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HOW TO PLEAD FRAUD - LESSONS FROM
SGRO V AUSTRALIAN ASSOCIATED
MOTOR INSURERS LTD [2015] NSWCA 262

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Pleading fraud is not a matter to take lightly

It is unethical to plead fraud or serious misconduct against a party unless your client specifically wishes to do so and you are satisfied that there is evidence to support the allegation. The person alleging fraud must be mindful of the costs risks associated with making the allegation. Where allegations of fraud are made speculatively, the courts' jurisdiction to award indemnity costs or personal costs orders may be enlivened, notwithstanding that the party may have won the case overall. (See *Chen & Ors v Chan & Ors* [2009] VSCA 233; *NIML Ltd v Man Financial Australia Ltd (no. 2)* [2004] VSC 510). Despite this, however, the requirement for a proper basis does not mean that the party alleging fraud must have a positive belief and that the allegation will actually succeed at a hearing.

Fraud – what information is required?

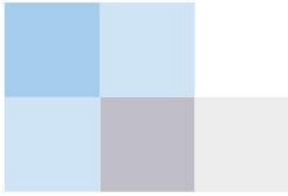
Rule 14.14(3) of the Uniform Civil Procedure Rules (NSW) (**UCPR**) provides that particulars must be pleaded for certain classes of allegations. Pursuant to Rule 14.14(2) this includes fraud. For the purposes of this Rule, fraud includes, but is not confined to allegations based on a cause of action in the tort of deceit. It further includes allegations that a plaintiff's claim, is in itself, fraudulent because it contains allegations of facts that are known to be untrue, See *Gazal v GIO (NSW) 1992 29 (NSW) LR 336*.

The court will not give relief on an issue involving fraud unless the allegation has been **clearly raised in the pleadings and actually pursued at the hearing**.

Rule 15.3 requires a pleading to give particulars of any fraud and mandates that a pleading must include appropriate particulars of the allegations involving specific types of fraudulent, willful and improper conduct. Rule 15.4 also requires a mandatory specification of particulars of any alleged 'condition of mind.'

Pleadings of fraud:

- must specifically allege **the acts involved**; and
- that the acts were **done in a manner that involves fraud**, although it is not necessary to use the specific word 'fraud';
- the fraud must involve **an explicit allegation of dishonesty**;
- the pleader must specify the **nature and extent of any misrepresentation relied on**;
- the pleader must specify **the precise circumstances in which a misrepresentation was made, including identifying any document constituting the misrepresentation**; and
- the allegation should not be expressed in general and ambiguous terms that are likely to be embarrassing to the opposing party.



The example used in the *Ritchie's UCPR* is if it was alleged that there were false entries in documentation, particulars would be required to:

- identify the entries;
- the respect/s in which they are inaccurate; and
- the basis of the allegation that their inaccuracy was known.

Sgro v Australian Associated Motor Insurers Ltd

The New South Wales Court of Appeal's judgment in *Sgro v Australian Associated Motor Insurers Ltd* [2015] NSWCA 262 emphasises the strict requirements for allegations of fraud to be clearly pleaded and properly particularised. The insurer successfully denied the claim, but the court was critical of the manner in which the allegations of fraud were pleaded.

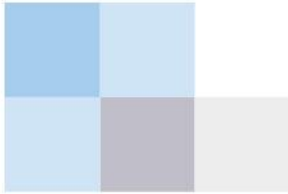
The appellant, Mr Sgro, was the owner of a 360 Modena Ferrari which he insured with the respondent, Australian Associated Motor Insurers (AAMI). Mr Sgro alleged that his Ferrari was stolen and made a claim on his policy for the agreed value of the vehicle being \$190,350. AAMI refused the insurance claim, alleging that the claim was fraudulent within the meaning of section 56 of the *Insurance Contracts Act 1984* (Cth) (ICA).

At first instance, her Honour Olsson SC DCJ rejected Mr Sgro's claim. Her Honour was not satisfied the vehicle had been stolen and found that AAMI was entitled to refuse the claim pursuant to section 56 of the ICA on the basis of inconsistencies in Mr Sgro's evidence.

AAMI alleged in its defence that Mr Sgro had made a number of false statements in relation to the insurance claim in support of its defence. Her Honour, at first instance, considered that there were "mysteries and anomalies" in Mr Sgro's evidence such that she had "considerable hesitation in accepting it unless corroborated." (at [38]). Her Honour was not satisfied that an insured event had occurred. Despite this, no findings of fraud were made.

The Court of Appeal found no error in her Honour's finding that the vehicle had not been stolen. In coming to this determination, Beazley P (with Meagher JA and McDougall J agreeing) noted that in order to succeed in his claim, Mr Sgro was required to satisfy the court, on the balance of probabilities, that the insurable event had occurred. This meant that the court needed to be satisfied beyond a 50% chance that the vehicle had been stolen. Having made factual findings open to the court that the vehicle was not stolen, Mr Sgro's claim failed and the appeal was dismissed with costs.





The Court of Appeal noted that a finding of fraud, including for the purposes of section 56 of the ICA, involved a finding that a person had been deliberately untruthful; with the intent of obtaining financial gain.

The Court of Appeal was critical of the manner in which AAMI had pleaded its section 56 defence. Specifically, the court referred to *Briginshaw v Briginshaw [1938] HCA 34* and rule 14.14 of the UCPR noting that the seriousness of raising questions of fraud required that it be clearly pleaded and properly particularised.

AAMI's defence in relation to section 56 was that Mr Sgro had "made false statements in support of the claim" such that AAMI was entitled to refuse the claim pursuant to section 56 of the ICA. The pleadings did not go the extra step required and assert that **the false statements were made with the intent to induce AAMI to pay the claim. In that respect the pleading was deficient.** The consequence of this deficiency was that the court at first instance neither addressed nor made findings as to Mr Sgro's alleged fraudulent purpose in making the false statements.

