

Before the Arbiter for Financial Services

Case 031/2020

EW

('the Complainant'/'the Insured')

vs

ArgoGlobal SE (SE 2)

('the Insurer'/'the Service Provider')

Sitting of 21 October 2020

The Arbiter,

Having seen **the complaint** whereby the Complainant basically states that:

He had made a claim to the Insurer on the basis of his policy to indemnify him for contents and alternative accommodation after his house had caught fire.

The issue is that the delay of up to six months by the Insurer prevented him from reinstating his home.

He admits that he had been paid for the contents but not adequately paid for alternative accommodation.

He is therefore requesting '*compensation equivalent to the rental of £4250 per month x 6 including housing, storage, animal accommodation all agreed with the primary building insurer.*'¹

Having seen **the reply** by the Insurer which essentially states that:

¹ A Fol. 4

This is a February 2019 fire claim where the Insured had property insurance with one insurance company and contents insurance with Argo (the Insurer).

The Insurer paid the contents claims back in May 2019 and paid £500 in compensation after the Insured said that there had been a short delay. The property insurer offered final repair costs to the Insured in September 2019.

The Insured did not accept the property insurer's offer to repair the property because he insisted that his property had to be demolished and completely replaced and challenged the property insurance with the UK regulator which found in favour of the insurance.

The property insurance controlled the claim for alternative accommodation and had agreed costs of alternative accommodation of £4250 per month for nearly 12 months totalling £50,000.

The Insurer considered that there was only one £50,000 limit for alternative accommodation under the composite property and contents policy.

Although the insurer believed that the rent being claimed exceeded the market price, they still agreed to pay an additional £25,000 taking the total to £75,000 and covering nearly 18 months' rent from the date of the loss.

The Insurer states that the Insured is in alternative accommodation due to the fact that the Insured did not accept to repair the property and took the decision not to commence any works despite the offer from the property insurers.

The Insured is responsible for further delay as he is seeking the planning permission for works beyond repairing the actual damage caused by the fire. Had the Insured accepted the property insurers' repair cost in September 2019, the works would have been completed by June 2020.

The Insurer maintains that it should not be liable to reimburse any further alternative accommodation costs.

Further considerations

The Arbiter shall determine and adjudge the complaint by reference to what, in his opinion, is fair, equitable and reasonable in the particular circumstances and substantive merits of the case.²

The Complainant is imputing delay in restoring his home to its previous position to the alleged delay on the part of the Insurer to settle his claim. He is asking the Arbiter to order the Insurer to pay him the total sum of £25,000 less £500 already paid to him, by way of compensation for renting alternative accommodation due to the delay by the Insurer.

On its part the Insurer claims that it had already paid the total amount for contents and together with the property insurance had offered the Insured the amount of £75,000 to cover 18 months' rent since the date of loss. The Insurer further states that the Insured did not accept to repair the damage to the property as a result of the accident but wanted to *rebuild* the property and the delay was due to this eventuality.

By way of preliminary comment, the Arbiter notes that while the Complainant blames the Insurance for excessive delay in settling his claim, he does not contradict the following:

1. That his property was covered by a property insurance for the building and by the Insurer covering the contents. (ArgoGlobal).
2. That he was paid for the contents and £500 for a short delay, in full and final settlement.³
3. That he refused to repair the property and accept the building insurers' compensation but wanted to rebuild the property. This dispute was resolved by the Financial Services Ombudsman of the UK. (FSO) and decided in favour of the property insurance.

² Cap. 555, Art. 19(3)(b)

³ A Fol. 143

4. That the Insurer and the property insurance had offered to pay him the total amount of £75,000 covering 18 months' rent from the date of loss for alternative accommodation.

The Cause of the Delay

The Complainant blames the Insurer for the delay in settling his claim. However, after the Arbiter considered all the facts of the case it transpires that much of the time was devoted to discussions and disagreement between the Complainant and the building insurer and not with the Service Provider which only covered the contents of the building and its share of the expenses for alternative accommodation. The Service Provider depended on such agreement and, therefore, cannot be held responsible for the delay which may have been caused by third parties or by the Complainant himself.

