

BETWEEN

ABC

APPLICANT

AND

ZZB

RESPONDENT

Date of Order:

25 March 2013

Referee:

Referee Edison

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that the claim is dismissed.

Facts

[1] ABC obtained travel insurance from ZZB for a trip to [a country] between 4 October and 6 November 2011. Section 3 of the policy (baggage & personal items) provided cover for “... loss, damage or theft of baggage or personal items occurring during [your journey] resulting from an [u]nexpected specific incident beyond your control”.

[2] AGC says that on 26 October 2011, CS (his wife) and their two children were riding in a rickshaw when her handbag was stolen by two men riding a motorcycle. ABC says the matter was taken to the local police station but they were unable to obtain a police report. ABC sent an email to ZZB on 26 October 2011, which stated (in part): “Two young boys who were riding on bike have snatched handbag from my wife’s lap which contain[s] I-Phone 4 (sic), Digital and Video camera, Laptop and couple of other items.” ABC also made a claim for medical expenses and travel delay which have since been withdrawn or otherwise resolved.

[3] On 13 February 2012, ZZB declined the claim. Its email stated (in part): “The spirit and intent of the [policy] is to provide cover for unexpected events. Thus in order to consider any claim, we must first confirm that an unexpected event has occurred...Under the terms and conditions of the [policy], you must provide all reasonable assistance, information and cooperation requested by us. You must also obtain and provide any and all necessary reports...that we may request, at your cost...In support of your claim you provided a copy of your travel itinerary and receipts for the lost property. We cannot confirm that any unexpected events occurred from this documentation, and unfortunately this means that your claim is not valid...”

[4] ABC requested that this decision be reviewed. The claim was again declined, but this time ZZB noted, in its letter of 16 March 2012: “During your interviews with our claims handlers, both yourself and your wife provided separate and conflicting versions of the circumstances of the theft.” The letter noted that CX had been carrying a laptop bag as well

as a handbag in her lap, and that this had not been mentioned when the claim was first submitted. CX also told the claims handlers that she had the iPhone in her hand when it was stolen because she was speaking to ABC at the time. This had not been mentioned by ABC. The letter stated that these conflicting statements meant that false information had been supplied in support of the claim and therefore the entire claim was invalid. The letter concluded that the failure to obtain a written report from the police, or local government authorities, meant that an unexpected event had not been proved as the cause of the loss.

[5] ABC complained to the Insurance & Savings Ombudsman (“ISO”). On 21 September 2012, the ISO declined to uphold ABC’s complaint in respect of the theft claim. The ISO concluded that ABC had provided misleading information relating to one item, a 24 carat gold “biscuit” (a gold square for making jewellery), which was claimed as part of the stolen property. The ISO’s view was that this misrepresentation entitled ZZB to decline the theft claim.

[6] ABC now claims in the Tribunal for the value of the stolen items (put in the claim form at \$4,800.00). ZZB disputes the claim.

Law

[7] The issue in the case is whether ABC is entitled to recover under his travel policy. The relevant law is the law of contract, and specifically the law of contract as it applies to insurance. A “condition” is a fundamental term of an insurance policy, breach of which entitles the insurer to avoid paying a claim. The ZZB policy sets out various “general conditions” applying to all sections of cover, including:

- (i) A condition requiring provision of all reasonable assistance, information and cooperation requested by ZZB: “You must also obtain and provide any and all necessary reports, including but not limited to, reports from a registered medical practitioner, police or other authority that We may request, at Your cost.” (page 10, paragraph 3);

- (ii) “When reporting loss or theft to police, security or appropriate authorities, always obtain a full written report within 24 hours of the discovery of the loss.” (Ibid, paragraph 6, under the heading “When the unexpected happens”);
- (iii) “Original receipts and documents must be provided to substantiate Your claim.” (Ibid, paragraph 9); and
- (iv) “If any information is falsely given or a fraudulent claim is made in any way then this policy shall become void and no claims will be payable.” (Ibid, paragraph 11).

[8] The policy contained a number of “conditions” applying to the baggage and personal items cover (the policy section relevant to the theft claim), including:

- (i) All losses must be reported to the police or local government authorities within 24 hours of the discovery of the loss (page 22, paragraph 4); and
- (ii) “You must prove Your loss to Our reasonable satisfaction. Proof of ownership and value is required for any lost or stolen items or money. This may include a receipt or current valuation (dated within the last 12 months and prior to any claims being submitted)” (Ibid, paragraph 5).

Decision

[9] I find that ABC is not entitled to make recovery under the policy and that his claim was validly declined. I consider that ABC, as insured, had to prove his loss by providing reasonably satisfactory evidence. The policy provided as a condition of cover that ABC must provide reports from the police or other authorities to substantiate the loss, if requested. The policy also made it clear that a full written report of the loss should be obtained when reporting the loss to the authorities. ABC failed to provide the reports requested by ZZB to substantiate his claim. It follows that, in reliance on the relevant conditions of the policy, in my view ZZB was entitled to reject the claim for the stolen items.

[10] I have considered ABC's view that he was unable to get a police report when he went to the police station the day following the theft. ABC said that the police do not bother with this kind of theft in India because it is so common. He said he did his best to get a police report. PU, for ZZB, told me that people visiting India do provide his company with reports to substantiate claims of theft. If ABC went to the police in India, I am surprised that he was unable to obtain any kind of written statement from them, or other local authority, acknowledging his reporting of the theft.

