IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

CIV-2015-409-332
[2015] NZHC 2457

BETWEEN	BRIAN NEWBERY Plaintiff
AND	AA INSURANCE LIMITED Defendant

Hearing: 21-23 September 2015

Appearances: D A Webb and R A Kay for the Plaintiff
C A Brick and A J McNaughtan for the Defendant

Judgment: 8 October 2015

JUDGMENT OF NATION J

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[1] Mr Newbery was a successful businessman who is now retired. He is also a vintage car enthusiast. Associated with that interest, he collected a number of Lladro porcelain pieces depicting vintage cars and figures in a variety of scenes. His wife matched his interest by also collecting Lladro figurines. A total of some 30 Lladro items were damaged in the Christchurch earthquake of 22 February 2011. The undisputed replacement cost of these items is $210,065.

[2] I have to decide whether these Lladro items can be classified as sculptures and/or ornaments in terms of Mr Newbery's policy with AA Insurance Limited (AA Insurance).

The nature of Lladro

[3] Lladro is made by the Lladro company in Spain, a business started by three Lladró brothers in 1951. A Lladro publication from 1981 refers to sculptors making a sketch and then discussing with painters any problems of colour. The sculptor then

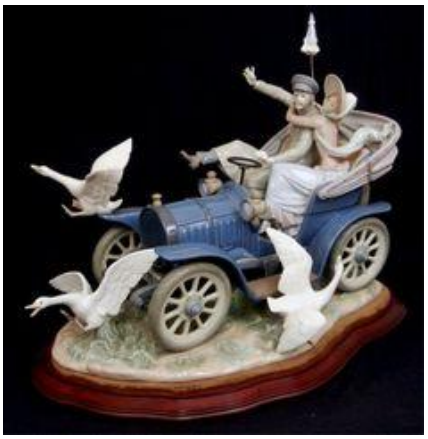
makes a clay model. Once every detail of the piece has been decided upon, a master model is made slightly larger than the definitive size to allow for shrinkage in the kiln. The model is then cut up into different pieces so that it may be recreated later from moulds. A special paste is injected into a moistened mould and left to dry. Once each piece has reached a workable consistency, the pieces are recomposed in the configuration of the original model, polished by hand so as to remove any signs of joins and to reproduce the original design. The piece is then marked with the Lladro mark. The reconstructed pieces are painted consistent with the paint on the original model, varnished and fired in a kiln. It is then coated with a porcelain solution, potentially repainted if required and then re-fired. This process can be completed a number of times before the piece is finished.

[4] The items are produced in a factory. Many people are involved in the process. In the Lladro authorised publication I referred to, there is reference to "the craftsman's workshop", "a whole team of specialists" involved in creating a piece, the "sculptors" who make the sketch, painters who deal with the colours, chemists who prepare the pastes, "specialists" who study the cutting up of the model and who prepare the moulds, "craftsmen" who recompose the model, "specialists" who manually polish the individual pieces taken from the moulds and "artists" who repaint the fired reconstituted model to match the paintings on the original.

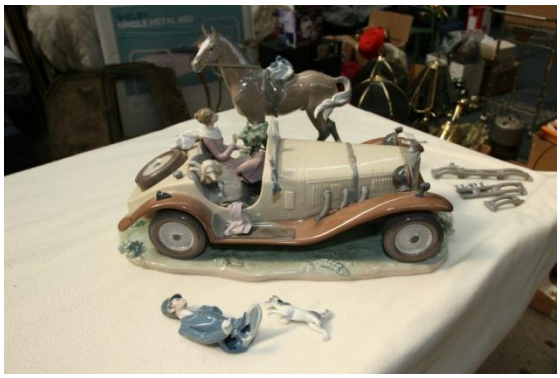
[5] Lladro pieces are now so distinctive and have such a name that they are commonly referred to simply as "Lladro". Each individual piece is, however, titled by Lladro. Mr Newbery said he had not received any particular information with each piece that either he or his wife had bought but he did refer to particular pieces that he had by reference to their titles.

[6] This claim concerns nine Lladro pieces which depict vintage cars. Their titles are "Young Couple with Car", "High Speed", "A Happy Encounter", "A Sunday Drive", "Auto Rally", "Car in Trouble", "Motoring in Style", "Where to Sir?" and "Circus Parade".

[7] As decorative pieces in a home, these pieces are large. Below is a picture of "Car in Trouble". It is 42 x 66 cm in dimension.



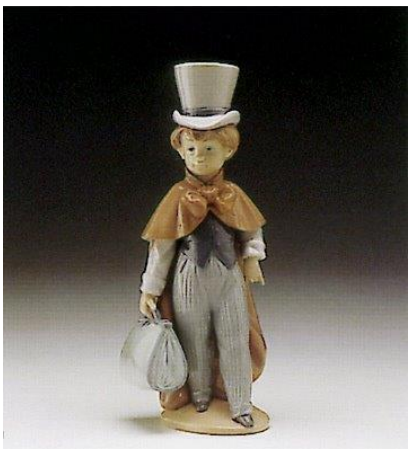
[8] During the hearing I had in front of me on counsel's bench "A Happy Encounter". Unfortunately, as the result of an unhappy encounter during the earthquake, it is missing the whole of the rider on the horse. It is reproduced below. Its size was 36 x 55 cm.



[9] Another relevant piece was titled "Don't Look Down". From the black and white photograph reproduction provided to me, it appears to involve two caricature figures in a cartoonesque aeroplane with a propeller.

