



November 2019

Insurer complied with its duty of good faith in its dealings with plaintiff

Harmon v Irish Life Assurance plc [2018] IEHC 801 (*High Court, Creedon J, 26 October 2018*)

The High Court, in dismissing Mr. Harmon's claim that he was mis-sold a unit linked Protection Plan ("**the Policy**"), found that the insurance company had complied with its duty of good faith in its dealings with Mr. Harmon and that there was ample evidence to support the agreement between the parties as to the exact terms of the contract.

Background

Mr. Harmon issued proceedings in 2012 alleging that the defendant's predecessor, Irish Progressive Life Assurance Company Ltd ("**Irish Progressive**"), mis-sold him the Policy in September 1995.

Facts

Mr. Harmon completed a life assurance proposal form with the benefit of advice from his broker, Carroll and Associates, seeking life assurance cover, specific critical illness cover and permanent total disability cover. Irish Progressive offered life assurance cover and specified critical illness only and issued policy documentation to Mr. Harmon and his broker requesting that Mr. Harmon satisfy himself that the cover proposed met his requirements. Mr. Harmon signed an acceptance form on 5 September 1995 and the Policy for life assurance and specific critical illness cover issued on 7 September 1995. Mr. Harmon subsequently contacted Irish Progressive in June

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1997 seeking to increase the level of critical illness cover provided under the Policy and to add permanent total disability cover to the Policy. Irish Progressive sent a proposal form detailing the cost of the requested cover, however, Mr. Harmon did not take up the proposal. Mr. Harmon subsequently submitted a claim under the Policy, which the insurers rejected as it fell outside the cover provided by the Policy.

The Arguments

Mr. Harmon argued that Irish Progressive failed in its duty to act in the utmost good faith by providing him with a policy that failed to meet his stated needs. He also argued that this duty extended to precluding insurers from raising defences otherwise available to them against the claims of insureds. Mr. Harmon relied on the decision of McMahon J in the High Court in *Manor Park Homebuilders Limited v AIG Europe (Ireland) Ltd.* in submitting that the duty to act in the utmost good faith includes an obligation on the insurer to disclose to him material facts within the insurer's knowledge.

He further argued that there was no consensus *ad idem* and, therefore, no contract between the parties, as he believed he had been provided with the cover he had requested, which included permanent total disability cover. He maintained that his request for cover was clear and unambiguous, that the first time an explanation was given by the insurers as to what was covered was when they refused to pay his claim, and that had an explanation of the cover been given to him when the Policy was taken out, then he would have been alerted to the disparity between what he was being given and what he had requested.

The insurers argued that the duty of utmost good faith requires an insurer to act in accordance with commercial standards of decency and fairness and to conduct itself reasonably, transparently and with candour. They submitted that in providing the policy documents to Mr. Harmon and his broker, and requesting that Mr. Harmon satisfy himself as to the level of cover, they had complied with the duty of utmost good faith. The insurers also highlighted that Mr. Harmon had his own broker to advise and consult on the terms of the Policy. In addition, they submitted that Mr. Harmon obtained life insurance cover which was required for a property investment and that this cover continued to apply.

In relation to the contract itself, the insurers argued that an agreement did exist. It noted that Mr. Harmon had signed an acceptance form acknowledging the cover offered and that he had not cancelled the Policy during the provided cooling-off period.

Conclusion

In dismissing Mr. Harmon's claim, Creedon J. concluded that Irish Progressive had complied with its duty of utmost good faith in its dealings with Mr. Harmon and that there had been consensus between the parties in respect of the Policy. The court also found in favour of the insurer in relation to issues of *res judicata* and the statute of limitations.

Comment

This case outlines the importance of dealing fairly with policyholders and disclosing all material facts relevant to the extent of cover. Irish Progressive had clearly stated to Mr. Harmon and his broker that the policy terms offered should be read to make sure it satisfied Mr. Harmon's needs.

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