

Before the Arbiter for Financial Services

Case ASF 113/2021

BE

(The Complainant)

vs

ArgoGlobal SE (SE 2)

(The Service Provider/The Insurer)

Sitting of 16 November 2021

The Arbiter,

Having seen the complaint whereby the Complainant states¹ that he had a home policy in 2019 where he specified his Rolex watch which is a high value item both from a monetary point of view and also from an emotional point of view since it was given to him by his parents for his achievements.

He accidentally scratched the watch and raised a claim with the insurer.

He was advised by Rolex to only use a certified supplier to get a high-level quote. In order to replace the watch face, they must perform a diagnostic service to assess the full damage of the watch and, as part of this diagnostic service, they will replace the watch face. He obtained a quote for this service from an official Rolex supplier and the Insurer is refusing (through intermediary Geo Claims) to pay for the repair, as the claim includes the diagnostic service, even though this is mandatory in order to get the watch face replaced.

The Insurer's argument is that they do not cover routine servicing though this is clearly not a routine scenario; it is a diagnostic service to repair the watch.

¹ A Fol. 1-4

The Complainant further stated that he visited every official Rolex Supplier in the City of London area and each supplier has confirmed that Rolex must perform a diagnostic service in order to repair the watch and this to ensure that the full damage is confirmed, and their products maintain their quality.

The Complainant submits that it is irresponsible for Geo/ArgoGlobal to ask clients to pay a premium on Rolex items when they knowingly would not be able to cover the costs of any repairs through official means. Clients should not be forced to unofficial repairs which will put their high value items at a severe risk.

Geo Underwriting Services Ltd (the Service Provider's intermediary) are still insisting on an invoice on repairing only the damage before proceeding with the claim. Rolex, or any official Rolex suppliers, cannot provide this invoice in isolation as they must service the watch to firstly assess the damage and the service cost will include repairing the watch. This is Rolex's policy to maintain the high quality of their products.

The Complainant feels that he was made to pay 'for a redundant premium'; and the Insurer did not apply common sense to the claim and were not helpful in resolving the issue.

He is asking the Insurer to pay for all the costs associated with his Rolex watch which is still broken.

Having seen the reply filed by the Service Provider which intrinsically states that this is a relatively straight forward matter. The claim concerns accidental damage to a Rolex watch. The watch is covered under the policy.

The Insurer requested details of the damage and the costings to repair, and this request is part of the usual claim process. The policy holder only provided a standard cost for service. As maintenance is not covered, they requested a breakdown. The policy is clear that maintenance (and, therefore, a service) is not covered.

The policy holder said no breakdown could be provided but the Insurer had received in previous cases, broken down costings from other customers with Rolex watches from various stores. If the policy holder provides costings for the damage and not the service, the Insurer is prepared to consider the claim.

Having heard the parties and seen all the documents submitted by the parties

Considers

The Arbiter will decide the case with reference to what, in his opinion, is fair, equitable and reasonable in the particular circumstances and substantive merits of the case.²

The Complainant's Version

The Complainant stated in his evidence before the Arbiter³ that after his Rolex watch was damaged, he tried to obtain a quote, but official Rolex suppliers told him that it was not possible to issue a quote before they do a service to the watch in order to assess the extent of the damage. The service is a pre-requisite to understand the extent of the damage.

The Complainant states that he has a broken watch for years now and went to a Rolex agent to get an estimate of the damage, but they said that they cannot give a quote before they do the service.

The watch is of great sentimental value to him and cannot repair it because the Insurer is insisting on not paying for the service which is the pre-requisite for the repair.

In his final submissions, the Complainant insisted that the service on the watch is intrinsically related to the actual repair of the watch and no Rolex supplier would issue a quotation before they carry a full service. The Insurer should specify in the policy that they do not cover the service in these situations.

The analogy to a car raised by the Service Provider is not correct because if a car is damaged through an accident, it is not the same as taking a car every year for a service. In his case, he does not want to do any maintenance service to his watch but repair an accidental damage to his watch.

² Chapter 555 of the Laws of Malta, Art. 19(3)(b)

³ A Fol. 113

The Service Provider's Version

In his final submissions,⁴ the Insurer argues that the insurance policy in this case is not a maintenance policy. If somebody took a Rolex watch for service and the Rolex engineer has found that it has been dropped and damaged, the Insurer would look at potential covering the damaged item due to the impact that was identified during a standard everyday service. This is similar to a car. No one would expect an insurance to pay for service of a vehicle. The policy covers a fortuitous event and not for ongoing maintenance.

Had it been a car accident, they would not service the car first to tell you what the damage was. They would look at the damage and establish its costs. They would repair the damage and do not do the service first.

In this case, if the Complainant provides information on how much would it cost to repair the watch face under the strap relating to the scratching, that would be covered.

