

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2011] NZERA Auckland 513
5347039

BETWEEN QBE INSURANCE
(INTERNATIONAL) LIMITED
Applicant

AND CRAIG ANDERSON
Respondent

Member of Authority: R A Monaghan

Representatives: P Skelton, counsel for applicant
D Mackinnon, counsel for respondent

Investigation meeting: On the papers

Determination: 2 December 2011

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] QBE Insurance (International) Limited (QBE) says its former employee Craig Anderson breached his employment agreement, and seeks compensatory damages and penalties in respect of the breaches.

[2] The parties have jointly applied to have the entire matter removed to the Employment Court under s 178 of the Employment Relations Act 2000. They rely on the following grounds as they appear in s 178:

(2)...

(a) *an important question of law is likely to arise in the matter other than incidentally, and ...*

...

(d) *in all the circumstances the court should determine the matter.*

[3] This determination addresses the application for removal.

Background

[4] Mr Anderson was until 4 March 2011 employed by QBE as its General Manager – Corporate and Specialist risks.

[5] QBE claims that in breach of express and/or implied terms of his employment agreement Mr Anderson:

- (i) committed QBE to underwrite an extended warranty and consumer protection insurance facility that Motorplus NZ Limited wished to offer to its customers;
- (ii) committed QBE to this extended warranty policy when he had no actual or delegated authority to do so;
- (iii) failed to ensure that details of the Motorplus Extended Warranty Policy were entered into QBE's computer system or reported in the usual way;
- (iv) did not take all reasonable and prudent steps expected of a competent underwriter to ensure that QBE received the premium payments from the insurance broker (Herbert Insurance Group Limited) in relation to the Motorplus Extended Warranty Policy; and
- (v) took steps to cover his trail by deleting email correspondence and not creating a file, or not disclosing or handing over the file that was created for this particular business transaction.

[6] QBE also alleges that Mr Anderson's conduct breached the statutory good faith obligation that he owed to it pursuant to s 4 of the Employment Relations Act.

[7] QBE is claiming a loss in excess of \$1.5 million as a consequence of the alleged breaches of Mr Anderson's employment duties, being the sum of alleged actual and anticipated claims that QBE is legally liable to pay in relation to the Extended Warranty Policy, less the premium income received.

[8] Mr Anderson denies breaching the terms of his employment agreement and/or his statutory duty under s 4, and says that he did not commit QBE to the extended

warranty facility in relation to the Motorplus business. He says he reached an agreement with Mr Herbert, of Herbert Insurance brokers, to offer only mechanical breakdown insurance on a 'prior submit and sign off' basis.

[9] Mr Anderson denies that QBE was 'on risk' to underwrite the policy and says that no premiums were paid and no 'closings' were provided by Herbert Insurance in relation to Motorplus.

[10] There are disputes over liability and quantum, and complex issues with respect to causation of loss.

[11] Mr Anderson has a counterclaim against QBE over what is alleged to be a failure by QBE upon the termination of his employment to transfer ownership to him of shares held on his behalf in an employee share plan.

Grounds for removal

[12] The parties have identified the questions of law that are likely to arise in this matter as:

- (a) whether the actions of Mr Anderson resulted in QBE being committed to and placed 'on risk' in relation to the extended warranty facility that Herbert Insurance Group Limited were seeking to arrange for Motorplus;
- (b) the scope of the implied contractual duty of an employee to exercise due skill and care;
- (c) the scope of s 4 of the Act in the context of this case; and
- (d) in relation to causation and remoteness of loss, whether the subsequent receivership and liquidation of Herbert Insurance Group Limited broke the chain of causation between Mr Anderson's alleged breach of contract and the loss suffered.

[13] The parties have pointed further to the relevance of insurance law in identifying whether Mr Anderson's actions or inactions created a legally binding and enforceable contract of insurance, the legal significance of the fact that the broker

received the premiums, and whether this prevented QBE from disclaiming the policies for non-payment of premiums.

[14] Regarding causation of loss, Mr Anderson is alleging that any loss QBE may have suffered or will continue to suffer as a result of having been committed to insure the Motorplus business was not caused by his actions or inactions but rather by the failure of the broker to account for premium income obtained prior to the date on which it was placed in receivership.

[15] Finally, the parties say that determining quantum is likely to be complicated.

[16] In addition the parties say there will be significant disputes of fact.

Determination

[17] I am satisfied from the above that the grounds relied on by the parties exist.

[18] I therefore order the removal to the Employment Court of the entire matter for hearing and determination.

R A Monaghan

Member of the Employment Relations Authority