

Before the Arbiter for Financial Services

Case ASF 127/2022

QP (Complainant)

vs

QIC Europe Limited (C 67694)

(Service Provider/Insurer)

Sitting of 26 October 2023

The Arbiter,

Having seen the complaint, whereby the complainant disputes the service provider's decision with regards to liability under the Holiday Home Plus Spain Home Insurance Policy due to Storm Damage or Escape of Water. She stated that the insurer failed to carry out a thorough claim review and investigation due to failure to respond to physical evidence and measurements provided by herself which contradicts their assessment, whilst also ignoring the indemnifiable loss under the Accidental Damage cover under the same policy.

The complainant stated that the claim relates to water damage to her insured property discovered on 7 May 2022, which damage was caused due to water ingress following escape of water from the blocked roof drainage system, which claim is however being repudiated by the insurer on the basis that the cause of loss is due to storm and/or defective construction.

The complainant is considering such repudiation to be incorrect due to the following:

- 1. 'The proximate cause of loss is not Storm but Escape of Water from blocked roof drains*

2. *The insurer has incorrectly restricted the definition for escape of water to a burst pipe, but this is not specified in the policy*
3. *If the proximate cause of loss was, in due course, held to be storm the repudiation for absence of physical damage to the building is incorrect as there is no policy definition of storm, and the Insurer has also misquoted an exclusion*
4. *The insurer has incorrectly claimed the terrace waterproofing does not comply with Spanish building regulations. The quoted regulations never became mandatory, and there was no evidence provided that the house was not built appropriately*
5. *The insurer has alleged defective waterproofing to the terrace but has provided no evidence.*¹

The complainant gave a detailed description of when the damage sustained was discovered, the nature and extent of such damage, the cause of the loss, and the liability under the policy in question. She also provided a detailed schedule² with her comments in relation to the various reasoning given by the claims handler in the various communication exchanged between them.

The complainant insists that the policy in question provides cover for 'Storm or Flood' together with 'Escape of water', but neither defines 'storm' nor 'escape of water'. She stated that the claim under the 'Storm or Flood' cover has been repudiated on the basis that there is no visible physical damage to the building and that the water has leaked due to a possible defective waterproof membrane and other construction defects.

She however argued that the policy does not specify that physical damage must be present for a Storm claim to be honoured, and thus, in the absence of 'Storm' definition and the failure to include the aforementioned requirement, such provisions cannot be imposed at claims stage.

In light of the above, the complainant expects the service provider to pay the sum of €14,559.85³, with €5,554.36, €7,129.32, €1,470, and €406.17 be in

¹ P. 8

² P. 14 - 21

³ P. 36

respect of Contents, Building, Alternative Accommodation, and other expenses respectively.

Having seen the reply⁴ by the service provider which, in essence, submits that:

I refer to your letter dated 31 October 2022, sent in respect of the above referenced complaint.

Whilst I write this letter in my capacity as Compliance Director of QIC Europe Limited (“QEL”), please note that, for the purposes of the Policy, claims and complaints handling was delegated to QEL’s third party administrator, Ibex Insurance Services Ltd (‘Ibex’).

This letter is QEL’s “reply” to YZ’s complaint pursuant to the terms of Article 22(3) of Act No XVI of 2016 (CAP 555).

Following receipt of your recent letter, the QEL Compliance Team has reviewed: (i) YZ’s new complaint form and supporting information dated 31 October 2022 (the “Submission”); and (ii) again, the original claims file, including Ibex’s response letter dated 19 July 2022 (the “Response Letter”).

In summary, the Response Letter confirmed the following circumstances of YZ’s claim:

- *YZ’s claim was notified to Ibex on 7 May 2022. YZ confirmed that she discovered water damage at the Property following her return to the Property after a period of just over two months away. The Property was reportedly uninhabitable due to damp and mould in several rooms.*
- *On behalf of QEL, Ibex instructed an approved repairer to attend the Property on 11 May 2022. Following the initial visit, the repairer informed Ibex that there was no evidence of burst pipes or an escape of water, but that there was a “lack of maintenance on the facade, terraces, expansion joints ... with numerous areas of damage to the property”.*
- *In order to investigate the claim further, Ibex appointed a loss adjuster to attend the Property on 17 May 2022.*

⁴ P. 256 - 258

- *In his report dated 18 May 2022 (copy enclosed), the loss adjuster confirmed that:*
 - *The amount of rainwater recorded in March 2022 would be considered a “storm”.*
 - *Various debris was blocking the drain terrace and/or downpipe, causing the accumulation of rainwater on the flat terrace roof.*
 - *This rainwater seeped through the flat terrace roof because it was not watertight.*
 - *Rainwater also seeped through the air conditioning pipes due to the poor conservation of the exterior façade.*
- *Based on the findings in the loss adjuster’s report, Ibex declined the claim on 30 May 2022. Whilst the storm conditions were present in the area surrounding the Property in March and April 2022, Ibex concluded (on QEL’s behalf) that the cause of the damage was the poor state of repair of the Property and the failed waterproofing membrane and as a result, the damage was not caused by a covered peril under the terms of the Policy.*

