

THE FEDERAL COURT AFFIRMS AN INSURER'S RIGHT TO CANCEL A CONTRACT OF INSURANCE WHERE AN INSURED HAS MADE A FRAUDULENT CLAIM

OCTOBER 26, 2017 | HEALTH SECTOR

The Federal Court of Australia has confirmed that, at common law, an insurer has a right to cancel a contract of insurance prospectively, on the basis of a breach of contract such as the making of a fraudulent claim by the insured.

In Issue

- Whether the insured fraudulently claimed and received payments of "Total Disablement benefit" under the relevant policy of life insurance.

The Background

In November 2002, the respondent, Mr Vincent, entered into a contract of life insurance with the applicant, AIA Australia Ltd, which was termed a "Priority Protection" policy (policy).

Cover under the policy relevantly included a "Total Disablement benefit", which was payable by the applicant when the respondent had suffered "Total Disablement", defined in the policy as meaning that the insured, *'due to Injury or Sickness... is unable to perform one or more of the important duties of His... occupation that He... must be able to perform to earn income...'* and *'is not working'*.

The policy provided for automatic termination of the contract of insurance upon the occurrence of certain events, including when the Policy was cancelled. It did not provide for termination for fraud.

Claims were lodged by the respondent from March 2003 until October 2016. Near the end of 2015, the applicant became suspicious of the claims made by the respondent and commissioned investigations.

Following its investigations, the applicant contended that a number of claims made by the respondent under the policy between February 2016 and October 2016 were made fraudulently in that the respondent knowingly represented that he was totally disabled when, in fact, he was not so incapacitated. The applicant alleged that the respondent, from at least January 2016, was intending to perform another occupation and capable of performing his usual occupation and that, from at least August 2016, he was actually performing another occupation and capable of performing his usual occupation.

On 19 October 2016, the applicant sent a letter to the respondent declining his claim dated 10 October 2016 and informed him by letter on the same day that it had cancelled the contract of insurance, on the grounds that the respondent had made fraudulent claims under the policy, with the cancellation to take effect 28 days later.

By email to the applicant dated 10 October 2016, the respondent replied to the applicant's correspondence

of the same day, stating, *inter alia*, 'Yes the information is true...'. Further, by letter to the Federal Court of Australia dated 27 November 2016 (in lieu of appearing at the first case management hearing), the respondent stated that '... It was a stupid thing to do as to lie on my documents'.

The applicant sought declarations that it validly refused to pay the subject claims pursuant to s 56(1) of the *Insurance Contracts Act 1984* (Cth) (Act) or, in the alternative, that the contract of insurance was validly terminated as the respondent's conduct constituted a breach of the good faith term implied into the insurance contract by s 13 of the Act. It also sought damages for breach of contract.

The Decision

The court found that the subject claims made by the respondent were fraudulent. The court specifically noted the admissions made by the applicant on 27 November 2016 were admissions of concealment of the facts from the applicant, and demonstrated that the respondent was aware that he was deliberately making false representations to the insurer. The court also found that the respondent admitted that he lied in making the claims alleged to be fraudulent by the applicant and that this was '*strong evidence that he knowingly made statements, which he knew to be false, in making the claims under the policy.*'

The court confirmed that at common law an insurer has a right to cancel a contract prospectively upon the basis of a breach of contract of such a serious nature as the commission of a fraud against the insurer and that nothing in the *Insurance Contracts Act 1984* (Cth) abrogated that right.

Implications for you

The Federal Court's decision has resolved the previous uncertainty as to basis on which an insurer may cancel a contract of life insurance for fraud, particularly where the relevant contract of life insurance was entered into *prior to* 28 June 2013 (when s 59A of the Act, which allows a life insurer to cancel a contract of life insurance entered into *after* 28 June 2013 if the insured has made a fraudulent claim, was introduced).

This is an important decision for life insurers as it confirms that the payment of fraudulent claims may be refused and that the relevant contract of life insurance may also be cancelled.

[AIA Australia Ltd v Richards \(No 3\) \[2017\] FCA 1069](#)

AUTHORS



SALMA HAJHUSEIN
SENIOR ASSOCIATE

+61 3 9909 6327

salma.hajhusein@bnlaw.com.au