

Before the Arbiter for Financial Services

Case ASF 120/2021

JK (the Complainant/the Insured)

vs

ArgoGlobal SE (SE 2)

(the Service Provider/the Insurance/

The Insurer)

Sitting of the 8 February 2022

The Arbiter,

Having seen the complaint whereby the Complainant states that he had a home insurance cover with the Service Provider.

On the 23 May 2020, during the COVID 19 lockdown, he had a burst water pipe in the kitchen. He called an emergency plumber and repaired the section which was burst. He also checked the bathroom and decided to replace a section behind the basin. Ten days later, they started noticing the first caving in of the floor in the kitchen and then in the adjacent bathroom followed by the appearances of holes in the floor.

He informed the insurance company, and on the 3 June, they sent someone from a firm called Acorn and, although they never released a copy of the report to the Complainant, they claimed that there was a leak which was slow and, although it was beneath the floor and, therefore, impossible to detect, they refused the claim. They asked the Complainant to get a second opinion, which he did. The persons releasing the second opinion stated that the leak was impossible to

detect. However, the insurer still refused to pay for the damages sustained by the Complainant.

The Complainant further stated that the insurance company acted unreasonably and tried their best to find a reason to deny the claim. The terms of the policy clearly cover this eventuality. The house was renovated in 2009 and it is inconceivable that he will not report a leak had he known about it.

The damage is now one-year old and has been compounded by the neglect due to this dispute. The Complainant requests that they want the house restored to the status before the damage from the burst pipe. He is also asking compensation for denying a legitimate claim on 'spurious' reasons.

The Complainant concludes by saying that the insurer is bringing excuses to deny the claim.

Having seen the reply sent by the Service Provider which in essence states that:

In June 2020 a loss adjuster had reviewed the claim and recommended that the claim be declined on the basis that the leak had been ongoing for quite some time. It was also advised that due to the length of time and the noticeable damage within the property, that the leak would have been known to the insured and they had failed to take any action in relation to the same. By allowing the leak to continue the damage occurred.

In both areas the leaks had been ongoing for a substantial time which had caused significant damage and rot to the tiled floors and floating sub-floors – chipboard and joists. The flooring has collapsed in the bathroom and in multiple areas of the kitchen which had been covered with plywood and over covering to allow them to continue to walk on these areas.

For example, the inspector from Acorn noted in his report that there was *'one leak from bathroom hand basin and one leak from the stop cock in the kitchen under the sink, this is why the damage is so vast in two areas in separate rooms. In my opinion, it would have been reasonably obvious that there was something going on with the floors as they are partially collapsed with floor tiles cracked significantly in both rooms. Each leak has been ongoing for some time and has contributed to the damage.'*

The claim has been declined on the basis of the insurance policy being designed to offer cover for a number of one-off events, often referred to as '*insured perils*'. In this case, the relevant occurrence is '*escape of water*'.

As with all contracts, they contain various terms and conditions and are subject to certain restrictions and limitations. These limitations include on page 16 under '*What is not insured ... Loss or damage caused by wear and tear, WET or dry ROT, or any other GRADUAL CAUSE*'. (Emphasis supplied).

The nature and description of the damage, the photos and the report of the builder Acorn, all demonstrate that the damage and rot found had to have occurred over a substantial period of time. The damage and rot could not have been caused by the one-time leak of water that immediately preceded the insured making the claim. Therefore, such damage is not recoverable under the contract of insurance.

Having heard the parties and seen all the documents,

Further considers

The Arbitrator has to decide the complaint by reference to what, in his opinion, is fair, equitable and reasonable in the particular circumstances and substantive merits of the case.¹

The issue is whether the insurer should honour the claim submitted by the Complainant to have his house restored to the position it was in prior to the bursting of the pipe in the kitchen.

The insurer refused the claim because it holds that the damage was not caused by a burst pipe but due to a slow leakage of water which is excluded by the policy.

The Complainant's Version

The Complainant testified² that they had been living in the house since 1986, and for the last 34 years, they did not enter any claim with the insurer.

¹ Chapter 555 of the Laws of Malta (CAP. 555), Art. 19(3)(b)

² A Fol. 267 et seq.

The accident that happened was a catastrophic leak. When the water pipe burst, he was not at the house as it happened during the COVID lockdown. What happened was that suddenly his kitchen flooded with water and his wife turned the mains off and called an emergency plumber. The plumber went the following day and replaced the joint behind the cupboard. The plumber also looked at the bathroom and he felt that he should replace a joint there as well.