[10] There are 15 porcelain figures. The titles include "A Great Adventure", "Lamp lighter", "La Menina", "Menina Gold", "Full of mischief", "Out for a Stroll", "How You've Grown", "Valencian Girl with Flowers", "Pocket Full of Wishes", "Fine Melody", "Girl at the Pond", and "Spring Courtship".

[11] Reproduced is a photograph of "A great adventure". Its size is 22 x 9 cm.



[12] There are three pieces involving two figures, "Away to School", "Romance" and "Magic". "Magic" is 15 x 4 inches in dimension.

[13] Other items were entitled "Littlest Clown" (18 x 2 cm), "Attentive Polar Bear with Flowers" (10 x 13 cm) and "Starstruck" (25 x 18 cm).

[14] When the hearing began, the claim included a piece which depicted two dressed up figures in an open vintage car with two dogs close by. It was titled "A Sunday Drive". By agreement during the hearing, the claim was amended to exclude that item.

[15] I consider that most people who insure the contents of their home, including the Lladro pieces involved here, would consider them to be expensive pieces of porcelain. That is consistent with the information Ballantynes provided to Mr Newbery in a letter of 4 July 2013 where they said the replacement value of certain pieces was as follows:

Car in Trouble	$24,500
Young Couple with Car	$14,040
A Sunday Drive	$16,625
A Happy Encounter	$18,375
Circus Parade	$23,275
High Speed	$18,655

Spring Courtship	$9,275
Romance	$3,395

The Insurance policy

[16] Mr Newbery had a contents policy with AA Insurance from 2007. The policy relevant to this claim came into effect on 14 February 2011. In a letter of 17 January 2011, AA Insurance advised Mr Newbery that his home and contents policy was being renewed but with some variations. The letter asked him to take time to read the new policy documents, the policy schedule and the summary of changes to make sure he understood them. An attached summary referred to contents cover for the period from 14 February 2011 to 14 February 2012. The summary said that the value of cover was $328,895 including "specified items". Under "specified items" there was a reference to nine items of jewellery with a description of each item and the value for each (a total value of $76,283).

[17] On this page was the statement:

> It is important you provide us with up to date information – for full details see your policy document.
>
> You must tell us immediately if:
>
> …
>
> You purchase anything that needs to be specified on your policy schedule or you need to increase your value of cover.

[18] On an associated page under a prominent heading was the following:

> Jewellery & works of art
>
> Your jewellery (including watches) and any works of art you own are covered up to $5,000 per item or $20,000 in total for any one event. If yours are worth more than this, you need to tell us about them so we can list them on your policy schedule and make sure you're fully covered.

[19] In his evidence, Mr Newbery confirmed he had visited the offices of AA Insurance and obtained from them a hard copy of the new policy. The policy is a plain English type document.

[20] Extracts relevant to the issue I have to decide include the following:

> Reading your policy
>
> …
>
> Some other words and phrases have a particular meaning. These are shown in italics in this document and the meaning can be found in the "definitions" section at the end of this policy.
>
> Your value of cover
>
> Your value of cover is stated on your policy schedule. When your policy is due for renewal, we will increase your value of cover by a small fixed percentage to allow for inflationary increases in the replacement cost of your contents, unless you advise otherwise. Your policy schedule we send you when your policy is due for renewal will show the revised value of cover and the premium applicable. It remains your responsibility to ensure that your value of cover is adequate at all times.
>
> What we cover – your contents
>
> Contents means unfixed household goods and personal property normally in or around your home, belonging to or hired by you or a family member, or in your care, custody or control, for which you are legally responsible. Some contents have limited cover – refer to pages 8-9 for details.
>
> Contents includes:
> - ✓ home appliances
> - ✓ furniture and furnishings, rugs, lights, blinds and curtains
> - ✓ clothing, footwear and cosmetics
> - ✓ jewellery, watches and works of art
> - ✓ portable swimming pools, saunas or spa pools
> - ✓ tools and gardening equipment
> - ✓ sporting equipment
> - ✓ business tools
> - ✓ digital downloads
> - ✓ money, documents and certificates
> - ✓ home office equipment, whether or not used in an occupation or business
> - ✓ furniture and furnishings in a home office or in a healthcare practice operated from your home
> - ✓ any watercraft with a replacement value of less than $5,000 including its spare parts and accessories
> - ✓ remote controlled models or toys
> - ✓ motorised equipment not requiring registration, including their spare parts and accessories, comprising wheelchairs, mobility scooters, domestic lawn and garden appliances, children's motorcycles and golf carts.
>
> Contents with limited cover
>
> Some items of your contents have limited cover. The following shows the most we will pay for those items following loss or damage by any one event.

Jewellery, watches and works of art

Jewellery, watches and works of art have limited cover unless they are specified separately on your policy schedule. The most we will pay for these items if they are not specified on your policy schedule is:

Jewellery, including watches - $5,000 per item but no more than $20,000 in total for any one event.

Works of art - $5,000 per item, but not more than $20,000 in total for any one event.

If the limits shown above are not sufficient to cover the cost of replacement of your jewellery, watches and works of art, you need to advise us so that they can be specified separately on your policy schedule. Once specified on the policy schedule, these items are covered for the full replacement value up to the total value of cover stated on your policy schedule. Full details of each item and proof of ownership will be required in the event of a claim.