[11] The policy also provided that ABC must prove his loss to the "reasonable satisfaction" of his insurer. This clause goes on to talk about proof of ownership and value. The ISO report (pages 4–8) discussed the evidence of ownership and value provided by ABC and his wife to ZZB. ABC described the gold biscuit in his insurance claim as being a 24 carat gold biscuit weighing 10 grams and worth \$700.00. ABC supported the claim for this item with a receipt from TE Jewellers for a "necklace set" purchased on 8 July 2011 for \$6,692.00. ABC told ZZB that this receipt included the gold biscuit. When ZZB queried this, and asked for the original receipt for the biscuit rather than the necklace, ABC provided a document from TE Jewellers dated 28 February 2012, which although headed "receipt" also stated it was a "quotation for insurance". This described the biscuit as 24 carat gold weighing 31.1 grams and worth \$2,200.00. The ISO expressed "serious concerns" about the changed weight and value of the gold biscuit, and concluded that the receipt concerning the necklace set was not a receipt for the gold biscuit:

I believe that by representing that the document was a receipt for the gold biscuit, when clearly, it was not, you made a representation that would give a misleading impression to the reasonable reader.

[12] In my view it follows from the ISO findings that ABC provided false information in support of his insurance claim, entitling ZZB to reject the claim not just for the gold biscuit, but for the other stolen items as well. It is clear from the terms of the policy that it would become void if any false information was given. The ISO report stated that ABC "was at least deliberately reckless as to whether or not the [receipt for the necklace set] was a receipt for the gold biscuit". I consider it could also be said that the provision of the 28 February 2012 quote, as the original receipt for the item, was a further false statement. It could not

possibly be a receipt. As the ISO report notes, ABC said he purchased the biscuit on 8 July 2011, not 28 February 2012.

[13] ABC told me that he made a mistake about the biscuit's value when he initially claimed it was worth \$700.00, and that the theft claim had been declined due to "confusion" about the item. ABC's view was that the claim was declined on the basis of false information, and that the false information was the change in the value of the gold biscuit. With respect to ABC, the concern went beyond the change in value. It also reflected the change in the weight of the biscuit, and the provision of false documentation to establish its ownership. The ISO considered ABC's explanations and whether a mistake had been made, and concluded as follows:

I also have serious concerns about the provision of the changed weight and value of the gold biscuit, as I do not believe that such a significant difference in description could have been a result of pure forgetfulness.

[14] I have considered ABC's view that ZZB questioned him about the receipt being for the necklace, and asked him to get a price for the gold biscuit. He complained that ZZB is now saying it cannot pay on the basis of the quote, when that is what they asked him to get. However, the ISO report said that ABC was "asked to provide the original receipt" and he then provided the quote dated 28 February 2012. I can appreciate that ABC may have misunderstood what it was that ZZB was asking him to do, but the ISO did not interpret ZZB's request as a request for a valuation. Further, the policy makes it clear that, although ownership can be proved by a recent valuation, it has to be in existence prior to the loss, which was not the case here. So the quotation does not prove ownership. I consider that ABC has not proved ownership of the gold biscuit, and therefore his loss for this item under the policy.

[15] I have considered ABC's view that the inconsistencies in his and his wife's testimony when questioned by ZZB was due to the number of times they were interviewed, and that English is their second language. I have to say I think ABC speaks English perfectly well. The transcripts of questioning of ABC and CX in the ISO report, whilst admittedly brief, do not suggest any language difficulty. I think ABC would have been able to request an

interpreter if he or his wife needed one (he did not do so for the Tribunal hearing). As to the inconsistencies themselves, they go beyond inconsistencies about the weight and value of the biscuit and the documents presented to support ownership, and include how the alleged theft occurred. Unfortunately I am not persuaded that all of this can simply be put down to language difficulties or being interviewed several times.

[16] I would add that, in his email of 26 October 2011, ABC did not mention the gold biscuit. It seems strange to me that he did not mention straight away such a distinctive item which was originally valued at \$700.00, and was later valued at much more than that.

[17] I have considered ABC's view that ZZB made its decision to decline the claim based only on the gold biscuit "...and never mentioned about any other item in the theft claim". One answer to this is that, as discussed above, ABC had an obligation to provide all necessary reports to establish the existence of an unexpected event covered by the policy. Failure to do so was a breach of a condition of the policy. The fact that ABC provided receipts for all the other items of property does not remedy this failure. It is also clear from the letter sent by ZZB dated 16 March 2012 that there were concerns about the circumstances of the theft which meant the entire theft claim was declined. The gold biscuit was not specifically mentioned. It is clear there were a number of reasons for the claim being declined.

[18] On the basis of the available evidence, I find that ZZB was entitled to reject the claim on the basis that the loss had not been proved to its reasonable satisfaction. There was no evidence of an unexpected event, and concern about a possibly fraudulent claim. Information reasonably requested had not been provided. The lack of a police report, the inconsistent answers to questions, and the ambiguous documents produced to support ownership of the gold biscuit, taken together, in my view entitled ZZB to decline the theft claim.