

Insurance
Case Law Update
Rosling King LLP



The Supreme Court has ruled that a lie made by an insured while making a claim under an insurance contract will not have the effect of repudiating liability if the lie itself is proved to be irrelevant on the facts. In making the decision, the Supreme Court reversed the decisions of both the Court at first instance and the Court of Appeal.

The Facts

In January 2010, the cargo ship “DC MERWESTONE” was disabled due to a flood in its engine room resulting in its main engine being damaged beyond repair. The flood was caused by a number of contributing factors all covered under the ship’s insurance contract. A claim was duly submitted to the Respondents for €3,241,310.60. The Respondents were informed that although the ships alarms had sounded at noon on the day of the flood, the crew were unable to attend to the engine room due to the rolling of the ship in heavy weather. This was in fact a lie on behalf of the Appellant, advanced at a time when the cause of the flood was not known and in frustration of the Respondents delay in processing the claim and making payment.

It later transpired that the lie was irrelevant. The damage to the ship was caused by a peril of the seas and not due to the fault of the Appellant. As such a prima facie claim existed under the insurance contract. However, the Judge at first instance held that despite seeming disproportionately harsh, the claim was in fact lost as a result of the collateral lie told. This decision was made on the established common law “fraudulent claims rule”, being that recovery is prohibited where a claim has been fabricated or exaggerated. The court held that the lie was a “fraudulent device” and insurers did not have to pay out. Upon appeal to the Court of Appeal, the decision at first instance was upheld.

Decision

The Supreme Court considered and applied the recently developed legal rule of collateral lies and their effect on contracts of insurance. The Supreme Court’s primary focus was to determine whether the “fraudulent claims rule” applies in claims where the claim itself is justified, but is supported by collateral lies.

In making its decision, the Supreme Court was keen to focus on the differences between a fraudulent exaggeration of a claim and that of a justified one, albeit supported by a lie. The former, such as exaggerating the amount of loss, has the effect of forfeiting the claim completely as the insured is attempting to gain that which they are not entitled to. In a justified claim supported by collateral lies, however, the insured is simply trying to obtain that which the law states he is entitled to. The lie, whilst dishonest, is therefore irrelevant to the existence of an entitlement. On this basis, it was held that there was no justification to apply the “fraudulent claims rule” in this instance.

It was decided that a collateral lie would only preclude an insurance claim where it was deemed to be material. This materiality test should not go to the merits of the claim generally but to the very question of recoverability. In this case, the Appellant gained nothing by lying and, conversely, the Respondent lost nothing. The damage to the ship was always going to be recoverable whether or not the Appellant had lied about the reason for such damage

occurring.

Commentary

Whilst this claim focused on matters of maritime insurance, the issues it raised speak to insurance contracts of all kinds. The presence of a lie told by an insured will not necessarily negate an insurance contract. One needs to look at the effect of the lie and whether the insured could be said to have unjustly gained as a result of it. As in this case, if liability would have always existed then the mere presence of a collateral lie in support of a claim will not be enough to repudiate liability.

Following this decision, if a lie is told on behalf of the insured it will not necessarily lead to insurers being able to decline cover. Particular emphasis should be placed on whether an untruth goes to the very matter of recoverability.

For further information, please contact [Georgina Squire](#) or the Partner with whom you usually deal.