



**THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA**

Reportable
Case No: 01/2002

In the matter between:
S SCHOEMAN

Appellant

and

CONSTANTIA INSURANCE CO LTD

Respondent

Coram: Marais, Zulman, Streicher, Cameron and Lewis JJA

Heard: 20 February 2003

Delivered: 21 May 2003

J U D G M E N T

STREICHER

JA/

STREICHER JA:

[1] I agree with the findings and reasoning of my colleague Marais JA in respect of the legal issue, being whether, in the absence of a provision to that effect in the insurance policy, fraud confined to part of a claim by an insured against an insurer results in the whole claim being forfeited, (paras 3 to 28 of his judgment). However, I do not agree with his factual findings (paras 29-59).

In my view the appellant, in the two facsimiles referred to by Marais JA, admitted that she, on the advice of her broker, inflated, not a particular item of her claim, but her claim, by 10%. In her evidence she did not explain that statement. Instead of doing so she testified how it came about that she claimed R20 000 in respect of various items of clothing. According to her she arrived at that figure on the basis of an estimation that she lost 50 shelves of clothing at a value of R50 per shelf i.e. R10 000 and 15 to 20 shirts valued at R6 000 to which amount she added a contingency figure of R4 000 in respect of goods she probably lost but was unable to specify. Both the appellant's broker and Mrs Graham denied that she was advised to inflate her claim.

[2] The court *a quo* held that the evidence adduced by the plaintiff and her witnesses did not have the effect of neutralizing the inference created in her facsimiles that she committed fraud when submitting the claim form. In so far as the court *a quo* held that the admission contained in the facsimiles remained unexplained, I agree.

[3] I am, nevertheless, doubtful that those admissions, in the light of all the circumstances, particularly those set out in para 32 of Marais JA's judgment, established that the appellant in fact submitted a fraudulent claim. However, in the light of the finding of this court that the appellant did not forfeit her claim in so far as it was not fraudulent, it is unnecessary to decide this issue. Whether or not she committed a fraud, she still has to prove her loss. To the extent that she may succeed in proving her loss such loss would be unaffected by any fraud she may have committed in the submission of her claim.

[4] I agree that the order set out in Marais JA's judgment should be made.

P E STREICHER
Judge of Appeal

Zulman JA)
Cameron JA) concur