Further Considerations

The case basically refers to the fact that the Insurer is refusing to pay for a service on a damaged watch which damage happened during an incident. The Insurer itself admits that the Rolex watch in question is covered by the policy for accidental damage but refuses to pay for a service on the watch which they consider as a routine service and not a service resulting from the incident.

On the other hand, the Complainant states that official Rolex repairers told him that in order to repair the watch professionally they have to carry out a service before to establish the amount of damage. They would not issue a quotation without including the necessary service.

Basic principles

First of all, the Arbiter wants to highlight a few basic principles in insurance law.

⁴ A Fol. 115

As has already been stated in previous decisions by the Arbiter,⁵ and as stated on numerous occasions by the Maltese Courts,⁶ the contract of insurance is based on the utmost good faith of the parties. This simply means that both the Insurer and the insured should act towards each other in absolute good faith by honouring their respective obligations.

While the insured is *inter alia* obliged to pay the premium and disclose all material facts that could impinge on the risks of the policy, the Insurer has the primary obligation to honour the claim in an honest, fast and fair way.

On the one hand, when an incident occurs, the damaged party is entitled to be brought back to his former position, namely, the insurance should cover his loss caused by the incident. In monetary terms, this means that the insured is reinstated in the same position he was in prior to the accident, and in this case, the damaged article be repaired in such a way as to reflect its former value.

In dealing with a claim the insurer must:

1. Consider the insured's interests with the same consideration it gives its own interests. This means that the insurer must give the policy holder the benefit of the doubt.
2. Look for reasons to find coverage, not for reasons to deny coverage. The insurer should be looking for reasons to pay the claim, not reasons to deny it.
3. Not view the process as 'insurance company' *versus* 'policy holder' but as one between honest partners to the same contract.
4. Promptly and fairly investigate every claim.
5. Promptly pay the claim if payment is owed.
6. Give an adequate explanation to the policy holder if the claim is denied.

The above is not an exhaustive list but merely an exemplary one.

⁵ For example, OAFS Case 039/2017

⁶ For example, *Patricia Agius vs GasanMamo Insurance Ltd*, PA, 5/06/2015 (JPG)

On the other hand, the insured is obliged to reduce the loss as much as possible and does not try to make a profit out of the incident to the detriment of the insurance company.

In this way, there would be a balanced and fair relationship to the benefit of both.

With these principles in mind, the Arbiter has to find a fair, equitable and reasonable solution.

The Insurer is not complaining that the incident (the scratching of the watch's face) is not an insured risk. It is only questioning whether it should pay for a service which, in its opinion, is not related to the incident, that is, for a maintenance or routine test.

The Complainant states that the service that needs to be carried out on his watch is not a routine test but is an intrinsic part of the process to repair the watch.

However, the Arbiter does not have any proof that Rolex suppliers need to carry out a service on a watch simply because the watch has suffered a scratch on its glass. The Complainant is stating that not even a quotation could be issued without a service being carried out *a priori*. On the other hand, the Service Provider submitted that they had previous cases of damaged Rolex watches and they had received breakdowns of costings from other customers with Rolex watches from various stores.

However, neither of the parties have brought forward tangible proof to sustain their arguments in this regard.

Therefore, the Arbiter cannot exclude anything and therefore he has to find a comprehensive solution which covers all possibilities.

The Arbiter agrees with the Insurer's position that they only cover any loss resulting from the incident. On the other hand, he does not want to exclude the possibility that, apart from the scratch on the glass, the watch could have suffered any other collateral damage. He does neither want to exclude the possibility that Rolex suppliers do not carry out any repairs unless they do a service to the watch to establish the exact amount and nature of the damage.

Decision

For this reason, the Arbiter reaches the following decision:

1. That he cannot give the Complainant a *carte blanche* and charge the Insurer even for works carried out on the watch if they are not related to the incident. He can only award the cost of damages resulting from the incident.
2. Therefore, he is deciding that the insurance company would pay for the costs of the repairs connected with the incident in the following way:
 - a) If the Rolex suppliers refuse to issue a breakdown of the expenses prior to the repair of the watch, the Complainant should go ahead with the repairs and if he afterwards obtains a declaration from the Rolex repairer that the service was carried out to establish the damage caused during the incident, then the Insurer must also pay for this service because that would not be a routine service. However, if the Rolex supplier declares that only the damaged glass was related to the incident, then the Insurer would pay only for the amount related to the watch's glass including the cost of labour to fix it and restore the watch to its previous condition.
 - b) All amounts to be paid by the Insurer should not exceed the limits established in the policy, if any.

Each party is to bear its own costs of the proceeding before the Arbiter.

Dr Reno Borg
Arbiter for Financial Services