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Stubborn insurer to pay for claim *and* court costs

By Jean-Paul Rudd

26 Jan 2023

A large insurance company's application to rescind a court order, granted by default, was dismissed with costs in the High Court of South Africa, Gauteng Division, Pretoria.

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The insurer, in exchange for monthly premiums to be paid by the insured, agreed to indemnify the insured for loss or damage. The insured's motor vehicle was subsequently damaged in a single motor vehicle collision. Following the collision, the insured submitted a claim with the insurer, who failed and/or refused to pay the claim. As a result, the insured instructed an attorney to issue summons to recover the damages he sustained in the collision from the insurer. The insurer failed to defend the summons, enabling the insured to take judgment by default.

Not long after having found out about the default order, the insurer brought an application to rescind the order. The insurer advanced logistical issues following its acquisition by another insurer as the reason for not defending the summons. The court was, amongst other things, told that the summons was received by the insurer's head of legal, who instructed a claims handler in the employment of the insurer to appoint an attorney to defend the action on the insurer's behalf. The claims handler's email address had however changed following the acquisition, resulting in the claims handler never receiving the email.

The insurer had to convince the court that:

1. There were reasonable reasons for the default on its part.
2. It possessed a *bona fide* defence, which on the face of it, was likely to succeed if the order was rescinded.

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In consideration of whether there were reasonable reasons for the default on the insurer's part, the court, *inter alia*, found that:

a. The insurer failed to put systems in place following its acquisition to ensure the continuity in its service to clients.

b. The head of legal failed to follow up with the claims handler despite appreciating the exigency of the summons.
c. The insurer had no other person but itself to blame for the default.

In the circumstances, the insurer failed to prove that there were reasonable reasons for the default on its part.

The court then turned its attention to the second element the insurer had to prove, being that it possessed a *bona fide* defence.

The insurer alleged that:

- The insured did not provide true and accurate information regarding the mechanism of the collision.
- The insured drove too fast whilst being under the influence of alcohol.

The insured disputed both allegations, arguing that the insurer had no basis for its allegations. The court agreed with the insured, finding that the insurer's defence had, on the face of it, no prospects for success. The court accordingly dismissed the insurer's application, holding the insurer liable for the insured's legal costs.

ABOUT JEAN-PAUL RUDD

Jean-Paul Rudd is a partner in Adams and Adams' personal injury and insurance departments. He specialises in civil litigation with special emphasis on personal injury related matters, which includes Road Accident Fund, medical negligence, slip and fall and wrongful arrest claims, professional indemnity matters, and insurance related matters.
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