

THOUGHT LEADERSHIP

News

DALLAS COURT OF APPEALS UPHOLDS SUMMARY JUDGMENT AGAINST LANDLORD SUING AS LOSS PAYEE UNDER TENANT'S POLICY

Newsbrief

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The Dallas Court of Appeals recently affirmed a summary judgment granted against a commercial landlord holding the landlord was not entitled to sue based on property insurance policy that named the landlord only as a loss payee. In *Ostrovitz & Gwinn, LLC v. First Specialty Ins. Co.*, No. 05-11-00143-CV, 2012 WL6559516 (Tex. App.—Dallas Dec. 13, 2012), the landlord had sued following a claim for fire damage at the subject property, asserting claims including breach of contract, violations of the Texas Deceptive Trade Practices Act and Insurance Code, negligence, and negligent misrepresentation. The trial judge granted summary judgments on all claims but one on various traditional and no-evidence grounds, and the landlord voluntarily non-suited the remaining claim.

The court of appeals affirmed the trial court's judgment in all respects. The breach of contract claim under the policy did not survive, first, because the landlord as loss payee was not a party to the policy, and second, because the landlord did not qualify as a third party beneficiary. The court of appeals acknowledged that no Texas case had explicitly evaluated whether being named as a loss payee confers third party beneficiary status. After reviewing the parties authorities and extrinsic evidence, the court determined that "the insurance policy does not clearly and fully spell out" an intention by the tenant and the insurer to confer a direct benefit on the landlord. A secondary breach-of-contract claim based on a document entitled "Evidence of Property Insurance" ("EPI") also failed because it was not a contract directly between the landlord and the insurer.

As for the extra-contractual claims, the Court first disposed of the landlord's DTPA and Insurance Code claims by determining that nothing was misleading about the policy or EPI certificate. While the documents may have been "unclear as to what rights [the]andlord enjoyed under the policies," but clearly set forth that the landlord was a loss payee only, and not an additional insured. The negligent misrepresentation claim failed for the same reasons. Finally, the negligence claim was unsupported by any evidence of a duty on the part of the insurer. The tenant requested that the landlord be added to the policy as a loss payee, which the insurer did; there was no duty to provide coverage beyond this request.