YZ did not accept the declination and submitted to complaint to Ibex. In summary, the basis for YZ’s complaint was five-fold:

- 1. The proximate cause of the loss was not ‘Storm’ but ‘Escape of Water’ from the blocked roof drains.*
- 2. QEL incorrectly restricted the definition for ‘Escape of Water’ to a burst pipe, but this is not specific in the Policy.*
- 3. If the proximate cause of the loss was, in due course, held to be ‘Storm’ the repudiation for absence of physical damage to the building is incorrect as there is no policy definition of ‘storm’, and QEL has also misquoted an exclusion.*
- 4. QEL has incorrectly claimed the terrace waterproofing does not comply with the Spanish building regulations. The quoted regulations never became mandatory, and there was no evidence provided that the house was not built appropriately.*
- 5. QEL has alleged defective waterproofing to the terrace but provided no evidence.*

In summary, the Response Letter confirmed Ibex’s reply to YZ’s complaint as follows:

- *The Escape of Water peril requires water to have escaped “**from**” fixed water tanks, apparatus, or pipes.*
- *On YZ’s own case, the rainwater that seeped into the Property did not escape “**from**” fixed water tanks, apparatus or pipes. The rainwater accumulated as a result of blocked drainage pipes. Therefore, there has not been a defined Escape of Water peril to trigger this insurance clause.*
- *Notwithstanding the fact that YZ is not pursuing her claim under the Storm peril, Ibex still tried to assist and investigated whether a claim under the Storm peril could be considered.*
- *Whilst Ibex concluded that there were storm conditions within area surrounding the Property in March and April 2022, condition which could have been sufficient to trigger the Storm peril, Ibex concluded that Storm was not the cause of the damage to the Property.*
- *As such, Ibex determined that the cause of the water ingress was due to the poor state of repair of the Property and the failed waterproofing membrane. Further, Ibex highlighted the “Wear and Tear” general exclusion and based on the loss adjuster’s findings, considered that the waterproofing membrane deteriorated over time and thus any loss arising was excluded under the Policy.*

Having reviewed the Submission, YZ has not added any new information or arguments that would or should, in my view, alter the coverage position.

I therefore conclude that the claim was properly declined, and the complaint appropriately rejected. I would kindly invite the Arbiter to draw the same conclusion and reject YZ’s complaint.

I hope this reply is useful for your current purposes. Please do not hesitate to get in touch with us should you require any further information.

Having seen the statement by the complainant

Having seen the statement by the service provider

Considers

The complaint mainly revolves around the fact of whether the claim in question falls under the ‘Storm or Flood’ or the ‘Escape of Water’ cover under the policy,

and the relevant exclusions applied by the insurer leading the repudiation of such claim.

The Arbiter shall determine and adjudge a complaint by reference to what, in his opinion is fair, equitable and reasonable in the particular circumstances and substantive merits of the case.

The Arbiter notes that in the various submissions made, the complainant continuously refers to the terms storm, flood, and escape of water. Despite these being part of the applicable *Holiday Home Plus Insurance* policy, 'Storm and Flood' and 'Escape of water' represent different covers under the policy. She mentioned the fact that, during the period in question there was a storm in the area, water escaped from the blocked roof drainage system, and the damages sustained resulted from flood.

However, despite noting the complainant's declaration, crucial to consider these aspects as defined in the policy document, which ultimately, is the basis of the cover in question. The Buildings Section of the *Holiday Home Plus Spain* policy, a copy⁵ of which was also presented by the complainant herself, indicates that,

"We will provide the following cover for any loss or damage to the Buildings up to the Limit of Cover shown on Your Schedule:

...

2. (i) Escape of Water from fixed water tanks, apparatus or pipes

...

4. Storm or Flood

...⁶

The relevant exclusions are also included.

Both in the original complaint submitted and also in the various submissions made, the complainant reiterated that between February and May 2022, there

⁵ P. 51 - 93

⁶ P. 69

were events that were considered as a 'storm' and resulted in 'flood' in the insured premises. Although these being part of the same cover, '**Flood**' is defined in the policy wording, but 'Storm' is not. Despite this lack of definition, the service provider confirmed that, as per the report drawn by the loss adjuster appointed by themselves, *'The amount of rainwater recorded in March 2022 would be considered a "storm".'*⁷

So, the existence of a storm during that time is unquestionable. The service provider indicated that,

'Notwithstanding the fact that YZ is not pursuing her claim under the Storm peril, Ibex still tried to assist and investigated whether a claim under the Storm peril could be considered.'

*Whilst Ibex concluded that there were storm conditions within area surrounding the Property in March and April 2022, condition which could have been sufficient to trigger the Storm peril, Ibex concluded that Storm was not the cause of the damage to the Property.'*⁸

Storm conditions have been proven and accepted, and thus, the Arbiter affirms that in such case, the '**Storm or Flood**' cover under the **Buildings** section of the Policy applies.

The policy is clear. The coverage under the same policy is what it is, but, it is crucial to take into consideration the statements of the complainant and that above all, these have not been deemed or even contested by the service provider.

