Life insurance and insolvent estates: Who's paying who?

By Viren Raja and Rui Lopes

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The Pretoria High Court in *Wentzel v Discovery Life Limited and Others*, was recently tasked with considering whether the payment of a life insurance policy by an insurance provider to a nominated beneficiary, being an un-rehabilitated insolvent, would vest in the beneficiary or the trustees of the insolvent estate.

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The applicant in this matter had entered into an insurance contract with Discovery Life Limited (Discovery) insuring the life of his wife, whom he was married to in community of property, in terms of which he appointed himself as the beneficiary of the policy. During the course of 2012, the applicant's joint estate was sequestrated. For all intents and purposes, there was no composition or rehabilitation that had occurred thereafter.

The 'rightful' beneficiaries

The applicant's wife passed away during the course of 2017. The applicant then claimed the proceeds from Discovery as the beneficiary of the policy. Discovery informed the applicant that the payment of the proceeds would be made to the trustees of the insolvent estate. The applicant objected on the basis that the first and final liquidation and distribution account in the insolvent estate had been confirmed and therefore, for all intents and purposes, the administration of the insolvent estate had been finalised.

Discovery and the trustees of the insolvent estate, however, contended that the estate of the insolvent remained vested in the trustees until such time that the insolvent is either re-vested with the estate, pursuant to a composition or the rehabilitation of the insolvent, which had not occurred. Additionally, the trustees argued that the creditors who had proven claims which still remained unpaid, stood to be prejudiced should the proceeds of the policy be paid to the applicant and not the trustees.

The court held that whilst the joint estate of the applicant and his wife was indeed dissolved as a consequence of her death, the status of the applicant, and his wife, being un-rehabilitated insolvents, prevailed until such time that it was changed as provided for in the Insolvency Act of 1936 (Insolvency Act) - being by way of compromise or rehabilitation. The court went on to note that upon sequestration, an insolvent is divested of their estate, which vests in the Master until a trustee is appointed, where after it vests in such trustee. Further, the Insolvency Act provides that the insolvent estate includes all property, both moveable and immoveable, at the date of sequestration and that this includes all property acquired or which accrued to the insolvent during sequestration.

The court held that on sequestration, a concursus creditorium is established and that no one creditor may enter into any transaction with the debtor, which has the effect of prejudicing the body of creditors. In dealing with the applicant's argument, the court held that the filing of the first and final liquidation and distribution account does not necessarily mean that the trustees have completed their duties in the administration of the joint insolvent estate and that nothing prevents the trustees from filing further liquidation and distribution accounts. The court went on to note that the moment that the applicant, being the beneficiary, demanded and accepted the benefit offered by the insurer, this constituted an asset in the hands of an insolvent, which is not protected, in that it is not exempted or excluded by the laws of insolvency from reach by the creditors of his insolvent estate.

To the trustees

This decision has made it clear that when an insurer makes payment pursuant to a policy in circumstances where the beneficiary of such a policy is an un-rehabilitated insolvent, the payments should be made directly to the trustees of the insolvent estate. If, however, payments are made directly to the insolvent un-rehabilitated beneficiary, the beneficiary must hand over such payment to the trustees as administrators of the insolvent estate. If the beneficiary fails to do so, the trustees have a right to claim the proceeds of the policy from the insolvent beneficiary, as it constitutes an unprotected asset, which was acquired by the insolvent prior to his or her rehabilitation.

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