[¶60-745] **Sklavenites v. Phoenix Prudential Australia Limited.**
Supreme Court of New South Wales, Court of Appeal.
Judgment 16 October 1986.
Full text judgment below.

Insurance — "Home Contents and Personal Insurance Plan" — "Plain English" policies — Construction — General conditions — Condition four sub-headed "Making a Claim" — Note to Condition four stated that "if you knowingly make a false or fraudulent claim, these policies will become void and we will not pay any claims under them" — Whether "note" a condition of policy or insurer's statments as to its view of the law — Reference to other "notes" in policy — Contra proferentem rule — Whether ambiguity — Whether all policies void or just policy in respect of which claim made — Appeal.

On 6 November 1981 the appellant proposed to the respondent insurer for cover under what was described as a home insurance plan. In due course the respondent issued a document headed "Home Contents and Personal Insurance Plan" which was written in the "Plain English" form. The document stated that "Six insurance policies are available to you" and went on to describe their nature. They included house insurance and contents insurance and the appellant selected at least those two forms of cover.

Paragraph four of the "General Conditions" had a subheading of its own, titled "Making a Claim". The paragraph contained instructions as to when and how a claim should be made and information to be provided. There then followed the words: "NOTE: If you knowingly make a false or fraudulent claim, these policies will become void and we will not pay any claims under them."

In June 1983 the appellant's house was severely damaged by fire and such of the contents as were then actually in it also damaged or destroyed. He made a claim under both the house policy and the contents policy. The trial Judge found that the claim in respect of contents was false or fraudulent to the appellant's knowledge. On that ground the respondent refused to pay both the contents claim and the claim in respect of damage to the house.

On appeal the appellant argued:

(i) that by use of the word "note", the words at the end of para. 4 relating to a false or fraudulent claim were not a condition at all, but a statement inserted by the respondent as to its understanding of the general law which was incorrect; and

(ii) in the alternative, that where two claims were made, only one of which was false or fraudulent, the language of those words did not authorise the insurer's refusal to pay either claim.

Held: appeal unanimously dismissed.

(1) The words about a false or fraudulent claim preceded by the word "note" were a condition, that is a contractual stipulation, of the contract of insurance. That was consistent with the use of the word elsewhere in the document to introduce what were evidently stipulations of the contract and not indications of the respondent's understanding of the general law. In addition, it would be most unusual if there were no provision in the document about

false or fraudulent claims and the form of words used closely resembled the modern Lloyd's stipulation covering false or fraudulent claims.

(2) The language of the condition clearly covered the situation which had arisen in this case and was fatal to the appellant's claim. There was no ambiguity and thus no need to apply the contra proferentem rule.

[*Headnote by the CCH INSURANCE LAW EDITORS*]

Appearances: J.A. McCarthy (instructed by Stern & Tanner) for the appellant. R.S. Milne Q.C. and Mr Roberts (instructed by Leigh M. Virtue & Collins) for the respondent.

Before: Kirby P., Samuels and McHugh JJ.A.