The Complainant thought that that was the end of the whole incident. However, about nine days later, his wife called him and said that the floor caved in and that there was a hole in it.

His house and others were built in the 1930s. They have stone walls and wooden floors. So, it was not possible to see any leak unless one has extraordinary vision. He and his wife renovated the house in 2009 with quite a big cost: plumbing, electricity, kitchen, bathroom, etc.

The flooding was due to a bursting pipe. He contacted the insurer on the 23 June and asked him to send them pictures which he did. The insurance policy covers this incident because under *'What is insured'*, point 4, states that he is covered for:

'Loss or damage caused by fire ... and escape of water or oil'.

He is basing his claim on *'escape of water'*. The person from Acorn sent by the Service Provider estimated the damage at £15,000 to £20,000.³

This person also stated that the damage had been going on for a long time. The Complainant disputes this because if the damage had been going on for a long time, then the kitchen would have been flooded with water. But it was possible that the damage was underneath the floor without people able to notice it.

On the direction of the Insurer, the Complainant found a company, Twenty 4 Seven Property Maintenance, which confirmed that the damage was impossible to detect underneath the floor until the damage became catastrophically evident. This is in contrast to what the Insurer had said that the leak should have been detected before, and that it had been going on for months.

³ A Fol. 89

The Complainant insists that the refusal of the claim is unreasonable because the leak could not have been spotted even if it had been going on for a long time. They had no reason why not reporting the leak had they noticed it.

The loss adjustor never went to the property and there was supposed to be a video conference which the adjustor did not follow. He relied only on the pictures sent to him by the Complainant.

The Complainant further stated that he did not repair the house yet and is expecting the sum in the region of £15,000 - £20,000.

The Service Provider's Version

William Brown, for the Service Provider, solemnly declared⁴ that they had received a call in relation to escape of water. They contacted a repair network expert who identified that there had been an escape of water, but they also identified that this had been going on for a long time. It had been gradually getting worse; this leak could have been identified by the policy holder.

The initial claim was rejected, and this was disputed. Then, they appointed a second expert on the case, a loss adjustor, who attended and reviewed the case. The loss adjustor came to the conclusion that it was an on-going wear and tear gradually operating cause which had rotten the floors; this is excluded by the policy.

Regarding the offer of £5000, this was offered to the Complainant by an escape of water specialist on the instruction of the Service Provider for the one-off fortuitous event, that is, the bursting of the pipe on the date indicated by the Complainant. This is the amount the Insurer would have spent to repair the property without the rot. The sum of £5000 offered to the Complainant would have covered the cost to dry the property within the first nine days, reinstate the plinths, reinstate the tiles and reinstate the bathroom.

John Henley, for the Service Provider, stated⁵ that the photographs of the Complainant show that one could put his foot through the floor. That consists of long-time leaking water and rot that is not caused by a one-off leak of water.

⁴ A Fol. 269

⁵ A Fol. 270

It amounts to being a long-standing leak which the policy specifically does not cover. Whether the Complainant had seen the leak or not is immaterial.

Further Considerations

The issue is whether the damage sustained by the Complainant can be attributed **wholly** to the bursting of the pipe.

The Complainant insists that this incident happening in May 2020 caused an extensive damage to the flooring of the property whereas the Insurer holds that the damage to the flooring of the kitchen and the bathroom resulted from an ongoing leak which is not covered by the policy.

The Arbiter notes that the policy covers *'escape of water'* and the *'finding and assessing of a leak following water damage, up to £5000'*. However, it excludes *'Loss or damage caused by wear and tear, wet or dry rot, or any other gradual cause.'*⁶

It is undisputed that in May 2020, a water pipe burst and there was an *escape of water*. *'Escape of water'* has generally been considered as a one-off event happening to an insured property:

*'Most policies routinely do cover [water damage](#) that occurs for specific reasons - usually a sudden or accidental event that occurs within the structure, such as a burst pipe or malfunctioning dishwasher or other plumbing/water supply-related problems. Gradual damage or wear and tear that happens over time generally isn't covered, though.'*⁷

'Escape of water' is clearly covered by the policy as shown above in this decision. William Brown, for the Service Provider, stated that the Service Provider instructed the escape of water specialist to offer the Complainant the sum of £5000 for the one-off fortuitous event, that is, the bursting of the pipe on the date indicated by the Complainant. This is the amount the Insurer would have spent to repair the property without the rot. The sum of £5000 offered to the

⁶ A Fol. 16

⁷ <https://www.investopedia.com/terms/w/water-exclusion-clause.asp>

Complainant would have covered the cost to dry the property within the first nine days, reinstate the plinths, reinstate the tiles and reinstate the bathroom.⁸

This sum was indeed offered to the Complainant. The Arbiter will consider this offer later on in this decision.