How we may settle your claim

At our option we may:

- pay for the item to be repaired, or
- replace the item with the nearest equivalent available in New Zealand, or
- make a payment to you, in the form of store credit, voucher or cash, for the replacement value of the item.

The nearest equivalent will be established with regard to functionality and quality, regardless of brand or price. If in our opinion a suitable nearest equivalent is not available in New Zealand, we will pay the current value of the item.

Definitions

We use words and phrases with particular meanings. The meanings are listed below:

…

Works of Art – Pictures, paintings, prints, sculptures, ornaments, tapestries, antiques (other than furniture), hand woven mats or rugs.

[21] Although the wording of the policy changed just a short time before the earthquake of 22 February 2011, there is no suggestion that Mr Newbery was misled into thinking he had replacement cover for the Lladro because of the wording of the earlier contents policy or anything that had been said to him by AA Insurance.

[22] Mr Newbery did not specify the Lladro as being "works of art". It is agreed that, if the items are found to be "works of art", as that term is defined in the section headed "Contents with limited cover", the insurer's maximum liability for such items is limited to $5,000 per item but no more than $20,000 in total for any one event.

Legal principles: Interpretation of insurance contracts

[23] There was no dispute as to the approach which I have to take.

(a) Insurance contracts are interpreted according to the ordinary principles of contractual interpretation.[1]

(b) The objective of construction of a contract is to give effect to the intention of the parties. That intention is determined by reference to their expressed rather than actual intentions. The purpose of the contract may be inferred from the language used by the parties, judged against the objective contextual background.

(c) The inquiry concerns what a reasonable and properly informed third party would consider the parties intended the words of their contract to mean.[2] This reasonable person is hostile to technical interpretations and undue emphasis on niceties of language but there is no presumption that words will be interpreted according to their ordinary meaning.[3]

(d) As contracts are interpreted objectively, evidence as to what the individual parties subjectively intended or understood their words to mean is not relevant and should be disregarded by the Court.[4]

[24] Neither party suggested that the context in which this insurance contract was formed or its background would affect the meaning I should give to the words used

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1 *MacGillivray on Insurance Law* (12th ed, Sweet & Maxwell, London, 2012) at [11-001]; *D A Constable Syndicate 386 v Auckland District Law Society Inc* [2010] 3 NZLR 23 (CA) at [23].

2 *Vector Gas Ltd v Bay of Plenty Energy Limited* [2010] NZSC 5, [2010] 2 NZLR 444 at [19].

3 *Multi-Link Leisure Developments Limited v North Lanarkshire Council* [2010] UKSC 47, [2011] 1 All ER 175 at [21]; *Trustees Executors Ltd v QBE Insurance International Ltd* [2010] NZCA 608 at [33].

4 *Vector Gas Ltd v Bay of Plenty Energy Ltd*, above n 3, at [19] per Tipping J; *O'Loughlin v Tower Insurance Ltd* [2013] NZHC 6701, [2013] 3 NZLR 275 at [36] per Asher J.

in the policy. In interpreting the policy, my focus has to be on its language. This is appropriate given this was a standard consumer policy and not a contract individually negotiated between the parties.[5] In that context, the ordinary meaning of words is important.

[25] Submissions were made with regard to whether or not the Court should apply the principle of contra proferentem, i.e. that the contract should be interpreted in a manner generous to the insured where it was prepared by the insurer. In his opening, Mr Webb suggested a principle similar to contra proferentem would be appropriate because of the way Mr Newbery received notice of the renewal of the policy and changes to its wording. Mr Webb referred to Mr Newbery's receiving just the initial letter with a schedule and the letter informing him how the policy could be obtained electronically. He said that on obtaining the policy Mr Newbery would have had to navigate his way through the policy to be fully aware of the particular provisions which are crucial in this case. It emerged from Mr Newbery's evidence that he had obtained a written copy of the policy from the AA Insurance at the time of renewal. There has been no suggestion that he was unaware of the limited cover for works of art or how "works of art" was defined in the policy.

[26] In closing submissions for Mr Newbery, Mr Kay submitted that the contra proferentem principle should be applied if the Court concludes that the words of the clause are ambiguous "or perhaps even if there is no absolute ambiguity, but the clause is a limiting one with another tenable meaning".[6]

[27] For the defendant, Ms Brick said neither the authorities Mr Kay referred to nor any other of his submissions indicated the contra proferentem principle should be applied in the latter situation. Both counsel, however, accepted that the potential for the contra proferentem principle to be applied will only arise if I am uncertain as to what the relevant words in the policy mean.

[28] In closing submissions for Mr Newbery, Mr Kay submitted:

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5 Burrows, Finn & Todd *Law of Contract in New Zealand* (4th ed, LexisNexis, Wellington, 2012).
6 *D A Constable Syndicate 386 v Auckland District Law Society Inc*, above n 1, at [69].

> There is only one issue before the Court – would a reasonable person in the position of the plaintiff consider the Lladro works he owns to be "sculptures" or "ornaments".

[29] Ms Brick accepted this but said that I must also consider this issue from the point of view of the reasonable insurer.

[30] Consistent with counsels' submissions, I must put myself in the position of a reasonable and properly informed third party. The issue is then whether the parties to this insurance contract would have agreed that the term sculptures and/or ornaments as used in the policy would include the Lladro pieces that are the subject of this claim.

The evidence

[31] The most important evidence in this case is what I have been told and have been able to observe about the pieces themselves and the words used in the policy. I was, nevertheless, presented with a considerable volume of evidence as to what the words "ornaments" and "sculpture" could mean in different contexts.

