



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY: JUDGMENT DELIVERED IN THE SUPREME
COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 11 June 2021

Status: Immediate

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

Discovery Life Limited v Hogan and Another (389/2020) [2021] ZASCA 79 (11 June 2021)

Today the Supreme Court of Appeal (the SCA) upheld an appeal by the appellant, Discovery Life Limited (Discovery), against an order of the Gauteng Division of the High Court, in terms of which Discovery was held liable to pay out the proceeds of the life policy taken by Mrs Church to Mr and Mrs Hogan (the respondents) who were the nominated beneficiaries under the policy. The SCA set aside the high court order and replaced it with an order dismissing the application brought by the respondents in the high court with costs.

During her lifetime, Mrs Susan Church took out a classic life policy with Discovery and insured her life for a sum of R3 million. She nominated her parents, the respondents, as the beneficiaries under the said policy. The policy commenced on 1 January 2016. On 6 August 2016 Mrs Church cancelled her policy with Discovery, advising that she was moving over to Liberty Life. On 15 August 2018 she wrote to Discovery confirming her previous telephonic notification that she was cancelling her policy with immediate effect. Discovery noted her instructions but pointed out that the cancellation would only become effective after a period of 30 days and that the September premium would still be collected by debit order as usual on 3 September 2018. On 23 August 2018 Mrs Church instructed her banker to stop the payment of the premium due under the policy for September 2018. On 28 August 2018 Discovery, unaware of Mrs Church's instructions to her banker, advised Mrs Church that her policy would be cancelled with effect from 1 October 2018 and the last day of cover would be 30 September 2018.

Mrs Church did not respond to Discovery's letter of 28 August 2018. Instead, on 3 September 2018, the debit order was returned unpaid with the remarks that 'payment was stopped by the account holder'. Discovery wrote to Mrs Church on 10 September 2018 and also sent her a text message on her cellular telephone advising her that her policy was consequently cancelled with effect from 1 September 2018. She was also advised of the process in the event she wanted to reinstate her policy. There was no response to this communication. Mrs Church died on 22 September 2018. On 27 September 2018, without informing Discovery about Mrs Church's death, the respondents paid the premium that should have been paid in terms of the policy on 3 September 2018 and thereafter submitted a claim under

the policy. Discovery repudiated the claim on the basis that it was no longer on risk when Mrs Church died because the policy was cancelled on 1 September 2018 at the instance of Mrs Church.

The respondents then instituted legal proceedings in the high court for the payment of the proceeds of the policy. The claim succeeded in the high court and the appeal to the SCA was with its leave. The SCA concluded that the non- payment of the September premium was deliberate if one takes into account Mrs Church's telephone conversation to Discovery on 6 August and her subsequent letter on 15 August 2018. Mrs Church's conduct therefore, including her stopping of the debit order payment of September 2018 could be interpreted in no other way than that she no longer wanted to remain bound by the terms of the policy. She deliberately repudiated her policy and Discovery was entitled to accept her repudiation. The SCA further concluded that the thirty-day period of grace for an unpaid premium in terms of the policy does not apply in cases where the cancellation is as a result of repudiation by the insured or where the cancellation is by mutual agreement between the parties. This was so because the policy was cancelled not as a result of the non-payment of the premium but as a consequence of Mrs Church's repudiation of the policy which Discovery had accepted.
