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News

HOUSTON APPEALS COURT AFFIRMS TRIAL COURT'S ISSUANCE OF SUMMARY JUDGMENT IN FAVOR OF INSURER DISMISSING INSURED'S CLAIMS FOR BREACH OF CONTRACT AND VIOLATIONS OF THE INSURANCE CODE

Newsbrief

20 APR 2021

Last week, an appeals court in Houston affirmed the trial court's decision to dismiss an insured's claims against her insurer for breach of contract and alleged violations of the Insurance Code.

Powell v. USAA Cas. Ins. Co., No. 01-19-00308, 2021 WL 1414217 (Tex. App.—Houston [1st Dist.] Apr. 15, 2021) involved an insured's claim for coverage under a homeowner's policy that was denied by an insurer because the insured presented no evidence that her claimed losses were covered under the policy or occurred during the policy period.

In 2010, the insured purchased a home that was in disrepair and agreed as part of the purchase to make repairs to the home. Indeed, the insured spent at least \$100,00 repairing the pool, fence, air conditioner, plumbing, roof leaks, and broken windows and doors. Between 2014 and 2016, the insured obtained three homeowner's policies from the insurer, but the only one at issue was one issued on April 5, 2016 and was effective for one year. The policy provided coverage against "sudden and accidental," direct, physical loss to tangible property caused by a covered peril that was not subject to an exclusion. Such exclusions included windstorm or hail, wear and tear marring, deterioration, vermin, or damage caused directly or indirectly by water damage arising from any of the aforementioned sources. Additionally, a condition of coverage under the policy was that the loss occurred during the policy period.

On April 17-18, 2016, the Houston-area experienced massive flooding, and the insured made a claim with FEMA for flood damage to her house. The claim was approved by FEMA, and the insured was paid to repair flood damage to several rooms and items of personal property.

On June 14, 2016, the insured file a claim with the insurer for damage to the interior of her home from an air conditioner leak and an overflowing washing machine. The insurer acknowledged the claim that same day and subsequently sent a plumber to inspect the leaks. The plumber reported the washing machine overflowed due to tree roots in the drain line, and the air conditions leak was caused by pin-hole leaks in the piping that were not leaking at

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the time of the inspection and that condensation dripping off of uninsulated pipes may also have contributed to the water damage in the insured's home.

The insured hired a remediation company to address the washing machine overflow. The company found water damage due to a leaking drip pan under the air conditioning unit and additional minor damage from the April floods and stated that the winds blew tree limbs onto the roof, causing water damage to various ceilings in the home.

Upon inspection by the insurer's adjuster and a representative from the remediation company, the insurer determined that the insured had an air conditioning system leak, a roof leak, and a washing machine overflow that damage the master bedroom. It then hired a consulting firm to inspect the damage and determine the cause and origin of the damage.

On July 28, 2016, the consultants reported that hail on inch in diameter fell at the insured's home for more than twenty minutes on April 17, 2016. The report also concluded that neither wind nor hail damage caused the roof and attributed various Causes, such as gaps between plumbing vent pipes and flashing, animal damage to vent pies, and condensation leaks from the air conditioning system, unsealed brick veneer, and fractured roof decking from workers walking on the roof as causes of the water damaged observed in the home.

On August 8, 2016, the insurer inspected the property a second time. During this inspection, the insured made comments that raised concerns with the adjuster that the insured may have misrepresented the condition of her house when applying for the policy and when the damage allegedly occurred. The insurer thus referred the claim to their internal investigation unit, who obtained statement from the insured.

The insured first noticed wet carpet near the washing machine in March 2016 and first noticed damage in the wet bar in April 2016. She also made inconsistent statements as to the damage covered by FEMA. Moreover, in an examination under oath requested by the insurer, the insured's testimony called into question whether the washing machine overflowed after the effective date of the policy and whether the insured accurately described and valued her personal property damage.

In July 2016, the insurer denied the insured's claim, stating that the insured misrepresented and concealed facts in the presentation of the claim, as the insured admitted the washing machine leak occurred prior to the policy period's start date and could not recall when the damage from the air conditioner leak occurred. The insurer further determined the roof damage was caused by wear and tear and maintenance issues.

The insured filed suit, asserting claims for breach of contract and violations of the Insurance Code. The insurer followed by filing a motion for summary judgment, arguing that the insured had no evidence that her claimed losses were covered under the terms of the policy or occurred during the policy period. The insurer also pointed out that the house was in disrepair with then insured purchased it and that it incurred damage prior to the effective date of the policy, and the damage was not covered under the policy.

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First, the insured responded by arguing that the insurer could not seek summary judgment on a ground not raised in its rejection letters, which the Court summarily denied, holding that even if such an argument was supported by prior case law, the insurer's reasoning for rejecting her claim was not inconsistent with what was in its rejection letters.

Second, the insured argued a fact issue existed as to whether the roof leaks were caused by wind or hail during the floods rather than gradual, long-term leaks. The Court initially held that, under the terms of the policy at issue, the physical damage to tangible property would be covered only if the damage occurred during the policy period. Because the insured admitted the washing machine leak occurred prior to the start of the policy period, and because the insured did not provide any evidence to show that her air conditioning leak occurred during the policy period, the Court concluded summary judgment was appropriate. As to her claim for the roof damage, the insured argued that disputed facts existed because, although she could not say exactly when the damage occurred, the insured's consultant reported that hail had hit her house on April 17, 2016 for more than twenty minutes. However, the insured also admitted that the damage could have occurred in 2013 or 2015, which the Court held precluded a genuine issue of material fact. Thus, summary judgment was appropriate on the roof issue as well.

The Court affirmed the summary judgment on the issue of whether any delay by the insurer in investigating the claim exacerbated the insured's mold issues because the policy expressly excluded such damage, and the insured failed to provide evidence to create an issue of material fact. The Court also upheld the summary judgment as to whether the policy covered flood damage because the insured conceded that the policy expressly excluded such damage. Finally, the Court pointed out that the insured did not argue or point to any evidence showing the insurer violated the Insurance Code, so the summary judgment as to that claim was affirmed as well.