



Judgment Summary

Supreme Court New South Wales

Avedis Avik Kalloghlian v Chubb Insurance Company of Australia Ltd [2016] NSWSC 902

Davies J

The Supreme Court has allowed an appeal against a local court decision relating to an insurance claim on a Rolex watch and has remitted the proceedings to the local court to be dealt with by a different magistrate.

Mr Kalloghlian lost his 18carat gold Rolex in Rio de Janeiro in July 2014. When he returned to Australia he lodged a claim on his insurer. The insurer rejected the claim because the Plaintiff had not proved his loss. The Plaintiff began proceedings in the local court to recover \$25,000 as a debt under the insurance policy. The Local Court Magistrate entered judgment for the Defendant in December 2015. The Plaintiff appealed to the Supreme Court asserting an error of law in the Magistrate's failure to provide any or adequate reasons for the issues in the proceedings.

There were 13 grounds of appeal concerning the reasoning or lack thereof for the Magistrate's findings that the Plaintiff failed to prove the loss of the Rolex and that the Plaintiff failed to satisfy the Proof of Loss clause in the policy; for the Magistrate's rejection of the oral evidence of the Plaintiff and Mr Sanossian (the jeweller who serviced the watch) and for the Magistrate's failure to consider the fact that Mr Sanossian was not cross-examined.

In relation to the proof of loss the issue was whether the Magistrate posed and answered the wrong question by finding that the Plaintiff was unable to provide a proof of purchase for the watch. The Plaintiff submitted the correct test was whether the Plaintiff had brought himself within the insuring clause of the policy. The relevant clause was entitled 'Deluxe Contents Coverage'. The Clause included 'Cover against physical loss or damage to [the Plaintiff's] Contents anywhere in the world.' Contents meant property owned or possessed by the Insured. The Court found that the Magistrate had identified proof of purchase of the Rolex with satisfaction of the proof of loss clause in the policy.

As to whether the Magistrate failed to give any or adequate reasons for why the Plaintiff's claim was unsuccessful the Plaintiff submitted that the Magistrate must have rejected his evidence about the purchase of the Rolex but that the Magistrate did not say why he did so and that the Magistrate made no finding as to whether he had accepted the evidence of Mr Sanossian. The Defendant submitted that the Magistrate had implicitly rejected the evidence because of a lack of corroborative material to evince that the Plaintiff had possessed and lost the watch. The Court reasoned that the 'failure to provide sufficient reasons can and often does lead to a real sense of grievance that a party does not know or understand why the decision was made' (*Re Poyser and Mills Arbitration*) and that it is not only the losing party but also an appellate court which may need to understand why it was

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that a lower court judge reached the decision he or she did. The Court identified this as a classic case where a claimant on an insurance policy had almost only his own word to prove ownership or possession and loss of the object for which the claim was made. The Court found that the Magistrate appeared to have approached the matter from the insurer's perspective because he focused only on documents and material that were not provided but which were required under the policy. The Court found that the Magistrate failed to assess the Plaintiff's evidence and explain why it was not accepted and that it was incumbent on the Magistrate to say whether he accepted or rejected Mr Sanossian's evidence and if it was accepted to explain why it did not support the Plaintiff.

The Court found that the Magistrate's reasons were insufficient to enable the parties to know why the decision was made. The Court also found that the Magistrate did not ask himself the correct question which was whether the Plaintiff brought himself within the insuring clause relevant to the loss but rather focused on the purchase of the watch when the Plaintiff's ownership or possession of the watch would have sufficed to bring the Plaintiff within the clause.