



MATTER OF CIRCUMSTANCE

Proving motive for insurance fraud in arson

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Reliance upon circumstantial evidence is common practice for insurance companies when alleging an insured was responsible for causing a fire that damaged an insured's premises. In many cases where insurance companies allege fraud, it can be complex and difficult to prove that the insured had a motive to start the fire, although, evidence suggests that an insured often has a conceivable motive.

Where an insurance company is unable to establish that an insured had a motive (on its own) to start a fire, the Courts may give weight to the surrounding circumstances. The surrounding circumstances of the event should be viewed as a whole, as the individual facts may not be enough to infer an insured's complicity. An illustration of how the Courts approach insurance fraud matters proven by circumstantial evidence is *Rama Furniture Pty Limited v QBE Insurance Limited*.

Rama Furniture (the insured) claimed upon a fire insurance policy issued by QBE in respect of a fire damaging the insured's furniture store. The trial judge held in favour of QBE, concluding that fraud had been established, and QBE were entitled to deny indemnity. The insured appealed the decision to the Supreme Court of New South Wales Court of Appeal. The facts relevant to a finding of arson are as follows.

In September 1983, the insured renewed its loss of profit and fire policies with QBE. On 4 November

1983, two days before the fire, the insured increased its cover under the loss of profit policy. On 6 November 1983, the day of the fire, the following circumstantial evidence was held to be relevant:

- At 5:06pm, the alarm was set, typically preceding the locking up of the premises. At this time, the owners of Rama Furniture did not perceive, by sound, sight or smell, the presence of a fire.
- At 5:07pm, the Security Alarm Company registered a break in the photoelectric beam in the storeroom.
- At 5:09pm, a second alarm was triggered from the showroom. The conclusion from this fact is that within two minutes of setting the alarm and securing the premises, fires had broken out that were sufficient to activate the photoelectric and heat sensitive alarm systems.
- At 5:12pm, the Bankstown and Kogarah fire stations received a call from the neighbouring factory.

QBE produced evidence to establish that the owners of Rama Furniture had a motive for setting the fire, including: accumulated losses for two years before the fire, pressure from the bank and an attempt to sell part of the premises.

With respect to establishing a motive at trial, The Court held:

The presence or absence of motive

will often be difficult to prove because of the limitations which trials necessarily place upon the exploration of the complex financial, personal and even psychological considerations affecting human conduct.

The Court then considered QBE's failure to establish a motive and the use of circumstantial evidence:

It is therefore necessary to pass to other considerations. But it is to overstate the appellant's [Rama Furniture] case to conclude that the failure of the insurer to establish motive by positive evidence, in some way destroys the insurer's defence, if it can be made out otherwise. In such a circumstance, it will be concluded that although motive could not be proved, it must have existed because it is demonstrated by objective facts.

Rama Furniture's case confirms the view that circumstantial evidence is sufficient in fraud cases, as held in Bradshaw v McEwans Pty Ltd: '...where direct proof is not available, it is enough if the circumstances appearing in the evidence give rise to a reasonable and definite inference...' The case illustrates the Court's willingness to take into account the surrounding circumstances of an alleged fraud where an insurance company is unable to prove an insured had a motive to commit arson.