However, the main issue is whether the extensive damage to the flooring was caused by the sudden bursting of the pipe or whether the rot had been going on for a long time due to a slow leakage.

The Arbiter has two versions, one by the Twenty 4 Seven Property Maintenance⁹ appointed by the Complainant, and the other by Acorn Builders appointed by the Service Provider.

Twenty 4 Seven declared that:

*'Upon inspection we found two large holes in the floor and a major subsidence in front of the sink area. The damage seems to be the result of a major leak which appears to have started from a burst pipe above the mains valve in the kitchen, this leak may have started very slightly sometime before but due to the location of the valve behind the cupboard and no visible signs of a leak this was impossible for you to detect, it wasn't until pressure burst the pipe causing a major flood that this was detected. The entire kitchen floor is unstable and dangerous ... The floor joists we can see through the holes tell us they are rotten and will need replacing ... In our opinion this damage has been caused by the main pipe burst and the water has soaked into the wood joists causing a very unstable structure.'*¹⁰

This technical opinion was challenged by the Service Provider:

'In both areas the leaks had been going on for a substantial time which had caused significant damage and rot to the tiled floors and floating sub floors - Chipboard and joists. The flooring has collapsed in the bathroom and in multiple areas of the kitchen which had been covered with plywood and over covering to allow them to continue to walk on these areas. For example, the inspector from Acorn noted in his report "one leak from bathroom hand basin and one leak from

⁸ Statement made by William Brown during the sitting of the 16 November 2021, *a Fol.* 269

⁹ *A Fol.* 31

¹⁰ *Ibid.*

the stop kick (stop cock?) in the kitchen under the sink. This is why the damage is so vast in two areas in separate rooms ... Each leak has been ongoing for some time and has contributed to the damage”.¹¹

Being faced with two opposing views, the Arbiter has to decide which of these versions is the most probable. He has to decide on a balance of probabilities.

The position taken by the Service Provider regarding the extensive damage to the floor in both rooms is more probable especially in relation to the severe rot. It is not probable that the rot came about by a sudden bursting of a pipe. The bursting of the pipe caused the damage mentioned by the Service Provider for which they were prepared to pay £5000.

The rot to the floor is more probably to have been caused by the two leaks in the kitchen and in the bathroom. A rot does not happen overnight, and the leaks must have been ongoing for quite some time.

Even the Complainant himself indirectly admits that there could have been slow leakages. In his Complaint,¹² he stated that apart from the damage caused by the bursting pipe, the emergency plumber that was called by his wife, also checked the bathroom and decided to replace a section behind the basin. This means that apart from the bursting of the pipe in the kitchen, the Complainant indeed had leaks coming from the bathroom as well.

Moreover, in his testimony before the Arbiter, he admitted that it was possible that there had been damage *‘underneath the floor’* without being able to notice it. The Complainant seems to admit that there could have been leaks but he could not have noticed them because they were hidden. All this militates in favour of the Service Provider’s position that there were slow leaks which rotted the flooring over time.

There is no doubt that in May 2020, there was the fortuitous event of a bursting pipe in the kitchen. It is not probable that it would have caused the extensive damage to the extent of two big holes, making it difficult to walk on the floor; so much so, that the Complainant had to cover these holes by plywood.

¹¹ A Fol. 70

¹² A Fol. 2

The wording of the policy in this respect is that cover is not possible where:

'Loss or damage caused by wear and tear, wet or dry rot, or any other gradual cause'.¹³

On the other hand, the Complainant was covered for *'Loss or damage caused by fire ... and escape of water or oil'.¹⁴*

Conclusion

For the above-stated reasons, the Arbiter upholds partially the complaint as follows:

The extensive damage caused to the flooring due to the leaks was not covered by the policy.

However, the damage caused by the bursting pipe was covered, and the Service Provider admitted that to repair the damage ensuing from this event the expenses would have been £5000.

Compensation

Therefore, in virtue of Article 26(3)(c)(iv) of Chapter 555 of the Laws of Malta, the Arbiter orders ArgoGlobal SE to pay the Complainant the sum of £5000.

With legal interest of 8% per annum from the date of this decision till the date of effective payment.

Each party is to pay its expenses of these proceedings.

**Dr Reno Borg
Arbiter for Financial Services**

¹³ A Fol. 16

¹⁴ Ibid.