



Federal Court of Australia

District Registry: New South Wales

Division: General

No: VID1360/2019

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

TAL LIFE LIMITED

Defendant

ORDER

JUDGE: CHIEF JUSTICE ALLSOP

DATE OF ORDER: 12 April 2021

WHERE MADE: Sydney

THE COURT DECLARES THAT:

1. The defendant (**TAL**) breached the requirements of s 13 of the *Insurance Contracts Act 1984* (Cth), on three (3) occasions, in that it failed to act towards the insured party (**Insured**), in respect of each matter arising under or in relation to the contract of insurance (**Policy**), with the utmost good faith, by failing to act towards the Insured with decency and fairness:
 - (a) on or around 30 June 2014, when TAL decided to avoid the Policy on the basis of non-disclosure or misrepresentation without first:
 - (i) telling the Insured of its retrospective investigation into her medical history and its concerns; and
 - (ii) affording the Insured a proper opportunity to address TAL and any material it was relying on and put material to TAL in relation to TAL's concerns prior to any decision to avoid;
 - (b) on 3 July 2014, when TAL sent a letter to the Insured to avoid the Policy (**Avoidance Letter**), asserting that she had breached her 'duty of good faith' where there was no basis for that accusation; and
 - (c) on 3 July 2014, when, by the Avoidance Letter, TAL threatened to recover amounts paid by TAL to the Insured after the commencement of the investigation, where those amounts had been paid to the Insured without the Insured having been informed by TAL that it was investigating whether it was entitled to avoid the Policy with the possible consequence that the benefits may have to be repaid, should there be an avoidance.



THE COURT ORDERS THAT:

2. The defendant pay 50% of the plaintiff's costs of the proceeding.
3. Otherwise, the parties bear their own costs of the proceeding.
4. All previous costs orders in this proceeding be vacated.
5. The amended originating process dated 10 July 2020 be otherwise dismissed.

Date that entry is stamped: 12 April 2021

Sia Lagos
Registrar