

THOUGHT LEADERSHIP

News

## U.S. DISTRICT COURT GRANTS SUMMARY JUDGMENT IN FAVOR OF INSURER ON CONTRACTUAL AND EXTRA-CONTRACTUAL CLAIMS

Newsbrief

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Last week, the United States District Court for the Northern District of Texas, Fort Worth Division, granted summary judgment in favor of Lexington Insurance Company on insured's breach of contract and extra-contractual claims. In *Univ. Baptist Church of Fort Worth v. Lexington Ins. Co.*, No. 4:17-CV-962-A, 2018 WL 4938567 (N.D. Tex. [Fort Worth Division], Oct. 11, 2018, mem. op.), the church building owned by University Baptist Church of Fort Worth ("UBC") sustained hail and windstorm damage to its tile roof. UBC's church was insured by Lexington Insurance Company ("Lexington"), including \$250,000 in coverage for code upgrades. An independent adjusting firm worked with UBC and its roofing contractor to define the needed repairs. To that end, the contractor included Ludowici roof tile in its proposal, but the independent adjuster did not approve the overall price of the proposal, so Vereia tile was used instead. The roof was repaired and upgraded to code as required. The total cost of the code upgrade work exceeded the code upgrade sublimit by over \$500,000. Lexington paid UBC the cost to repair the roof and the policy limit of \$250,000 for the code upgrade work.

Unsatisfied, UBC brought suit against Lexington alleging that Vereia is of lesser quality and durability than Ludowici and that by causing the Vereia tile to be used, Lexington breached the provision of the policy that required it to pay "the cost to repair, replace and rebuild the property with material of like kind and quality." UBC also alleged that Lexington breached its common law duty of good faith and fair dealing. UBC also brought claims under Chapters 541 and 542 of the Texas Insurance Code, alleging that Lexington (1) failed to attempt in good faith to effectuate a prompt, fair and equitable settlement, (2) failed to promptly provide UBC with a reasonable explanation of the basis for Lexington's denial of payment above the sublimit for code upgrade work, and (3) refused to pay UBC's claim without conducting a reasonable investigation. In response, Lexington sought summary judgment on all the claims, arguing that it performed its policy contractual obligations and that there was no evidence to support the extra-contractual claims.

As summary-judgment evidence, the roofing contractor and independent adjuster each submitted affidavits. The contractor stated that Vereia was an inferior tile product that had to be used to bring the project in line with the price the adjuster would approve. The adjuster stated that, per the proposal, if the roof had been repaired with Ludowici tiles, the "like kind and quality repair" would have been to remove and re-lay some tiles and replace the remaining tiles in the damaged area of the roof with matching tile from salvage yards. The adjuster further stated that the work

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actually done using the Vereia tiles consisted of replacing all the tiles in the damaged area of the roof and, as such, UBC received better than a like kind and quality repair.

As to UBC's claim of breach of contract, the court found that the summary-judgment evidence established that UBC suffered no damages by use of the new Vereia tiles instead of the used Ludowici tiles. The court held that the absence of damages was fatal to UBC's claim and granted summary judgment in favor of Lexington.

As to UBC's extra-contractual claims, the court held that all the claims failed as a matter of law. The court held that UBC's (factually unidentified) claim of breach of duty of good faith and fair dealing failed as a matter of law because Lexington did not breach the policy contract and in the absence of a breach "there is no violation of [Lexington's] duty to act in good faith and deal fairly with the insured." The court held that UBC's claims under the Texas Insurance Code failed because Lexington timely paid UBC the full amount it was entitled to under the policy. Further, Lexington was not required to provide UBC an explanation of its code upgrade policy limit or why it was not paying more than the \$250,000 limit for the code upgrade work because the policy itself disclosed the limit and "an insured party is deemed to know the contents of its insurance policy."