

Cession of Policy

Cession of policy to bank in securitatem debiti - by virtue of cession, bank took a loan from the insurer in the name of the insured -invalidity of such loan.

Background

The complainant ceded his life policy to his bank as security for his present and future debts. Money had been illegally withdrawn from the complainant's cheque account by his employee resulting in his account becoming overdrawn. In terms of a decision of the Ombudsman for Banking Services the complainant was liable to his bank for this debt.

In an attempt to recover the debt, the bank took a loan from the insurer. Purporting to act in terms of the cession it did so, not in its own name, but on behalf of and in the name of the insured. The insurer co-operated by advancing the loan to the bank. The bank thereby discharged the complainant's overdraft, and thereupon returned the policy to the complainant.

In the course of time interest accrued on the loan and the insurer claimed the loan debt plus interest from the complainant. The issue to be decided was whether the insurer could recover the loan debt from the complainant.

Discussion

We accepted the decision of the Ombudsman for Banking Services that the complainant was liable to his bank for the money illegally withdrawn from his account. This meant that the overdraft debt was secured by the cession.

The insurer contended that the cession agreement empowered the cessionary to deal with the policy *in rem suam*. The insurer therefore submitted that the bank had authority to conclude the loan on behalf of the complainant.

The cession was indeed couched in broad terms. It declared for instance that the cessionary could do anything necessary for the enforcement of the policy. It thereby empowered the cessionary to enforce it, surrender it, alienate it, etc. Indeed nothing prevented the cessionary, being the rightful owner, from applying for a loan *in his own name* in terms of the policy conditions. In the final analysis, however, the cession was by nature nothing more than a transfer of the insured's entitlement to the policy benefits. Its purpose was to enable the cessionary to enforce the rights under the policy in order to achieve payment of the secured debt. It did not purport to authorise the

cessionary to enter into foreign transactions, such as a loan, in the name of the insured. Subsequent to the cession the insured was after all no longer the owner of the policy and could therefore not take out a loan in his own name under the terms of the policy.

Conclusion

We came to the conclusion that the cessionary had no authority to conclude a loan in the name of the insured, and we therefore regarded the loan as void and unenforceable. The insurer accepted our decision.