

THOUGHT LEADERSHIP

News

COURT FINDS INSUFFICIENT EVIDENCE TO SUPPORT JUDGMENT AGAINST PROPERTY INSURER FOR CONTRACTOR'S ALLEGED THEFT OF INSURANCE PROCEEDS

Newsbrief

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The Fort Worth Court of Appeals recently reversed a trial court judgment in a case where an insurer failed to pay additional amounts after a contractor stole some of the insurance proceeds meant for repairs. In *Argonaut Great Central Insurance Company v. MLLCA, Inc.*, 2021 WL 1919641, (Tex.App.—Fort Worth, May 13, 2021), the court examined a trial court's judgment after a jury found against Argonaut on claims for fraud and fraud by nondisclosure, breach of contract, insurance code violations, violations of the duty of good faith and fair dealing, and deceptive trade practices.

In November 2015, a hailstorm struck Decatur, Texas. The storm hit a gas station owned by MLLCA, damaging the roof of the station and the canopies over the gas pumps. MLLCA presented a claim to Argonaut which assigned the claim to an independent adjuster, Vericclaim. MLLCA arranged for a roofing company, RS Roofing, to submit an estimate for repairs. Vericclaim asked for an itemized bid that did not include certain repairs which were unnecessary, but RS Roofing would not provide one. Negotiations between Vericclaim and RS Roofing broke down over itemization and the scope of repairs, and RS Roofing became unresponsive. Argonaut requested another bid, so Vericclaim asked a contractor named Frank Walley to evaluate the damage and MLLCA ultimately decided to hire Walley as its contractor. Argonaut and Walley agreed on the total cost of repairs. Pursuant to the policy, the actual cash value amount would be disbursed first, followed by additional payments as the completion of repairs demanded. MLLCA agreed to the plan, but it asked to have the check made jointly payable to MLLCA and Walley. When the check was received, MLLCA endorsed it over to Walley.

Walley gave some of the proceeds back to MLLCA and did some of the work. However, Walley ultimately took the remaining funds without completing the work. MLLCA's owners used their own money to pay for the completion of repairs to the canopies, but not all the remaining work. Argonaut declined to release the remaining funds, because its obligation to pay the full repair cost would be triggered under the policy only if MLLCA documented more than the actual cash value payment in expenses on completed repairs.

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MLLCA filed suit. At trial, MLLCA argued that Argonaut breached the policy by refusing to pay the remaining \$95,000 in repair costs. The jury found against Argonaut on MLLCA's claims for fraud and fraud by nondisclosure, breach of contract, insurance code violations, violations of the duty of good faith and fair dealing, and deceptive trade practices. MLLCA elected to recover on its fraud claims the trial court rendered judgment accordingly, with four alternative recoveries in the event the appellate court reversed the judgment on the fraud claims. Argonaut appealed, and MLLCA cross-appealed.

On appeal, Argonaut argued that there was insufficient evidence to support the fraud, DTPA and breach of contract claims. The court agreed. The court also found that because the policy had not been breached, and there was no evidence of independent injury to support the "narrow" exception, the claims for breach of the insurance code and the duty of good faith and fair dealing also failed. The court reversed the trial court's judgment and rendered judgment that MLLCA take nothing.