Beneficiary nomination **CR298**

Insured married in community of property – beneficiary nominated without consent of spouse – effect of section 15 of the Matrimonial Property Act.

Background

The life insured, who was married in community of property to the complainant, held a policy with each of companies A and B. Some years before her death, but after her marriage to the complainant, she had signed the forms prescribed by the companies for the appointment of a beneficiary to the proceeds of the policies, in both cases nominating her daughter as the beneficiary. The forms of both companies made provision for the signature by the insured's spouse in the event of the insured being married in community of property, but in neither case had the complainant signed his consent on the form.

Following the death of the insured both companies made payment to the named beneficiary of the proceeds of the respective policies. In both cases the complainant objected, contending that the unilateral nomination of the named beneficiary had been irregular and had resulted in him losing his one half share of the proceeds to which he was entitled as a consequence of the marriage being in community of property. Both companies rejected his claims and, relying on the provisions of section 15 (9) of the Matrimonial Property Act no. 88 of 1984, alleged that the insured had not advised them that she was married in community of property.

The complainant then approached us for assistance.

Discussion

The relevant portions of section 15 (2) and 15 (9) of the Act read:

"15 ***Powers of spouses****…*

15 (2) Such a spouse shall not without the written consent of the other spouse…

(c) alienate… insurance policies…

15 (9) When a spouse enters into a transaction with a person contrary to the provisions of subsection (2)… and

- *(a) the person does not know and cannot reasonably know that the transaction is being entered into contrary to those provisions…, it is deemed that the transaction concerned has been entered into with the consent required in terms of the said subsection (2)…;*
- *(b) that spouse knows or ought reasonably to know that he will probably not obtain the consent required in terms of the said subsection (2)… and the joint estate suffers a loss as a result of that transaction, an adjustment shall be effected in favour of the other spouse upon the division of the joint estate."*

In both instances the complainant contended that there was an onus on insurance companies to investigate whether a married insured, on signing a nomination of beneficiary form, was married in or out of community of property. The companies in turn contended that it was for the signatory, if married in community of property, to arrange for signature by his or her spouse, and that because the complainant's signature was not obtained they were entitled to assume that the life insured had the necessary contractual capacity to sign the document on her own.

The office considered that in the absence of any indication in documents in the insurer's possession that the insured had been married in community of property, there was no call on the companies to investigate the matter.

In regard to the complainant's claim against company A we were of the opinion that by omitting to obtain the complainant's signature to the nomination of beneficiary form, the insured had by implication led the

company to understand that she was not married in community of property. At the same time she had thereby also represented that she had the right to make the nomination as the policy owner. We were further of the opinion that the party liable to furnish information about his or her marital status is in fact the insured. Since the insured had not indicated otherwise on the beneficiary nomination form, company A could not have known that the document was being signed in breach of the provisions of section 15(2)(c) of the Act. We concluded in the circumstances that it must be deemed that the document had been completed with consent. We suggested, although we could not assist him in this regard, that the complainant might pursue the remedy provided for in section 15(9)(b).

Our reasoning was the same in respect of company B, and we were supported in this view by the decision of Distillers Corporation Ltd v Modise 2001(4) SA 1071 (O). A further feature in the case of company B was that it was prior to the coming into operation of the Long-Term Insurance Act (52 of 1998) that the deceased had entered into the policy contract. This meant that the earlier Insurance Act (27 of 1943) was applicable, and in terms of section 41 thereof all policies concluded by a woman on her own life fell outside the joint estate. Because section 15(2)(c) of the Matrimonial Property Act was only applicable to assets which form part of the joint estate, and because the current Long-Term Insurance Act does not have a provision similar to that in the earlier Act, the insured had therefore not required the consent of her spouse for the purpose of nominating a beneficiary.

Result

We informed the complainant that in both instances the declining of the claims by the insurers had been justified.

BG
March 2011