

## BRIEFING

# Fraud case review: the sins of the father

The February 2014 decision of the Technology and Construction Court (TCC) in *Sozem Savash v CIS General Insurance Limited* [2014] EWHC 375 has served to highlight the court's strict approach to dealing with fraudulent claims and the notion of fraud by agency.

### Background

The case concerned a household insurance claim following an alleged burglary in May 2009 of premises located in London, which Mr Savash Junior had acquired from his father, Mr Savash Senior. Mr Savash Junior was the insured under the household insurance policy.

The claim, whilst not a large one by the standards of the TCC, was transferred from the Central London County Court to the High Court due to allegations of fraud and dishonesty against Mr Savash Junior. Although these were civil proceedings and the standard of proof is "balance of probabilities", the court recognised the need to be confident in its findings given the seriousness of the allegations.

Following the burglary, which caused considerable internal damage to the premises due to a broken water pipe, a claim was prepared and submitted to the insurers of Mr Savash Junior. The claim, which was mostly prepared by Mr Savash Senior, consisted of stolen and damaged contents, building work and accommodation costs for Mr Savash Senior, who claimed to have been in residence at the time.

### Unusual facts

Insurers sought to decline cover on the basis that the property was in fact unoccupied at the time of the burglary, and thus cover was excluded under the policy terms. Insurers also alleged that the entire event had in fact been staged to enable the property to be renovated.

Although the court accepted that a burglary had in fact taken place, it was recognised that it included features which were "extremely unusual" and even "unprecedented", such as wanton damage to most fixtures and fittings, the removal of unlikely and hefty items (such as granite kitchen tiles, a king size divan bed, three mattresses and a three seater sofa) and the fact that none of the neighbours noticed anything unusual, such as a large removal lorry to transport such items.

The court held that Mr Savash Junior and Mr Savash Senior had given inconsistent accounts as to whether the property was occupied at the relevant time, and that the claim regarding the allegedly stolen items was inherently falsified. The claim for remedial works, which had mostly been carried out by a relative and paid for in cash, had also been substantially exaggerated. In dismissing the claim in its entirety, the judge held that the claim was, in large measure, fraudulent.

### Fraudulent agents

It was recognised that, although Mr Savash Senior was probably more involved with the details of the claim, there was no doubt that Mr Savash Junior knew what was going on. Essentially, Mr Savash Junior was to be fixed with the consequences of the fraud of Mr Savash Senior, acting as his agent, because he acted with his authority, albeit in a fraudulent manner.





Therefore, whilst the court recognised the seriousness of an allegation of fraud and thus the need to be increasingly confident in its findings, the decision demonstrates a strict approach to fraud. In closely scrutinising the circumstances of the claim, where the court is satisfied that the heightened burden of proof has been satisfied, it will have no difficulty in making a finding of fraud - even where fraudulent devices have been employed by an agent of the insured (so long as such actions are not outside the scope of the agency).

### Conclusions

This case arguably extends the principle set down in the case of *Direct Line Insurance plc v Khan and Another* [2001] EWCA Civ 1795, where the “innocent” co-insured suffered a forfeiture under the policy because of the fraudulent acts of her co-insured husband (and agent). In this instance, even though Mr Savash Senior was not an insured under the policy, his actions nevertheless impacted upon the claim made by his (insured) son.

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