THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

REPORTABLE
Case number: 510/07

SASRIA LIMITED
APPELLANT

and

SLABBERT BURGER TRANSPORT (PTY) LTD
RESPONDENT

CORAM : **MPATI AP, STREICHER, MTHIYANE JJA, HURT *et* MHLANTLA AJJA**

DATE : **22 MAY 2008**

DELIVERED : **30 MAY 2008**

Summary : Insurance policy – interpretation – absence of clear indication that words to be given special meaning rather than 'ordinary dictionary meaning' compatible with their content in the policy – *contra proferentem* rule applied.

Neutral citation : *Sasria V Slabbert Burger Transport* (510/2007) [2008] ZASCA 73 (30 MAY 2008)

JUDGMENT

H
URT AJA/

HURT AJA:

[1] This is an appeal, with leave of the court a quo, from a judgment in which the appellant was ordered to pay the respondent R 600,000 as indemnification for the destruction by fire of a truck belonging to the respondent. I will refer to the parties by their designations in the court a quo, *viz* to the respondent as 'the plaintiff' and to the appellant as 'the defendant'.

[2] After the pleadings had been closed and a conference in terms of rule 37 had been held, the parties drew up a statement of agreed facts in terms of rule 33(1) and (2), after which the matter was dealt with in terms of rule 33 (3).

[3] It is not necessary, for the purposes of this judgment, to quote the stated case in full. It was common cause that the plaintiff, a large transport fleet operator, had insured a truck with registration number 406 SBH GP ('the truck') under a 'coupon policy' issued by the defendant. The defendant, in terms of this policy, undertook to indemnify the plaintiff

'against loss of or damage to (the truck) directly related to or caused by . . . any riot, strike or public disorder, or any act or activity which is calculated or directed to bring about a riot, strike or public disorder.'

[4] This policy was in force during February and March 2005. The truck was destroyed by fire on 2 March 2005. The circumstances of its destruction are set out thus in the stated case:

'10. On 1 March 2005 the members of SATAWU,[1] including the SATAWU members employed by the plaintiff, embarked on a lawful strike ('the strike').

11. As a result of the strike approximately half of the drivers employed by the plaintiff went on strike.

12. The drivers employed by the plaintiff who did not go on strike continued to work as drivers.

13. During the strike:

13.1 drivers who were not participating in the strike were assaulted and threatened;

13.2 trucks were damaged by stones being thrown at them and being set fire to;

13.3 cargo being carried on trucks was looted;

13.4 the SAPS intervened to attempt to prevent the events listed in 13.1 to 13.3 from taking place.

14. On 2 March 2005:

14.1 Abel Mtshweni, a driver employed by the plaintiff, who was not participating in the strike parked the truck at the Caltex truck stop facility at Leslie, in the Leandra area near Ogies, Gauteng ('the truck stop').

14.2 Three unidentified men, two of whom were wearing dark blue overalls of the same type as those worn by the plaintiff's drivers, purchased a small quantity of petrol, a phone card and a box of matches from the shop ('the shop') at the truck stop.

14.3 After the unidentified men left the shop the truck was on fire ('the fire').

14.4 The fire destroyed the truck.

14.5 The fire started when a quantity of flammable liquid was ignited on the front left side of the truck.

14.6 No-one saw by whom, or how, the flammable liquid was ignited.

14.7 The flammable liquid was not ignited publicly.

15. The strike ended on 8 March 2005.

16. The value of the truck was R 600,000 which is the amount the defendant will have to pay to the plaintiff if it is liable to do so.'

In paragraph 19 of the agreed statement of facts, it is stated that: -

'The issue to be decided is: was the damage to the truck caused by a peril listed in the SASRIA policy.'

[5] In the court a quo, Goldstein J inferred from the statement of agreed facts that:-

' . . . the purchase of the petrol and box of matches from the shop at the truck stop must have led to the fire which destroyed the truck, which was being driven by an employee (of the plaintiff) in defiance of the strike, and that, given the dress of two of the men, they must have been employees of the plaintiff.'

[1] The South African Transport and Allied Workers' Union to which approximately half of the 500 drivers employed by the plaintiff were affiliated.

Counsel for the defendant endeavoured to persuade us that there were a number of different inferences which could be drawn from the stated facts and that the learned judge had erred in using the inference set out above as the basis for his decision as to the motive behind the destruction of the truck, his attempts were unconvincing. It is trite that:

' . . . in finding facts or making inferences in a civil case, . . . one may . . . by balancing probabilities select a conclusion which seems to be the more natural, or plausible, conclusion from amongst several conceivable ones, even though that conclusion be not the only reasonable one.'[2]

There can be little doubt that the inference drawn by the learned judge was by far the most probable of all the conceivable ones and counsel's submissions to the contrary must be rejected.