The complainant declared that,

*'Following the discovery of the damage, the Policyholder invited a builder to inspect the roof and it was discovered that there was a blockage of the drainage pipes and downpipes leading down from both the front and rear roof terraces. Upon clearing the pipes, quantities of red sand, tree leaves, pine needles and other wind-borne debris were found within the apparatus.'*⁹

⁷ P. 257

⁸ Ibid.

⁹ P. 11

She also affirmed that,

*'The evidence collected from the drain clearance activity suggests that the deposits of sand could not be fully washed away by the rainfall accompanying it, and some remained on the terrace or at the base of the drainage pipe outlet. Subsequent rainfalls continued to wash debris (pine needles leaves and sand) into the drain which then settled further, restricting its capacity to fully discharge rainwater. Subsequent deposits of the above debris from separate occurrences of wind were then washed into the drain but could not discharge due to the restricted opening and eventually the drain became fully blocked. Rainwater was then able to pond on the roof where the level of retained water was able to overtop the skirting and flow down into the house.'*¹⁰

It is evident that in such case, various experts have been appointed, both by the complainant and the service provider in order to establish the main cause of the damages sustained to the insured property. Despite noting the relevant reports' contents, it is clearly not the intention of the Arbiter to question the contained experts' declaration or to further appoint any other experts to establish otherwise.

However, based on the above, the Arbiter is also convinced that the cause of the damage is the blocked drain which caused water ingress that would not have happened if the water did not pool on the roof because of the blocked drains. Thus, the damages sustained are resultant from the water ingress due to the blocked drain. The latter is the act caused by a peril, which is in fact the storm, and is thus an insured peril under the applicable policy. However, whilst the Arbiter's decision is based on storm being the insured risk, 'Escape of water' cannot be totally excluded as the blocked inlets caused the escape of water by the non-functioning of the drains.

The Arbiter also believes that the argument presented by the service provider and its appointed experts, that the roof membrane was defective, or the fact that there were cracks in the wall or in the air-conditioning cable inlets is not persuasive. Although it could have contributed marginally, it is not the main cause of the loss. This is substantiated by the fact that, as declared by the complainant herself, in June 2022, following the discovery that water had

¹⁰ P. 19 -20

entered some of the conduit containing the electrical cables, they arranged for a water test and discharged water over the roof terrace in an effort to discover any defects. She affirmed that *'There was no trace of water entering the house during or after this. This evidence was provided to the insurer regarding the cause of damage and absence of defects within the roof terrace, but this has not been accepted by or commented on by the insurers.'*¹¹

Also, *'Following heavy rain in Torrevieja on 10 October, the property was inspected for any trace of water ingress. There was no evidence of water having entered the property at this time, despite a large amount of rain having fallen in October so far.'*¹²

The fact that, following clearance of the relevant accumulated debris, but no repairs¹³ to the house had yet been carried out and no water ingress was expressed following the Autumn rains, it is further evidence that the main cause of the escape of water was in fact the drain blockage and not the membrane defect.

For the above reasons, the Arbiter decides that the complaint is fair, equitable and reasonable in the particular circumstances of the case and is limitedly upholding it in so far it is compatible with this decision.

Compensation

In the complaint form submitted, the complainant requested reimbursement of the sum of €14,559.85¹⁴.

A detailed breakdown¹⁵ of the costs in question were also presented. However, the Arbiter notes that, despite such costs being listed in certain detail including replacement cost, purchase date, and depreciated value where applicable, no evidence substantiating such valuations was submitted.

¹¹ P. 279

¹² P.249

¹³ *Ibid.*

¹⁴ P. 3

¹⁵ P. 33 - 36

On the other hand, included in the loss adjuster's report, is a valuation¹⁶ of the damage found, with the *Total Damage to Mainland*, *Total Damage to Contents*, and the *total cost for alternative accommodation*, amounting to €3,090.41, €2,590.00, and €840.00 respectively. It is also noted that the Proportional Rule¹⁷ in respect of the damages to the Buildings has been applied due to under-insurance. As a result, the *Total Compensation with VAT* as suggested by the loss adjuster amounts to €5,626.64.

The Arbiter believes that the insurer's/loss adjuster's valuation is more convincing and thus the complainant should be compensated in line with such valuations. Should liability have not been contested, the insurer would still probably have relied on its appointed loss adjuster's conclusion.

However, although it was clearly concluded that the proximate cause of the damages sustained was the Storm and it is a peril insured under the policy in question, considering the other findings in relation to the condition of the building, the Arbiter believes that it is fair and reasonable to award the complainant a financial compensation amounting to 90% of the loss adjuster's valuation with the remaining 10% representing the possible contributory factor for lack of maintenance.

Therefore, in virtue of Article 26(3)(c)(iv) of Chapter 555 of the Laws of Malta, the Arbiter is ordering QIC Europe Limited to pay the complainant the sum of €5,063.98¹⁸.

Alfred Mifsud
Arbiter for Financial Services

¹⁶ P. 273

¹⁷ P. 274

¹⁸ 90% * €5,626.64 (P. 274) = €5,063.98