[32] In his evidence, Mr Newbery said he did not consider it fair or reasonable for an insurer to use the term ornaments to limit its liability because the term "can apply to almost anything". He said that he understood ornaments to refer to trinkets, generally being mass-produced and not being overly expensive. He did not believe the "ornaments" could properly describe "limited edition, expensive items such as the figurines". He said he regarded sculpture as something that someone makes from a solid piece of material, as being solid, heavy and relatively durable and usually signed by or attributed to a particular artist. He did not think the term could apply to figurines which were hollow, having been made from porcelain that had been poured into a mould.

[33] He said that he considered the most accurate description of the Lladro figurines was "figurines". He said that if one searched on Google for "auctions for Lladro" or similar, the items on the resulting sites were almost always described as figurines, not ornaments or sculptures.

[34] Words in the policy are not to be interpreted according to what either party considers "fair and reasonable". The subjective interpretation of an insured and their expectations as to what they consider would be fair and reasonable are irrelevant in determining the ordinary meaning of words used in a policy.[7]

[35] It is, however, of some relevance that Mr Newbery understood the ordinary meaning of the word "ornament" to be very wide.

[36] When Mr Newbery submitted his first claim for the contents of their home on 10 October 2011, his list included:

- 3 ornate gold and silver tree ornaments – suggested replacement cost $660
- 1 porcelain Egyptian cat ornament – suggested replacement cost $400
- 1 Italian porcelain Dalmatian dog real size ornament – suggested replacement cost $4,500

[37] When cross-examined, Mr Newbery indicated that he had some knowledge of the way Lladro is made. In discussing what he thought happened when, at the end of a limited edition the original model was destroyed, Mr Newbery said that he understood "the original, it's the original piece that that artist made is destroyed. It's not the mould [sic]."

[38] When referred to information about Lladro, Mr Newbery made the comment "Well, the firm of Lladro was started by three brothers and one's – one does a certain job in the factory and that's why the one I think's more of an artist than the others".

[39] Mr Newbery said that the items he had bought had been in very large boxes with a lot of packing and that you get a card you can send to Lladro and they give you a little plaque to go on the car. He said he had obtained that sort of card but that he had not got any other information. He said he had been interested in the cars just

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7 *O'Loughlin v Tower Insurance*, above n 4, at [36], [81]-[82].

because they were similar to what he collected. He said he had not been aware of the names of the sculptors associated with the items before the hearing.

[40] Mr Newbery said that, before the earthquake, two or three of the large items involving cars were on a fireplace, three or four were in cabinets and three were under coffee tables where they could be seen. He agreed the items were on display. He said other items were kept in the house in different places, on display in glass display cabinets, included with his wife's collections of other items.

[41] Mr Newbery's initial claim for Lladro was made using an EQC form. Under the heading "Item description (make, model, size, serial number)" each Lladro piece was described simply as Lladro and the title for the piece, e.g. Lladro "A Great Adventure" or Lladro "A Sunday Drive". I note that the term "figurine" was not used in the description of these items on the claim form.

[42] Mr Newbery explained how he had been able to "collect" what he described as the "eight car figurines that Lladro produced". Mr Newbery also considered his wife to have a collection of Lladro.

[43] The claim forms were supported by a schedule of the Lladro items with reference to the age and a replacement value. The form was a form used by Ballantynes, the Christchurch department store. In that schedule, each of the Lladro items was referred to by its name or title. This description was under the heading "Description of goods (including brand, make, model and size, etc)".

[44] Mr Newbery is asking me to accept that he reasonably understood the Lladro items to be fully covered for their replacement value by virtue of their being contents of his home, excluded from the definition of works of art. It is of some relevance in this regard that Mr Newbery mentioned that around 2007 he had gone to the AA Insurance officer to talk about insurance cover for house contents and cars. There had been no previous mention of this in his brief or in any documents that were part of the common bundle.

[45] Mr Newbery said he had sold his business and no longer wished to use a broker. He talked to someone called Brian in the Sydenham office of AA Insurance. As a result of that discussion, he put down 10 or 12 items of jewellery on the list of specified items but decided not to put down the Lladro. He said that, as a result of the discussion, he decided it wasn't worth listing the items because the Lladro "was large, cumbersome and it wouldn't be taken by burglars because it wasn't something they could sell and in a fire it wouldn't be destroyed". He said that he understood that in 2007 he had to itemise his wife's expensive jewellery and anything else that was expensive in the house and that this is why they came to be talking about the Lladro. He said he could not really remember in all honesty what the details of the conversation were but said "I was quite happy to leave them off because I didn't really want to list another 20 odd items and also get them valued".

[46] I then asked Mr Newbery some questions as to how he had come to discuss the Lladro in 2007 and what was said to him about whether or not they should be insured. He referred again to "their size and that they were virtually fireproof, we didn't think they would be uplifted or stolen". I then asked him "in '07 did you think you had made a decision not to insure the Lladro?" Mr Newbery answered "basically, I most probably would have, yes".

[47] The 2007 AA Insurance contents insurance policy was produced to the Court. In closing, Mr Kay, for Mr Newbery, accepted that it was properly before the Court. He sought to make something of the fact that in the 2007 policy the wording provided limited cover for "a set or collection of any kind". In that policy, contents with limited cover included "a fur, an object containing gold or silver, jewellery, a watch, an antique (excluding furniture), a set or collection of any kind, a document, a Persian or similar rug or carpet, a picture or work of art". The policy did not further define "work of art".