[5] The question is thus whether the destruction of the truck was a peril covered by the policy, i.e. was it 'directly related to or caused by any riot, strike or public disorder, or any act or activity which is calculated or directed to bring about a riot, strike or public disorder'.

[6] The judge a quo directed his attention to the question of the meaning of the words 'any act or activity which is calculated or directed to bring about a riot, strike or public disorder'. In approaching the question in this way, I think that he imposed an unnecessary burden on himself. It would have been much simpler to consider, first, whether the destruction amounted to ' loss or damage . . . directly related to or caused by any riot, strike or public disorder'.

[7] The main thrust of defendant's counsel's argument in this connection was that the words 'riot, strike or public disorder' must be interpreted in the light of the *eiusdem generis* or *noscitur a sociis* principles. In other words the meaning to be given to the word 'strike' was to be equated to situations of 'riot' and/or 'public disorder'. He

[2] Per Selke J in *Govan v Skidmore* 1952 (1) SA 732 (N) at 734 C-D, approved in *South British Insurance Co. Ltd. v Unicorn Shipping Lines Ltd.* 1976 (1) 708 (A) at 713 E-H.

referred us in this regard to a dictum in the case of *SASRIA Ltd v Elwyn Investments (Pty) Ltd*[3] to the following effect : -

'Although some strikes are lawful, the fact that damage is caused introduces an element of unlawfulness, which is also the hallmark of a riot or public disorder. The activities are also (in the case of a strike where damage is caused) of a disorderly nature. In the context, violence leading to damage is a necessary ingredient.'

He also referred us to a decision by an arbitration appeal board (comprising three arbitrators) in which the dictum of van Dijkhorst J was adopted with approval. But in the Full Bench decision, the court was involved with the interpretation of the word 'riot' and in the arbitration matter the issue turned on the meaning of 'labour disturbances'. Neither of these decisions is therefore helpful in interpreting the word 'strike' in its context in the policy under consideration.

[8] The ordinary meaning of the word 'strike', in the sense in which it is used in the policy, is defined in the Shorter Oxford English Dictionary[4] as:-

'A concerted cessation of work on the part of a body of workers for the purpose of obtaining some concession from the employer or employers.'

In his attempts to persuade us that the word should be given a modified meaning by its juxtaposition with the words 'riot' and 'public disorder', counsel made various attempts to formulate the effect of applying this modified meaning. He suggested 'a violent or potentially violent disturbance of the public peace by employees' or 'an act related to a (lawful or unlawful) strike which has degenerated into public disorder'. In each attempt in which he endeavoured to incorporate attributes of violence, unlawfulness and public (as opposed to surreptitious or covert) action, counsel found himself confronted with the difficulty that the

[3] An unreported judgment of the Full Bench of the Transvaal Provincial Division in case no. A370/93, per Van Dijkhorst J.
[4] Third Ed. Vol II at p 2150.

formulation itself rendered the word 'strike' redundant because it fell either within the scope of the word 'riot' or the words 'public disorder'.

[9] In my view the difficulty which Counsel plainly experienced in formulating a clear and acceptable meaning for the word 'strike' can be attributed simply to his insistence that the ordinary dictionary meaning of the word was not compatible with the context in which it appears. I see no difficulty in giving the word its ordinary meaning. Indeed, if the contention of the insurer is that that meaning was intended to be modified, then it has only itself to blame for failing to do so in clear language. The *contra proferentem* rule would apply to any suggestion that the word 'strike' should be given a meaning which would restrict the scope of the defendant's liability to indemnify the plaintiff in the event of the destruction of the truck.[5]

[10] On the basis that 'strike' bears its ordinary, dictionary meaning, it is clear that the destruction of the truck was an act directly related to a strike and that it was caused by a peril listed in the SASRIA policy.

[11] The appeal is dismissed with costs, such costs to include the costs occasioned by the employment of two counsel.

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N V HURT
ACTING JUDGE OF APPEAL

Concur :

[5] *Concord Insurance Co. Ltd. v Oelofson NO* 1992 (4) SA 669 (A) at 674H to 675A.

MPATI AP
STREICHER JA
MTHIYANE JA
MHLANTLA AJA