

## **C58**

*Cession of insurance policy as security for a debt to a bank – bank redeemed debt - – insurer erroneously overpaid the bank as cessionary which credited the account of the insured with the excess payment – question whether insured was unjustly enriched at the expense of the insurer or the bank*

### **Background**

The complainant had ceded her life assurance policy to a bank in order to secure an existing debt. The bank surrendered the policy, as it was entitled to do, and requested payment from the insurer. The insurer erroneously paid to the bank the proceeds of the complainant's policy together with the proceeds of another policy not belonging to her. The bank compounded the problem by deducting the amount required to cover the debt from the combined proceeds of the two policies and thereafter crediting the complainant with the balance being an amount of R14 150. When the insurer realised the error the insurer claimed from the complainant repayment of the overpaid amount alleging that the complainant had been unjustifiably enriched. The complainant alleged that when she discovered the amount with which she had been credited she had enquired from both the insurer and the bank whether the amount was correct and both had confirmed the correctness thereof. The complainant alleged that she had in the meantime spent the money. The insurer and the bank both denied that any of their employees had assured the complainant that the amount as paid into her bank account was a correct payment.

### **Discussion**

An enrichment action would only lie against the actual recipient of the monies wrongly paid. Our office took the position that the insured had paid the bank, as cessionary of the policy, the proceeds of the policy on the bank's instruction with the result that the bank was the real recipient of the payment. The fact that the bank had thereafter credited the complainant's bank account with an incorrect amount was the fault of the bank and a matter between her

and the bank. The insurer therefore had to reclaim any overpayment from the bank and not from the complainant. The insurer contended that the bank had received the amount paid by the insurer as agent for the complainant and that the complainant was therefore the recipient of the excess money paid by the insurer. For this proposition we could not find any authority. We made a provisional ruling that the insurer had no claim based on unjust enrichment against the complainant because she could not be regarded as the actual recipient of the money paid by the insurer to the bank as cessionary. We suggested that there was a possibility that once the insurer had successfully reclaimed payment from the bank the bank in turn would have a claim against the complainant.

### **Result**

The insurer was initially not disposed to accept our ruling, but eventually, albeit reluctantly, it accepted our ruling, whereupon the bank ceded to the insurer its right of action against the complainant, to recover the overpayment.

**MFBR**  
**October 2005**