[48] Mr Newbery told me that some items of Lladro had been damaged in the September 2010 Christchurch earthquake but he had not made any claim in relation to that damage.

[49] Mr Dunbar Sloane was called as an expert witness for Mr Newbery. He is the present Managing Director of Dunbar Sloane Limited. He has worked in the company for the past 20 years and said it was auctioneer of art, antiques, artefacts, toys and dolls, wine and colonial collectables.

[50] Mr Sloane said he was giving evidence as an expert and that he was complying with the code of conduct for expert witnesses. Despite this, he expressed an opinion, not just as to how Lladro would be described in the art auction business. In his brief, he said that it was his view that the pieces "are neither ornaments nor sculptures" and therefore do not fall within the definition of "works of art" in the policy. I do not accept that Mr Sloane had the expertise to be commenting on how particular words should be interpreted in an insurance policy.

[51] Mr Sloane said:

> We have not, and would not, describe the Lladro as ornaments. The term ornaments would, in common usage, properly describe items of very low to no value, normally mass produced, that we sometimes sell under the heading of bric-a-brac. Such chattels are purely for decorative purposes, and are not purchased by individuals to add to a valuable collection.

[52] He said that at Dunbar Sloane they would classify such valuable items in their catalogues under the heading of "collectables".

[53] Mr Sloane said that, in his opinion, the Lladro were not sculptures. To him "a sculpture was an item that represents a person, animal or design and is something that is produced by working on a solid material". He said sculptures can be identified by the artist and that where an item is produced under the name of a factory, even limited edition figurines are not regarded as sculptures. He did not consider Lladro items made from porcelain to be sculpture because the porcelain was poured into a mould and the resulting items were hollow. In his brief, Mr Sloan said the best description of Lladro was "collectables" and that a valuable Lladro item would be further classified as a figurine under the "sub-set of collectables". Mr Sloane said he was yet to meet a vendor who had described their valuable Lladro as ornaments.

[54] Mr Sloane's evidence was not of great assistance to me because it appeared he saw his role as being to assist Mr Newbery in establishing that the term Lladro could not be included in the description of either sculptures or ornaments under the policy. He did not appear to appreciate that, as an expert witness, he was required to help the Court understand how the terms "sculpture" and "ornaments" were ordinarily used in the particular business with which he had experience.

[55] At the conclusion of his cross-examination, I asked Mr Sloane to describe in a general way the items which Lladro produced. He confirmed they were commonly referred to as just "Lladro". He said Lladro are known for porcelain items, mostly for figures of people and children, associated with certain colours. He said they produce a lot of boats figure groups, a lot of car figure groups and antique cars. I asked him to explain how he would describe the items they produced to someone who was not familiar with Lladro. He said he would describe them as making porcelain figures or porcelain models of cars, porcelain models of boats with people in them. He would describe them as producing models or figures.

[56] Given that it appears impossible to produce in porcelain a scaled-down replica of the true item and the porcelain representations of vintage cars are also intended to depict a scene, I considered his use of the term "model" to be inappropriate. It was simply a way of avoiding having to refer to those particular items as "ornaments".

[57] I do, nevertheless, accept that in the auction world auctioneers frequently avoid the use of the term "ornament" and use something more specific to the particular item which is being sold. I accept Mr Sloane's evidence that "ornaments" is a term of a generic nature.

[58] Under cross-examination, Ms Brick put to Mr Sloane examples of the term ornament or sculpture being used in art auctions in ways inconsistent with his evidence.

[59] In that way and through later evidence, I learnt of Christie's Auction House selling a Jeff Koons ceramic puppy vase (one of an edition of 3,000) referred to by

Artprice.com as being in the category "sculptures". There was also reference to a Jeff Koons "Balloon Dog" resin "sculpture". Such an item sold in July 2015 for £200, one of a run of such items.

[60] I was later told by Mr McWilliam, an expert witness for AA Insurance, that Carter's price guide to antiques and collectables provided the most commonly used database recording recent sales in Australia and New Zealand. A Carter's price guide referred to the Cordy's sale of a Lladro piece in August 2015. The report referred to:

> … a large and impressive Lladro … porcelain sculpture of a Venetian gondola, the gondolier stands on the stern, three passengers sit before him, manufacturers marks, number 4,800 and artist's signature: J Ruiz and F. Catala, raised on plinth base. 78 x 16 x 37.5.

[61] The Lladro was identified on the information available from Carter's price guide as "sculpture". There were other references in the guide to Lladro pieces similar to those at issue here where the items were on occasions described as "sculpture".

[62] John Cordy Limited is another New Zealand antique and art auctioneer. In a Cordy's antique auction catalogue for 23 June 2009, the items included, as described:

> A Lladro ornament, Three Puppies in a Basket of Flowers
>
> A pair of Lladro ornaments, Spaniel Puppy leaning over a vase of flowers, the other of a kitten rubbing up to a vase of flowers
>
> A Lladro ornament, Three Kittens in a Basket of Flowers

[63] There were 12 items, most of a person but one of a kitten asleep over a vase of flowers, where each item was described as a figurine. The estimated values were between $75 and $180.

[64] Another catalogue for a Cordy's antique and art auction for 17 June 2014 included the item described as "a Lladro porcelain sculpture of a peacock, model 8118, sculpted by Antonio Ramos".

