DENEYS REITZ
GENERAL AND INSURANCE LITIGATION
BREAKFAST SESSION
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AN UNLUCKY STRIKE

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1. Did the burning of a truck, which had been driven by a non-striking employee, qualify as "damage … directly related to or caused by … a strike?"

2. The interpretation of this provision in the Sasria policy formed the subject of the judgment by the Supreme Court of Appeal in *Sasria Limited v Slabbert Burger Transport (Pty) Limited*.[1].

3. The policy was taken out by the insured, a large transport fleet operator, and the Insurer agreed to indemnify the insured :-

   "*against loss of or damage to (the truck) directly related to or caused by … any riot, strike or public disorder, or any act or activity which is calculated or directed to bring about a riot, strike or public disorder."*

4. The claim in which the dispute arose, was for indemnification for the destruction by fire of a truck belonging to the insured. The truck was destroyed by fire during a time when Union members, employed by the insured, were on a lawful strike. Half of the drivers employed by the insured went on strike, whilst the other half who did not go on strike continued to work as drivers.

5. As is quite common, even in lawful strikes, drivers who were not participating in the strike were assaulted and threatened, and trucks were damaged by stones being thrown at them and by being set fire to.

6. The particular circumstances that led to the destruction of this particular truck, were significant:

a) Abel Mtshweni, a driver employed by the insured who was not participating in the strike, parked the truck at a Caltex truck-stop facility
b) Three unidentified men, two of whom were wearing dark blue overalls of the same type as those worn by the insured's drivers, purchased among other things, a small quantity of petrol and a box of matches from the shop at the truck stop.
c) After they left the shop, the truck was on fire.
d) The fire started when a quantity of flammable liquid was ignited on the front left side of the truck.
e) No-one saw who ignited the flammable liquid or how it was ignited.
f) The fire destroyed the truck.

7. The issue to be decided was whether the damage to the truck was caused by a peril listed in the Sasria policy.

8. The judgment of the trial court was arrived at on the basis of a number of inferences made from the agreed facts, namely that:

a) The purchase of the petrol and matches from the shop at the Truck stop probably led to the fire which destroyed the truck;
b) The truck was driven by an employee of the insured in defiance of the strike; and
c) Given the dress of two of the unidentified men, they were probably employees of the insured.

9. One of the side issues that arose in the Appeal, which does not deal with the general principles of policy interpretation but which is nevertheless important, is whether the trial court was correct in arriving at the inferences just mentioned, and whether the trial court was correct in basing its decision as to the motive behind the destruction of the truck on these inferences.

10. The Supreme Court of Appeal relied on the following extract in the judgment of Selke J in *Govan v Skidmore*[2] which was approved in *South British Insurance Company Limited v Unicorn Shipping Lines Limited*[3] that:

[1] 2008 (5) SA 270 (SCA)
[2] 1952 (1) SA 732 (N)
[3] 1976 (1) 708 (A)

> *"… in finding facts or making inferences in a civil case, … one may … by balancing probabilities select a conclusion which seems to be the more natural, or plausible, conclusion from amongst several conceivable ones, even though that conclusion be not the only reasonable one."*

11. Accordingly, the SCA found that the inferences drawn by the trial court were the most probable of all the conceivable ones and had to be accepted.

12. The court then turned its attention to the main question in the case whether the destruction of the truck was a peril covered by the Sasria policy and more particularly whether it was "*directly related to or caused by any riot, strike or public disorder, or any act or activity which is calculated or directed to bring about a riot, strike or public disorder."*

13. Sasria argued that the meaning to be given to the word "*strike"* is to be equated to situations of riot and / or public disorder. Sasria argued that in order for the claim to fall within the auspices of the policy, violence leading to damage is a necessary ingredient. In other words, Sasria's argument was that in order for this claim to be covered by the policy, the damage ought to have been related to or caused by a violent strike.

14. The SCA rejected this argument and examined the ordinary meaning of the word "*strike"* in the Shorter Oxford English dictionary:

> "*A concerted cessation of work on the part of a body of workers for the purpose of obtaining some concession from the employer for employees."*

15. The court found that if the insurer intended to modify the meaning of the word "*strike*" to relate it to riot or public disorder, it ought to have done so in clear language. The rule that a policy is to be interpreted against the party drafting its wording (the contra proferentem rule) would prohibit a meaning which would restrict the scope of the insurer's liability to indemnify its insured in the event of the destruction of the truck.

16. On the basis of the ordinary dictionary meaning of *strike*, it was accepted by the SCA that the destruction of the truck was an act directly related to a strike and that it was caused by a peril listed in the Sasria policy.

17. The court therefore found for the insured truck owner.

18. The significance of this case is that our courts have once again favoured a simple and ordinary meaning of words in interpreting clauses within a policy. In addition, the rule that a policy is to be interpreted against the party drafting its wording prevailed which ought to remind us that we live and die by our literary sword, and that we ought to take care how we wield it.

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