

ACCEPT YOUR FATE: COURT OF APPEAL CONFIRMS THAT RELIANCE ON IMPLICATION ALONE MAY NOT SUFFICE TO PROVE ACCEPTANCE OF AN OFFER

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In a recent appeal, the Victorian Supreme Court of Appeal affirmed the importance of clear acceptance of an offer for a contract to be binding. The applicant was communicating with the respondent insurer in relation to both an annual renewal and/or a 14 day extension of cover at the end of the policy. Before a clear acceptance was made, a fire broke out on the applicant's property in West Footscray which burned for days and sent an acrid smoke plume over parts of Melbourne.

IN ISSUE

- Whether an offer by an insurer to extend an insurance contract was implicitly accepted
- Whether the offer by the insurer constituted a unilateral contract of insurance

THE BACKGROUND

For a summary of the background to the proceedings, please see our 1 April 2020 case note [here](#).

THE DECISION AT TRIAL

Justice Riordan found no bilateral contract existed in circumstances where the Plaintiff's broker requested that the Insurer re-consider renewing the 2017 Policy (resulting in the Renewal Quotation being issued), rather than accepting the Offer. All communications between the parties' representatives were in writing (by email), and none purported to accept the offer of a 14 day extension for the payment of the additional premium.

Justice Riordan also determined that no unilateral contract existed because the defendants' offer was expressly to provide the extension of cover in exchange for the payment of additional premium, which the Plaintiff never committed to pay. The Insurer could not unilaterally impose an obligation on the Plaintiff to pay the extra premium, without it having accepted the Offer.

THE ISSUES ON APPEAL

The Court of Appeal had to consider two grounds of appeal raised by the applicant:

- whether the offer made by the respondents within the email dated 24 August 2018 either dispensed with acceptance or was impliedly accepted; or
- alternatively, whether an inferred contract had come into existence based on the circumstances of the parties' relationship and dealings.

THE DECISION ON APPEAL

The Court of Appeal dismissed the applicant's appeal and concluded that no contract was formed.

The applicant's submission that the offer for a 14 day extension of cover dispensed with the need for acceptance was rejected by the Court of Appeal which found that there was nothing in the context or words of the offer that dispensed with the need for acceptance. Although both parties were aware of the applicant's desire for continuous insurance cover, and despite the offer of a 14 day extension to ensure no break in the applicant's cover, these matters did not dispense with the need for acceptance since acceptance of the offer would have imposed an enforceable obligation on the applicant to pay the premium. The premium could not have been considered an advance payment for any policy that might have later been entered into since it was a separate and discrete premium for that 14 day extension.

The Court of Appeal rejected the existence of a unilateral contract on the basis that the offer of insurance cover in return for the payment of a premium involves a mutual promise which plainly does not describe a unilateral contract.

The Court of Appeal also dismissed the applicant's assertion that they impliedly accepted the offer by continuing communications with the respondent with respect to the annual renewal. The applicant argued that the respondents' offer of a 14 day extension to 'assist with placement' indicated that the purpose of the extension was to enable the applicant to secure an annual renewal and, as such, by continuing to provide information about the annual cover, the applicant impliedly accepted the interim cover offered. The Court of Appeal rejected this assertion and held that the phrase 'assist with placement' did not necessarily indicate that the respondents expected that the applicant would renew cover with them. There was nothing to suggest that the applicant could not have proceeded with a different insurer. It was held that the two matters of accepting the interim cover and pursuing annual cover were separate and the fact that the applicant wanted continuous annual cover and continued communications regarding that did not impliedly mean that they had to accept the interim cover.

IMPLICATIONS FOR YOU

The decision of the Court of Appeal is unsurprising. It would have been a curious result if the mere offer to provide insurance cover could render the insured bound by such cover in the absence of any express acceptance. Parties negotiating the terms of their insurance should therefore be careful to ensure that they are explicit about what terms are or are not being accepted.

Danbol Pty Ltd v Swiss Re International SE [2020] VSCA 274

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