The Service Provider submitted in its reply that while the claim was filed in February 2019:

*'Argo paid the contents claims back in May 2019 and paid £500 in compensation after the Insured said there had been a short delay. The property insurer offered final repair costs in September 2019. The Insured did not accept this as it said the property needed to be demolished and completely replaced and challenged it with the UK regulator ... This (dispute) has now been resolved with the UK regulator finding the property insurers were entitled just to offer repair costs. The property insurer controlled the claim for alternative accommodation and has agreed costs ...'*⁴

The Insurer paid its share of the alternative accommodation costs when it was asked for by the property insurer and claims that the Complainant was in alternative accommodation now because he has continued to refuse to repair the property and is seeking planning permission for works beyond repairing the actual damage caused by the fire.

After the Arbiter analysed all the facts submitted by both parties, he considers the Insurer's version more convincing and is accepting it. Therefore, he concludes that the Insurer was not liable for the delay in offering or in paying for

⁴ A Fol. 126

the Complainant's alternative accommodation as is being alleged by the Complainant.

Established Principles

An important principle in insurance law is that the insurance is obliged to place the insured in his former position, a principle known as *restitutio in integrum*. The insured can only be paid for the loss suffered and cannot pretend to make a profit out of the accident covered by the insurance policy. These principles have also been established by the Maltese Courts in various judgements.⁵

Furthermore, our Courts have also established that:

'as a general principle every insured person should be restored to the previous position, he\she was in before suffering the damage. However, another equivalent principle is that no one can take advantage of the situation and make a profit from it but on the contrary, the insured has a duty to minimize the damages, where possible'.⁶

In this case, the Service Provider asserts that the Complainant did not accept to repair the property although the property insurance had offered to indemnify him for the repairs, but he sought to do works beyond repairing the actual damage caused by the fire. The Complainant does not expressly deny this.

Moreover, the Complainant is asking the Arbiter to order the payment of six months' rent to cover alternative accommodation.⁷

The Service Provider has explained that the Insurer and the property insurance had offered to pay him the total amount of £75,000 covering 18 months' rent from the date of loss. The Complainant has not sufficiently proven that he needed more time to fix the damages caused by the fire and if he wanted to do further works for which planning permission was necessary, the extra delay

⁵ *Francis Chetcuti vs Citadel Insurance p.l.c.*, Court of Appeal (CA), 15/02/2006

⁶ *Citadel Insurance p.l.c. et v. Raymond Calleja*: First Hall Civil Court, 11/07/2016 *'Bhala principju kull persuna ghandha tingieb fl-istess pozizzjoni li kienet qabel ma ssubiet id-dannu. Però, hu principju iehor daqstant ekwivalenti illi ebda persuna ma ghandha tавvantagja ruhha u taghmel profitt mid-dannu subit u anzi hemm l-obbligu li d-danni ghandhom fejn possibbli jigu minimizzati mill-kreditur.'*

⁷ A Fol. 4.

should not be borne by the Insurer. The Insured cannot make a profit out of the insured risk.

The Complainant has already been paid by the Insurer,⁸ and the Arbiter is convinced that the amount of £75,000 offered by the property insurance and the Insurer covering 18 months' alternative accommodation at the rate of £4500 per month, as established by the Complainant himself and as stated in this complaint, is reasonable and fair.

The Complainant is asking the Arbiter to order the Insurer to pay him the sum of £25,000 less £5,000.⁹ When considering the offer made by the property insurance and the Insurer as mentioned above, the Arbiter notes that this exceeds the amount being claimed by the Complainant in his complaint.

Furthermore, since the delay was not caused by the Insurer, as explained above, it should not carry further burdens.

For the above-stated reasons, the Arbiter cannot uphold the complaint.

Due to the particular nature of this case, each party is to bear its own costs of these proceedings.

Dr Reno Borg
Arbiter for Financial Services

⁸ A Fol. 143

⁹ A Fol. 4, For the payment of six months' rent.