

THOUGHT LEADERSHIP

News

COURT FINDS PROPERTY OWNER WAS NOT INTENDED OR IMPLIED THIRD PARTY BENEFICIARY OF INSURANCE CONTRACT ISSUED TO LESSEE - INSURER'S SUMMARY JUDGMENT GRANTED

Newsbrief

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Recently, Judge Keith Ellison of the Federal District Court for the Southern District of Texas, granted an insurer's motion for summary judgment holding the Plaintiff was not an insured or an additional insured under the insurance Policy and thus had no contractual basis to bring a claim for coverage. *Bender Square Partners v. Factory Mutual Insurance Company, d/b/a FM Global, and PNS Stores, Inc.*, 2012 WL 208347; Civ. No. 4:10-cv-4295 (S.D.Tex., Jan. 24, 2012). The Court further held that Plaintiff was not entitled to proceeds from the Policy as a holder of the Policy's certificate of insurance since the certificate did not confer policy rights under Texas law. Additionally, the Court held that Plaintiff was never an intended third party beneficiary of the insurance policy as a matter of law.

Plaintiff, Bender Square Partners, sought to recover for losses it suffered as a result of Hurricane Ike in September 2008 to property it had leased to PNS Stores, Inc. According to Bender, the amounts it sought to recover were covered under a Commercial Property Insurance Policy that Factory Mutual Insurance Company, doing business as FM Global issued to Big Lots, Inc. and its subsidiaries, one of which is PNS Stores. Benders alleged that FM Global wrongfully refused to timely and fully pay and indemnify Bender for all losses covered under the Policy.

Plaintiff admitted it was not a named insured under the Policy, was not named as an additional insured in the Certificate, and was not an additional insured or loss payee on the Policy. Rather, Plaintiff claimed it was a named holder of the Certificate and was an intended or implied third-party beneficiary of the Policy.

However, the Court held that the terms of the certificate of insurance were subordinate to the terms of the insurance policy and the certificate did not confer any rights to Plaintiff under the policy. The Court also held that Plaintiff failed to meet its heavy burden of showing that it was an intended third-party beneficiary to the Policy. To qualify as a third-party beneficiary of the Policy, Bender must have shown (1) that it was not privy to the Policy; (2) that the Policy was actually made for its benefit; and (3) that the PNS Stores and FM Global intended for Bender to benefit by the Policy. The Court found that Plaintiff did not proffer any evidence to support the inference that it was an intended third-party beneficiary.

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Finally, as to Plaintiff's claim that it was an implied third-party beneficiary, the Court found that the insurance policy did not require PNS Stores to procure a policy issued in Bender's name. Accordingly, Bender was not an implied third-party beneficiary. Holding that Plaintiff was not an insured, additional insured, or third-party beneficiary to the Policy, the Court granted summary judgment as to all of Plaintiff's claims.