CASES AND TRIBUNAL DECISIONS

The Contract of Insurance: a sum of many parts

Montclare v MetLife Insurance Ltd [2016] VSCA 336

Link to decision

Background

In approximately 1993, the plaintiff, Mr Montclare met Mr Shilton while Mr Montclare was working as a male escort. The pair became friends and ultimately entered into a de facto relationship which lasted until Mr Shilton committed suicide in 2001.

In 1998, Mr Montclare applied to Citicorp (now MetLife) for insurance cover over the life of Mr Shilton in the sum of $300,000. This was granted through a Master Policy which named Rivkin DM as the Policy owner. In 1999, Mr Montclare increased that sum to $1.1million. Notably, the policy did not contain an exclusion for suicide.

Upon Mr Shilton's death, Mr Montclare claimed the $1.1million benefit.

The insurer refused payment of the claim and avoided the policy from inception on the basis that, by answering 'No' to a question which asked whether Mr Shilton had ever had a "mental or nervous disorder or breakdown" at the time of applying for cover, Mr Montclare and Mr Shilton had misrepresented or failed to disclose Mr Shilton's prior medical history which included treatment for mental illness.

The Supreme Court of Victoria ruled that Mr Montclare was an 'insured' within the meaning of the *Insurance Contracts Act 1984* (Cth) (the ICA) and was therefore subject to the obligations imposed by the ICA. The court ruled that Mr Shilton's and/or Mr Montclare's false answers were plainly misrepresentations, and were able to be sheeted back to Mr Montclare, as the insured, pursuant to section 25 of the ICA. The court ruled that the misrepresentations were fraudulent and upheld the insurer's avoidance of the policy.

Mr Montclare successfully applied for leave to appeal the decision.

The Appeal

The ICA in force at the relevant time did not impose obligations of disclosure or penalties for making misrepresentations upon third party beneficiaries of life insurance policies. Montclare was only subject to the relevant obligations and penalties if he himself was an 'insured' as a party to the contract.

Mr Montclare appealed on the basis that the trial judge had erred in finding that he was 'an insured' within the meaning of the ICA. Mr Montclare did not however, dispute that a fraudulent misrepresentation had been made.

MetLife submitted that Mr Montclare was an 'insured' within the meaning of the ICA and therefore, subject to the obligations under the ICA.

The Court of Appeal found that while the contract of insurance was made up of a 'suite of documents', there was a direct contractual relationship between MetLife and Montclare and that Mr Montclare was an 'insured' within the meaning of the ICA. The Court confirmed that MetLife was entitled to avoid the contract by reason of Montclare's undisputed fraudulent misrepresentation.

First Instance Decision

Mr Montclare gave evidence that he and Mr Shilton completed an application for insurance, which was advertised as being 'arranged by Rivkin Direct Management Pty Ltd… under a Master Policy with Citicorp Life insurance.'

The 'Master Policy' nominated Rivkin DM as the 'Policy Owner'. Mr Montclare submitted that this demonstrated that the contractual relationship was between Rivkin DM and Citicorp; not between Citicorp and himself.

In contrast, MetLife relied upon the information brochure provided to Mr Montclare, the wording of which strongly indicated that the applicant for life insurance (Mr Montclare) was the 'owner' of the insurance and not the agent. MetLife argued that this was evidence of an intention to create a direct relationship between Citicorp and Mr Montclare.

The court considered that in this sense, the Master Policy and information brochure were inconsistent.

Having accepted the risk, Citicorp (via Rivkin as its agent) issued to Mr Montclare a certificate of insurance. The trial judge ruled that this document constituted the first contract of insurance between Citicorp and Mr Montclare.

The certificate provided that payment of any benefits would be to Rivkin as trustee (albeit there was evidence that in the usual course payments were made directly to claimants) and that Citicorp's liability under the insurance arrangement would cease in the event that the Master Policy was cancelled for any reason. This suggested that the insurance cover provided to Mr Montclare and the Master Policy were directly linked.

Having successfully applied for an increase of cover on 10 June 1999, Mr Montclare received a second certificate of insurance. The trial judge ruled that this certificate constituted the second contract of insurance between Citicorp and Mr Montclare.

The trial judge ruled that the insurance contract was comprised only of the first and second certificates of insurance.

Appeal Decision

The Court of Appeal rejected the trial judge' s view that the contract was constituted by the certificates alone and held that the contract of insurance did not have its source in a single document. The contract did not wholly reside in the 'Master Policy' as Mr Montclare had submitted and nor did it reside wholly in the certificates of insurance, as MetLife had submitted. The contract was made up of a suite of numerous documents, including the 'Master Policy' between MetLife and Rivkin, the individual certificates of insurance in Mr Montclare's own name and indeed the information brochure provided to Mr Montclare prior to his original application for cover.

The court found that there were sufficient connections between the application forms completed by Mr Montclare and the Master Policy to conclude that the application by Mr Montclare was an application for insurance under the Master Policy. The most significant link between the Master Policy and the certificates was the fact that payment of a death benefit (which was the ultimate purpose for which Mr Montclare had obtained the insurance) pursuant to the terms of the certificates resulted in a discharge of Citicorp's obligations under the Master Policy. Furthermore, the fact that cancellation of the Master Policy for any reason would result in a termination of the insurance also indicated that the certificates did not 'stand on their own' but had a legal operation which was affected by the existence of the Master Policy.

It was held that there was a direct contractual relationship between Montclare and MetLife which was part of a tripartite agreement between MetLife, Rivkin DM and Montclare as evidenced by the documents forming the contract.

As Montclare was in fact a party to the contract, he was 'the insured' and MetLife was entitled to avoid the contract by reason of his pre-contractual fraudulent misrepresentation, pursuant to section 29(2) of the ICA.

Implications

While we are of the view that the decision turned on a fairly unique (and complicated) set of facts, it is worth nothing that the ICA does not contain a definition of a 'contract of insurance'.

The case clearly demonstrates that the terms of a contract of insurance can be found in more than one document, even if those documents are partially inconsistent and highlights the need for insurers to maintain good record keeping practices to assist with the determination of rights and liabilities should disputes arise.