

CASES AND TRIBUNAL DECISIONS

Fraud doesn't extinguish innocent beneficiary's claim

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

[Link to decision](#)

Background

On 17 March 2008, a house owned by Mr and Mrs Humby was destroyed by a fire after he deliberately lit the fire. Mr Humby was inside the house at the time of the fire and was killed.

Following the fire, Mrs Humby made a claim on a home and contents insurance Policy and Mr Humby's life insurance Policy that was held with the defendant.

The Claims

The home and contents insurer undertook an investigation into the cause of the fire, which revealed that the fire had been deliberately lit with the use of an accelerant. The investigation also revealed that most of the Humby's 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, however she maintained the claim on Mr Humby's life insurance policy.

The defendant refused the life insurance claim on the basis that it had been made fraudulently and 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 the defendant 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.

However, 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 to the defendant.

The Court was not persuaded by the defendant's 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 are 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 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 if the claim had been made by Mrs Humby.

Whilst accepting that the public policy that lay behind the principle was to discourage the commission of crimes, His Honour Judge Stretton, in the District Court of South Australia said *"I do not consider however that in considering the totality of the circumstances, the factors of who makes and pursues the claim before the court, and for whom the ultimate benefit of the policy is sought to be secured, and against who the public policy shield is sought to be brandished, should be excluded from the totality of the circumstances to be considered by a court."*

Implications

At first glance this decision seems to be at odds with community expectations, as it permits the family of a fraudster to benefit from the fraudulent act of a relative. However, it is in line with previous cases that establish that for the public policy ground to be made out there must have been an intention to commit a fraud on the policy in question.

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 and the beneficiaries were not implicated in the fraud.

The case also shows the difficulty that insurers can face in mounting a public policy defence in support of a denial of a claim. The success of a public policy defence will depend largely on the particular 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.

We understand the decision is currently being appealed by the insurer.