *“the character of the joint criminal enterprise is such that it is foreseeable that a party or parties may be subject to unusual or increased risks of harm as a consequence of the activities of the parties in pursuance of their criminal objectives, and the risk materialises, the injury can properly be said to be caused by the criminal act of the claimant even if it results from the negligent or intentional act of another party to the criminal enterprise.”*²
- The claimant has to have been an active party to the unlawful and criminal act at the time of the injury or loss.³
- The unlawful and criminal act must be sufficiently serious, non-trivial or morally wrong that the law should not countenance recovery of the damage, loss or claim by the person involved in such an act.⁴

*Graham v Colonial Mutual Life Insurance Society Limited (No. 2)*⁵ was referred to as its facts bore some similarity to the Humby case. There, the deceased had died of smoke inhalation and asphyxiation in the course of committing arson by burning his computer and certain business records. His widow claimed pursuant to the deceased's life insurance policy.

² *Joyce v O'Brien* [2013] EWCA CIV546.

³ *Miller v Miller* [2011] HCA 9, *Jackson v Harrison* (1978) 138 CLR 438,

Smith v Jenkins (1970) 119 CLR 397, *Gala v Preston* (1991) 172 CLR 243.

⁴ See for example: *Fire & All Risks Insurance Co Limited v Powell* [1966] VR 513.

⁵ [2014] FCA 717.

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McKerracher J found that the death was as a result of being trapped in the premises after the fire was lit and was unforeseen, unexpected and unintentional, holding that the death was not caused by the arson but by being trapped by the building and killed by the smoke. A partial suicide exclusion comprised “the only exclusion to deliberate death in the policy” and the policy did evince an intention to deal with accidental death caused by criminal activity by providing as part of a further accidental death option, an exclusion for accidental death caused by criminal activity. Accordingly, McKerracher J had held that accidental death caused by criminal activity was intended to be covered by the life cover as there was no similar exclusion, and found in favour of the plaintiff widow.

The facts of the *Graham* case were dissimilar to the claim by the estate of Mrs Humby in that the widow in that case was uninvolved in the arson and the Court held in light of all those facts that public policy was no bar to her claim.

Judge Stretton found:

1. There was a direct causal connection between the unlawful and criminal act of Mr and Mrs Humby planning to commit arson for the property insurance and Mr Humby's death in a sense that, absent the arson scheme, the accelerant would not have been present to be accidentally ignited. However, Mr Humby's death was neither intended nor foreseen by rather was accidentally caused when the accelerant he had poured out ignited prematurely. There was at no stage any plan by either Mr or Mrs Humby that he should die or that they might defraud the life insurer, nor did they foresee or contemplate doing so. The life insurance was not in their contemplation at the time and was in place to provide security for the family, particularly the children, four of whom still lived at the house at the time of the fire.

2. Mrs Humby was indeed an active party to the unlawful and criminal act at the time of the injury or loss.

3. The unlawful or criminal act of pursuing a joint scheme to commit arson to defraud a property insurer is a serious, non-trivial and morally wrong act. Pouring petrol over the floor of a house with a view to igniting it for the insurance was a serious crime. The act involved dishonest conduct directed towards financial gain and also presented collateral dangers. There were nearby houses and rural properties and it was a very hot day. There was obvious risk that the fire would spread beyond the Humbys' own property.

The unlawful conduct committed was very serious; however the crime itself was neither directed to causing the insured event under the life insurance policy (being the death of Mr Humby) nor to making a claim on the life insurance policy.

The conduct in pursuance of the scheme did not directly cause the death but created the accelerant soaked environment whereby accidental premature ignition could, and indeed did, cause the insured event -being Mr Humby's death. However the Judge held that Mr Humby's death was an accident in every sense of the word and that the litigation was instituted and the benefit of the policy was sought for the Humbys' children who were then without both parents and were blameless, as they knew nothing about and took no part in the scheme.

On the issue of public policy, the Judge considered allowing this life insurance claim was unlikely to promote the commission of similar crimes. Similarly, it was unlikely that refusal of the claim would act as a deterrent to others as the thought that public policy would prevent a claim on a life insurance if a scheme to make a fraudulent claim on another policy went wrong would be unlikely

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to arise, it being the experience of the Court that arsonists do not usually intend or contemplate that their actions will kill them, and usually plan to be around to reap the financial benefits of the consequent fraudulent insurance claim.

Judge Stretton placed some emphasis on the nature of life insurance itself as providing the means by which families can financially survive the death of the insured, and that such insurance has an important role in society on which basis he thought honouring such contracts would be in the public interest, as a general rule.

If the claim was barred, it would mean the Humbys' innocent surviving children would be denied the insurance benefit to which they would otherwise be entitled.

In the final analysis, whilst the Humbys' unlawful conduct was serious, in light of the fact the insured event was an accident which was neither contemplated, intended nor reasonably foreseen and that the claim on the life insurance policy was not fraudulently made, and taking into account all the other relevant circumstances, public policy did not demand that the claim not be met and accordingly judgment was entered for the plaintiff.

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