[65] A Cordy's auction catalogue of 11 August 2015 referred to an item as "a large Lladro figure group" with a description of the scene and the words "modelled by Fulgencio Garcia". That catalogue also referred to "a large and impressive Lladro porcelain sculpture of a venetian gondola" with the description repeated by Carter's. The estimated value was $1,250.

[66] I was also told of information from or about Lladro, available through information on the internet or from a 1981 book about Lladro which appeared to have been authorised by Lladro. In that material, Lladro pieces were described as sculptures.

[67] Other information available on the internet referred to Lladro pieces as sculptures, designed by a sculptor and identified with a named sculptor. For example, on Wikipedia, with regard to the history of Lladro, there was a reference to "1974, the first blue emblem, consisting of a bellflower and ancient chemical symbol, appears on the base to show the origin of the sculpture".[8] It also referred to the formation of the Collectors' Society in 1985 and the value of "The first annual sculpture, called "Little Pals"".

[68] The Court was also provided with a catalogue of antiques and collectables from Dunbar Sloane for 19 and 20 November 2012. Under the heading of China and Collectables, the items included:

> Coalport, the Old Curiosity Shop "sculpture" H 13 cm, estimated $80-120
>
> Coalport, the Farmhouse Sculpture, A/FH. 9 cm, estimated $40-80
>
> Coalport, the Parasol House "sculpture", A/F H.11 cm, est $80-120
>
> Boxed Lladro "Family Outing" sculpture, No. 05974, Family in Speedboat H.35 cm. L 66 cm. Estimate $1,000-1,600.

[69] Pictures of some of the Coalport items indicated they were somewhat similar to the Lladro pieces and unlikely to have been the original one-off pieces made by the original artist or sculptor.

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8 "Lladró" (October 2014) Wikipedia https://en.wikipedia.org/wiki/Lladró>.

[70] Mr Sloane also had referred to him a catalogue for a Dunbar Sloane auction on 21 July 2015 in which Dunbar Sloane had catalogued items for sale as including "Lladro Cow and Suckling Pig ornament (AF) and cow milk jug". Mr Sloane was somewhat dismissive of this, as indeed he had been of the Cordy's auction catalogues. He said that Cordy's is not a highly regarded top-tier auction house and does antique auctions and general sales every week. He then explained this apparent aberration in a Dunbar Sloane catalogue as resulting from the fact that it was associated with a general auction that Dunbar Sloane held each week. He said the items for auction were catalogued by two school-leavers in their department in Wellington. Under cross-examination, he said the sort of people who do the cataloguing for this sort of auction do not have any particular expertise but compile an online list as "a reference for buyers who come in to have some vague idea of what they are bidding on".

[71] The evidence of Ms Baker, a Senior Customer Manager with AA Insurance, was read. Ms Baker's evidence provided information as to relevant parts of the policy. She also produced some publicly available material showing the way Lladro items had been referred to. She said that the "works of art" definition in the policy was broad, as AA Insurance meant the definition to cover all purely ornamental, decorative items and art works over the specified value. She said that in responding to the claim on Mr Newbery's behalf, AA Insurance had referred to the Oxford Dictionary definition as conveying the meaning which they understood the word "ornament" to have in the policy. The definition she referred to was "ornament – a thing used or serving to make something look more attractive but usually having no practical purpose, especially a small object such as a figurine."

[72] As with Mr Newbery's evidence, I remind myself that I must be concerned with the meaning of the words that would be accepted by a reasonable third party, rather than what the insurer may have intended or thought they meant. The parties are stuck with the words in the policy.

[73] AA Insurance called, as an expert witness, Mr McWilliam, who is based in Sydney. He has been involved in conducting valuations of fine art, decorative art and general contents for 40 years. This has included the valuation of household

contents including Lladro porcelain, mainly for the purpose of insurance. He gave evidence as an expert and said he was complying with the code of conduct.

[74] Mr McWilliam said that, when conducting valuations, if he sees a large number of items such as the Lladro and other collectables owned by Mr Newbery, he would recommend that they be included in a valuation report for insurance purposes because he is aware it is often necessary for such items to be specified in order for them to be covered by insurance. However, he acknowledged that depended on the terms of the policy. He did not purport to offer any opinion as to whether the particular items in this case were covered by the words ornament or sculpture as used in the policy.

[75] Mr McWilliam provided information about how Lladro is made, the way in which Lladro information associates the pieces produced as being associated with a particular sculptor and the way Lladro information refers to the pieces as "sculpture".

[76] Mr McWilliam referred to definitions of "sculpture" in the Webster Dictionary and the Encyclopaedia Britannica. He was of the opinion that the definitions referred to were "appropriate definitions of the term sculpture, as that term is used in the art world". He said that modern use of the term "sculpture" included amalgamated and moulded works. He said it is not uncommon for pieces to be factory produced but, nevertheless, identified as sculptures and associated with the sculptor who designed or made the original sculpture. He said the process undertaken by Lladro when producing sculpture is similar to that employed by Jeff Koons and said a sculpture could certainly be hollow, as was the case with Jeff Koons' Balloon Dog (Orange). This item was described as "one of five unique versions", of different colours. It was sold by Christie's in November 2013 for $58,405,000.

