

Legal update 9 of 2021: Cancellation of a life policy by a policyholder

Introduction

This update deals with the cancellation of a life policy by a policyholder and whether the 30-day grace period for the payment of premiums applies in this instance. Below is a summary of and more detail on the case.

Summary

Case: Discovery Life Limited vs Hogan and Another: Gauteng High Court, Johannesburg (Case No: 389/2020)

- **The finding:** The court found that the policy had been cancelled by the policyholder and that the 30-days grace period did not apply. The policyholder herself cancelled the policy with immediate effect and terminated the debit order instruction at the bank,

resulting in no further premiums being paid. The grace period only applies when the non-payment of the premium is not due to cancellation of the policy.

- **Practical application:** A client should ensure that they have continuous life cover. To achieve that, they should only cancel a life policy on receipt of confirmation that a replacement policy is in place.

More detail of the case

Case: Discovery Life Limited vs Hogan and Another: Gauteng High Court, Johannesburg (Case No: 389/2020)

The timeline of the events leading up to the case before the High Court was as follows:

- **December 2015:** Ms Church took out a Discovery life policy for R3 million, nominating her parents, the Respondents, to receive the proceeds on her death.
- **6 August 2018:** Ms Church called Discovery and cancelled the policy as she was taking out a policy with another insurer.
- **15 August 2018:** Ms Church wrote to Discovery to cancel the policy with immediate effect.

- **16 August 2018:** Discovery wrote to Ms Church's financial adviser, confirming that the policy would be cancelled after the 30-day notice period, i.e., with effect from 1 October 2018. The last day of cover would be 30 September 2018 and the last premium would be collected on 3 September 2018.
- **23 August 2018:** Ms Church instructed her bank to stop payment of the debit order for the policy premium.
- **10 September 2018:** Discovery wrote to Ms Church to let her know that her policy had been cancelled with effect from 1 September 2018 as requested. The letter set out the process she could follow if she wanted the policy to be reinstated. A SMS confirming cancellation of the policy was sent to her.

- **22 September 2018:** Ms Church passed away.
- **27 September 2018:** The Respondents paid the September premium to Discovery and notified Discovery of the payment.
- **28 September:** Discovery sent a letter to Mrs Church setting out the requirements for the policy to be reinstated.
- **November 2018:** The Respondents submitted a claim to Discovery. Discovery declined the claim on the basis that Ms Church had cancelled the policy.
- **July 2019:** The Respondents filed an application in the High Court for payment of the proceeds of the policy, with interest.

The High Court ruled that the policy had been reinstated as Discovery had accepted the premium paid by the Respondents. The Court also found that by not giving Ms Church the chance to pay the returned debit order, Discovery had not complied with the 30-day grace period for the payment of premiums as allowed for in the policy contract.

Discovery appealed the High Court judgment in the Supreme Court of Appeal (SCA).

The SCA found that in deciding whether the policy had been cancelled, the facts leading up to 10 September 2018 had to be considered.

The SCA found that Ms Church's letter to Discovery made it clear that she wanted to cancel the policy with immediate effect. Furthermore, although Discovery had advised her of the 30-day notice period for cancelling the policy and collection of the September 2018 premium, she instructed her bank to cancel the debit order for the premium.

The SCA further added that an insurer is not required to honour the 30-days' grace period for the payment of the outstanding premium when the policyholder herself cancelled the policy. The grace period only applies when the non-payment of the premium is not due to cancellation of the policy.

The SCA ruled that the policy had not been cancelled because of non-payment of the premium, but because Discovery had accepted Ms Church's cancellation of the policy with immediate effect.

The SCA decided in favour of Discovery.

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