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DISPUTE RESOLUTION ALERT

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INSURANCE

Assessing insurance claims in light of intentionally missed premium payments

In instances where someone fails to pay an insurance premium and it amounts to a repudiation of an insurance contract, the insurer need not provide an extension for the payment of a premium (grace period) regardless of the wording of the policy. This was held in the recent decision of the Supreme Court of Appeal (SCA) in the matter of *Discovery Life Limited v Hogan and Another* (389/2020) [2021] Zasca 79 (11 June 2021).

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INSURANCE

Assessing insurance claims in light of intentionally missed premium payments

The beneficiaries subsequently submitted a claim under the insurance policy, which was declined by the insurer on the basis that at the time of the insured's death the policy had been cancelled.

In instances where someone fails to pay an insurance premium and it amounts to a repudiation of an insurance contract, the insurer need not provide an extension for the payment of a premium (grace period) regardless of the wording of the policy. This was held in the recent decision of the Supreme Court of Appeal (SCA) in the matter of *Discovery Life Limited v Hogan and Another* (389/2020) [2021] ZASCA 79 (11 June 2021).

In this case, the insured took out a life insurance policy with the insurer in December 2015 and had nominated her parents as the beneficiaries of the policy. On 6 August 2018, in a telephone discussion with a representative of the insurer, and subsequently in a letter on 15 August 2018, the insured communicated to the insurer that she wished for her policy be cancelled with immediate effect.

Representatives of the insurer then wrote to the insured's broker on two occasions informing the broker firstly, that the insured's policy would be cancelled but that a notice period of 30 calendar days applied in terms of the policy (16 August letter), and secondly, that the effective date of the termination would be 1 October 2018, and the last day of cover would be 30 September 2018, with the last premium due on 3 September 2018 (28 August letter).

The insured had, however, instructed her banker on 23 August 2018 to stop payment of the debit order in respect of the premium due for September 2018. After receiving notice that the September premium was not paid, the insurer wrote a letter to the insured on 10 September 2018 and informed her that her policy was cancelled with effect from 1 September 2018.

The insured died on 22 September 2018. Following her death, the insured's beneficiaries (on advice from the insured's broker) paid the September premium to the insurer on 27 September 2018. On 28 September 2018 the insurer sent a letter to the insured requiring the insured to complete and sign a declaration of health form, but it received no response.

The beneficiaries subsequently submitted a claim under the insurance policy, which was declined by the insurer on the basis that at the time of the insured's death the policy had been cancelled.

Following the declined claim, the beneficiaries launched an application in the Gauteng Division of the High Court, for the payment of the proceeds of the policy with interest.

They successfully contended that in addressing the 16 August and 28 August letters to the insured's broker, the insurer had made an election to hold the insured to the terms of the policy and that at the

INSURANCE

Assessing insurance claims in light of intentionally missed premium payments...*continued*

It is important to note from this case that an insurance policy, despite its nuances through the development of other branches of the law, still firmly falls under the principles of contract law.

stage the premium was paid the policy remained in force. They further argued that the insurer failed to notify the insured of the unpaid September premium and failed therefore to provide the insured with a 30-day grace period prior to cancelling the policy, as was required by the terms of the policy.

SCA findings

In the SCA it was stated that the central issues to be decided were firstly, whether the insured's instructions to her bank to stop payment of the September premium amounted to a repudiation considering her previous communication to the insured about cancelling her policy, and secondly, if so, whether the terms of the policy governing non-payment of premiums find application in instances of repudiation.

In dealing with the first inquiry, the court considered the material terms of the policy and the conduct of the respective parties. In doing so, the court applied an objective test in which the focus was not on the state of mind or intention of the repudiating party but rather on how someone in the position of the innocent party would perceive the conduct of the repudiating party.

In applying the test, the court considered all the circumstances that took place preceding the termination of the policy by the insurer. The court found that the insured had no intention of honouring the terms of the policy that required her to give 30 days' notice of termination and to pay the premium for September. It held that as the insured deliberately repudiated the terms of her policy, the insurer was entitled to accept the repudiation and cancel the policy.

The court also determined that, notwithstanding the express provisions of the policy requiring the insurer to provide the insured a 30-day grace period in relation to unpaid premiums (which is also outlined in Rule 15A of the Policyholder Protection Rules for Long-term Insurance), it does not apply in instances where the insured repudiates the agreement.

Comment

It is important to note from this case that an insurance policy, despite its nuances through the development of other branches of the law, still firmly falls under the principles of contract law. The law of contract is settled on the consequences of repudiation and this was confirmed by the SCA in this case.

Byron O'Connor and Lubabalo Mbolekwa

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BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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