[77] Mr McWilliam said the term "ornament" does not have a special meaning in the art world. He considered the term ornament to be a general term encompassing objects of decoration within a residence. He said the Lladro items are referred to as ornaments from time to time but, in his experience, a more descriptive term was

usually used. He did not accept that the term "ornament" had to be low-cost. As a rather graphic example of this, he referred to the Hanging Heart item produced by Jeff Koons. This was described by Christie's as a "Mirror polished stainless steel hanging heart 291 x 280 x 105.1 cm" and as an ornament. It was advertised for auction in 2007 and expected to achieve a sale price of up to US$20 million.

[78] Mr McWilliam said that Lladro items can be appropriately classified as "collectables", which he said was a term that could refer to any item acquired to add to a collection rather than to the nature of the item itself. He said that in the art world, items of Lladro sculpture would typically be classified in the "decorative arts" category, along with other items of porcelain and ceramics. He referred to the way Lladro was described in the Carter's Price Guide to Antiques and Collectables. Like Mr Sloane, Mr McWilliam referred to the breadth of the term "ornaments". He considered it was appropriate to use the term for an item which was "purely decorative, such as a Fabergé Egg".

[79] Mr McWilliam said that, if he was valuing items such as these, they would appear under the heading "Lladro Porcelain Sculpture". Underneath that would be the term figure, figurine or figure group. Beneath that would be the title of the item, the name of the sculptor, if it was a limited edition there would be a reference to how many were in the edition and, if he had it, the Lladro catalogue number. He would then have the size of the size of the object, height, weight and depth.

[80] Through documents in the common bundle, I was provided with some further examples of the way Lladro was referred to. In an article in the *New Zealand Herald* of 18 August 2007, the reporter referred to the modest flat in which the retiring Mayor of Manukau lived and wrote "the most flashy things in sight are the big barbecue on the deck and some Lladro ornaments". On the internet site stuff.co.nz, there was a report of 3 December 2011 in relation to the 5.7 magnitude earthquake centred near Picton but also affecting Wellington. The item said "there were reports of ornaments being knocked off shelves in Karori and a resident in a fifth floor apartment on the Terrace said she lost two precious Lladro ornaments in the quake".

[81] Mr Newbery's claim was initially provided to EQC with a "schedule of contents" on a Ballantynes form in which a Ballantynes staff member provided a replacement value for each of the Lladro pieces.

[82] Under the heading Description of Goods (including brand, make, model and size, etc) each item was described simply as Lladro, the title and a reference number, e.g. Lladro "Musician with Guitar" Ref: 8173.

[83] There was a further Ballantynes letter to Mr Newbery of 4 July 2013, with its Lladro valuation. The letter began "To the best of our knowledge, the current replacement values for your Lladro figurines are …". At the end of the letter, the Lladro sales consultant at Ballantynes wrote "In our experience, any Lladro figurine that has been damaged and repaired loses any investment value, having ornamental value only".

Discussion

[84] I have to decide whether, in the context of this standard form home contents policy, a reasonable insured and a reasonable insurer would have understood that the term "ornaments" and/or "sculptures" could refer to the Lladro pieces which are at issue.

[85] I have been referred to a number of dictionary definitions for both words. The definitions are all wide enough to potentially refer to the Lladro as either ornaments or sculptures.

[86] AA Insurance, in its response to Mr Newbery's solicitor of 22 January 2015, referred to a definition of "ornament" in the Oxford Dictionary of Common Usage. The entries in that dictionary are as follows:

> Ornament – A thing used or serving to make something look more attractive but usually having no practical purpose especially a small object such as a figurine.
>
> Sculpture – The art of making two or three dimensional representative or abstract forms, especially by carving stone or wood or by casting metal or plaster.

[87] While these indicate the meanings the words might have, it is the meaning which these words objectively have in the context of this policy that matters. The Court of Appeal has said: [9]

> The meaning which a document (or any other utterance) would convey to a reasonable man is not the same thing as the meaning of its words. The meaning of words is a matter of dictionaries and grammars; the meaning of the document is what the parties using those words against the relevant background would reasonably have been understood to mean.

[88] The term "ornaments" as used in the policy is wide but that width does not create any absurdity or ambiguity. It is also appropriate to interpret and apply the word widely given the purpose of this insurance contract for both parties.

[89] The use of the word "ornaments" gives the insured the ability to notify the insurer of his wish to have cover for more than the limits specified in the policy. It also allows for the insurer to be better informed as to the risk it is assuming and to avoid surprise in the event of a claim relating to household contents. The breadth of the clause provides a way for an insured to obtain increased cover through simply providing details to the insurer of particular items which might be thought to have some special value.

[90] While parties to a contract may not intend the words in the contract to have their ordinary meaning, there was nothing about the nature of this particular contract or the context in which it was entered into to suggest that the parties intended the words to have anything other than their ordinary meaning.

[91] I consider that both parties would have reasonably understood that the term "ornament" could refer to an item of the size of these items, whether it was one of the smaller figurines or one of the larger items on display. I do not accept that a reasonable insured would have considered that the term "ornament" should apply to just a very small item or trinket. I note that Mr Newbery and his wife had not limited their description of ornament in such a way, when describing a large porcelain Dalmatian dog as an ornament.

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[9] *Boat Park Limited v Hutchinson* [1999] 2 NZLR 74 (CA) at 82.

[92] I do not accept that a reasonable insured or a reasonable insurer would have thought the term "ornament" necessarily could only apply to items of lower value, trinkets or, what Mr Sloane described as, bric-a-brac. In this instance, the wording of the policy indicated that neither the insurer nor the insured would have made that assumption. Hence, the policy gave the insured the option of listing any such items if they had wanted to obtain cover for more than $5,000 for any one item or $20,000 for all such items.

