

GROUP: Fire and General Insurance

SERVICE: Contents

Complaint No : 109967

YEAR: 2002

Casebook Index: Damage - Contents, Exclusion - Contents, Policy limits.

Background

In August 1994, C and his wife insured their contents with P. In April 2002, C and his wife had 2 Lladro figurines stolen from their house while they were on holiday. They had left their son to look after their house while they were away. C made a claim to P for the stolen figurines and stated in the claim form that he and his wife believed their son's friend had stolen the figurines.

P declined the claim on the basis that the loss of the figurines was excluded under the policy, as the theft was by persons lawfully in the house.

Assessment

The policy provided that there was no cover for "*Any loss or damage caused by: ...theft by persons lawfully in the home*".

It is established law that a person is lawfully entitled to be on another person's property, if the occupier of the property gives the person implied or direct permission to come onto the property. *Howden v Ministry of Transport* [1987] 2 NZLR 747.

C's son was living at the house at the time of the theft and C had left him in charge of the house while he and his wife were away. Therefore, C's son was a lawful occupier of the house and was able to give permission for people to come into the house.

Although the son's friend denied stealing the figurines, the Case Manager believed that, on the basis of C's suspicions about the circumstances of the theft and the fact that no evidence of forced entry into the house had been provided, it was more likely than not, the figurines were taken by "*...persons lawfully in the home*".

Result Complaint not upheld