DEVON CHAMBERS

CIVIL LAW NEWSLETTER

September 2016

HAYWARD V ZURICH INSURANCE COMPANY PLC [2016] UKSC 48.

Fraudsters beware: Fraud can set aside an agreed settlement

Summary

- Zurich was able to set aside original agreement as fraud will trump an agreed settlement.
- A party alleging fraud does not have to show they believed the misrepresentation was true.
- If a representee knew the representation was false then a claim will not succeed but a mere suspicion is not enough.
- Any qualified belief Zurich had through its investigations did not rule it out from being induced into the settlement.
- A party's belief is relevant in establishing if the party was induced into the agreement which Zurich had been in this case.
- Similar claims brought pursuant to section 57 of the Criminal Justice and Courts Act 2015 would be dismissed and the party would lose their QOCS protection.

Facts

In June 1998 Mr Hayward had been injured at work. His employer admitted liability and settled the claim through its insurer Zurich Insurance Company PLC (Zurich). Mr Haywood initially claimed £419,316.59. Zurich had suspicions about the extent of Mr Hayward's injuries and had video evidence proving this exaggeration. However, on 3 October 2003 by Tomlin Order Zurich agreed to pay Mr Hayward £134,973.11 (inclusive of CRU repayments). In 2005 Zurich received further evidence that the respondent had fully recovered a year before the settlement. In February 2009 Zurich sought to set aside the settlement and claimed damages for deceit.

At first instance HHJ Moloney QC found that Hayward's deliberate exaggeration meant that a reduced award in the sum of £14,720 was appropriate. However the Court of Appeal held that Zurich ought not to be able to set aside the settlement agreement, as it knew Mr Hayward had committed a fraud at the time the settlement was agreed. Zurich appealed.

Appeal

The issue in this case was inducement into the agreed settlement. There were two points on appeal to the Supreme Court:

a) must the defrauded representee (Zurich) prove that it was induced into settlement because it believed that the misrepresentations were true; or

b) does it suffice to establish influence that the fact of the misrepresentations was a material cause of the defrauded representee (Zurich) entering into the settlement?"

Judgment

In allowing the appeal Lord Clarke giving the leading judgment, with Lord Toulson agreeing, stated that the critical issue on appeal is whether, in order to show the requisite influence by or reliance on the misrepresentation in a claim to set aside a compromise on the basis of fraudulent misrepresentation, the defrauded representee (i.e. Zurich in this case) must prove that it settled because it believed that the misrepresentations were true? The answer is "no" [23].

Lord Clarke stated that there is no authority supporting a freestanding requirement of belief that the misrepresentations are true [18]. The representee's state of mind is instead relevant to, but not necessarily decisive of, the court's consideration of inducement into the settlement agreement, and causation which the trial judge had correctly decided in Zurich's favour [18, 23, 25].

Whether a party was induced is a question of fact and also goes to the issue of causation [32]. This includes the possibility that the insurer may, instead, settle on the basis that the judge will believe the misrepresentations, thus must take this into account [32]. Importantly any qualified belief through investigation does not rule out the insurer from being induced into the settlement [40]. There is no duty to be careful, suspicious or diligent in research of fraud particularly where the insurer did as much as it could to reasonably investigate the accuracy and ramifications of the claimant's representation before entering into the settlement [39]. However where the representee knows the representation is false they cannot succeed [43]. Zurich did not know that Mr Hayward was deliberately exaggerating his injuries to such an extent as later became clear, and did everything that it could to investigate.

Lord Toulson added that it must be shown that the false representation caused the insurer to act to its detriment. Therefore in this case Mr Hayward's misrepresentation induced the insurer to enter into the settlement agreement [70].

Lord Clarke dealt with the second point on appeal succinctly by stating that it is difficult to envisage any circumstances in which mere suspicion that a claim was fraudulent would preclude unravelling a settlement when fraud is subsequently established [48].

Implications for practitioners

- Settlements can be reopened and set aside if fraud can be proved, even if it is historical.
- A suspicious insurer can reopen a settlement if fraud can later be proven, particularly if they had done all they reasonably could to investigate the claim and settled the claim realistically in the circumstances.
- A party does not have to have believed the misrepresentations on which it relied to its detriment even if their own investigation did not wholly credit the fraudster. However if a party seeking to claim fraudulent misrepresentation knows the representation is false then that will defeat any claim.
- Knowledge rather than suspicion is important.
- Practitioners should check what investigations were conducted by the insurer to ascertain if the insurer had knowledge or a mere suspicion of the allegation of fraud.
- Inducement and causation are still relevant issues therefore the facts of the case are still important. Whether the court would believe the misrepresenting party is a relevant consideration when assessing inducement.
- Defendants and their insurers should no longer be discouraged from pleading their cases fully. Where previous investigations for suspected fraud are conducted prior to settlement this will no longer stop the insurer from issuing a claim for fraudulent misrepresentation if fraud is later established.
- Practitioners should by wary of the changes implemented by s.57 of the Criminal Justice and Courts Act 2015 where claims such as this could be dismissed. In those circumstances there would have been no need for the second claim. Further Mr Hayward would have lost his qualified one way cost shifting protection.
- It should be noted that despite the Supreme Court refusing to define a fraudulent claim too widely, once fraud has been established it will punish the fraudulent party (see Versloot Dredging BV v HDI Gerling Industrie Versicherung AG [2016] UKSC 45).

Dr Richardo Childs

Upcoming Events

Chambers will be holding a criminal law seminar on:

Tuesday 6 December 2016 from 5pm at Jurys Inn, Plymouth

Free admission – Seasonal refreshments provided – 2 hours CPD

DEVON CHAMBERS

Jason Beal
Nigel Lickley QC
Paul Rowsell
Garth Richardson
Nicholas Bradley
Rupert Taylor
Edward Bailey
Paul Williams
Ramsay Quaife
Stuart Frampton
Joanna Martin
Piers Norsworthy
Kelly Scrivener
Emily Cook
Victoria Hoyle
Julia Cox
Islam Khan
Sally Daulton
Scott Horner
Richardo Childs
Amy Edinborough (pupil)

DEVON
CHAMBERS

Devon Chambers
3 St Andrew Street
Plymouth
PL1 2AH

01752 661659

www.devonchambers.co.uk
clerks@devonchambers.co.uk