[93] I consider that, having regard to the terms of this policy, a reasonable insured would have understood that the term "ornament" would apply to an item which had no practical use but which was owned and on show for display because of the value which the owner placed on the appearance and design of the item.

[94] The word "ornament" appears under the heading and is part of the definition of works of art. Associated with it are pictures, paintings, prints, sculptures and tapestries, all of which have no practical use. That would also have suggested that the word "ornaments" was being used in the policy as referring to items which were owned for display rather than use. Each of these items was clearly of that sort. With each of the items, there was an element of art involved. The ornaments were intended to depict a person, animal, scene or an event but also an emotion consistent with the way the pieces were titled. They were decorated or painted in a particular way consistent with them being works of art in a general sense.

[95] These items could have been described as Lladro, a figurine, a figure group or as a collectable but any such description would still have been consistent with it being an "ornament" as that term is used in the policy.

[96] A reasonable insured would have understood that the insurer was providing cover at a certain level for the normal range of contents that might be found within a home, but that the insurer would want to know if certain items it was covering had some value greater than might otherwise be assumed. A reasonable insured would have appreciated that the insurer was agreeing to insure items of a general description, such as jewellery or works of art, where the item's value could be modest or quite high in relation to the level of cover which was available under the

policy. A reasonable insured would have accepted that the insurer would want to know whether or not it was covering items which might have a value outside a particular range so that it would know the level of risk it was carrying. Both parties would also have understood that specific mention of the items would reduce the risks that might be associated for both the insured and the insurer in proving a loss and accepting a claim at some later time.

[97] In interpreting this policy, I am not concerned with how an insured might have to categorise a Fabergé Egg or a Jeff Koons orange balloon dog but I do have to consider how a reasonable person might categorise a Lladro figurine or some of the larger items which include a vintage car. I consider any reasonable person wanting to insure these items under the policy would have considered the Lladro to be "ornaments" as that term is used in the policy.

[98] Because the meaning of the word "ornaments" is clear, I do not need to consider whether the "work of art" definition in the contract of insurance should be treated as an exclusion clause so as to require a different interpretation of the word. I do not need to consider the differing legal submissions as to when the contra proferentem rule could be applied. The application of that rule could not lead me to hold that the word "ornaments" in the policy should be given a different meaning.

[99] I thus find that each Lladro piece, in respect of which this claim has been made, comes within the meaning of "ornament" as that term is used in the definition of "works of art" in the policy. There is accordingly only limited cover available in respect of the damage done to all such items.

[100] It is accordingly not necessary for me to find whether the ordinary meaning of the term "sculptures", as used in the policy, would extend to these items. Nevertheless, I will deal with this issue.

[101] I do not consider that the ordinary meaning of sculpture will be much influenced by how the art world regards a Jeff Koons sculpture or even a Rodin bronze produced by the Musée Rodin from moulds long after the sculptor's death.

[102] I do not have much regard to the way Lladro market the expensive items they make and seek to associate them with the sculptor involved in the original design. It could be assumed a collector of Lladro items would be reasonably informed as to how Lladro is made and described by the business that makes it. Such a reasonably informed insured is likely to have known that Lladro could be described as "sculpture". Nevertheless, I consider neither the reasonable insurer nor the reasonable insured would have understood that the word "sculpture" had to have the meaning which a collector of the relevant item would give it. The meaning of "sculpture", as with "ornament", had to be one which the owner of a single Lladro piece would accept, as well as a collector. This was a standard form insurance policy that could cover a single expensive piece owned by the insured as well as a collection. A reasonable insurer would not assume that the owner of a Lladro piece would know how the item might be described by a dealer or valuer of fine art objects.

[103] Lladro is most commonly known and described as associated with the business and factory that produces it. As Lladro, it will not be commonly seen as an item which has been created or fashioned by the original creator. I do not consider that either a reasonable insurer or a reasonable insured would have considered that a porcelain piece, reproduced on a repetitive basis from a factory, sold and marketed primarily under the name of that business, would be considered a sculpture in the way that term is used in the policy.

[104] In the context of this policy, I also limit the meaning of the term "sculpture" because of the way the word "ornament" has been used in the policy. Because I consider the word "ornament" has a meaning wide enough to cover a number of items that are owned and displayed within the home, it is consistent with the purpose of the insurance contract to give the term "sculptures" a more limited meaning than might otherwise have been the case. Had I construed the term "ornaments" more narrowly, I might have adopted a wider meaning for the term "sculptures".

[105] My conclusion, with regard to the meaning of the word "ornaments" as that term is used in the policy, means that Mr Newbery must fail on his claim. The amount which he may be able to recover from the insurer under the policy is thus

limited through the way these items are to be treated as works of art, with the limited cover as specified. Just what amount the insurer might have to pay in respect of these items will depend on what claims have been made in respect of other items which come within that definition in respect of which there is no dispute. Mr Newbery's counsel agreed in closing submissions that, if I held that the items were works of art, as that term was defined in their policy, the appropriate course would be for me to give judgment for the defendant dismissing the claim. I now formally do so.

[106] I anticipate that costs will follow the event. If there is no agreement reached in that regard, a memorandum as to costs is to be filed for AA Insurance before 24 October 2015. A memorandum in reply is to be filed by 11 November 2015. The memoranda are to be no longer than four pages.

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