CFN: 20180043021 BOOK 30836 PAGE 1970
DATE:01/22/2018 09:29:35 AM
HARVEY RUVIN, CLERK OF COURT, MIA-DADE CT

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

Leroy Venisse,

Plaintiff,

vs.

Federated National Insurance Company,

Defendant.
_____/

CIVIL DIVISION
CASE NO.: 15-15478 CA 01 (22)

FINAL SUMMARY JUDGMENT

I. INTRODUCTION

The dispositive question in this first party property insurance dispute is whether the "duct" work that carries cooled air (or heat) throughout a house is part of the air conditioning "system" for purposes of the "Water Damage Exclusion Endorsement" within the homeowner's policy issued by Defendant, Federated National Insurance Company ("Federated). Federated insists that the duct work is a component of the air conditioning "system" and, as a result, this exclusion is triggered. Plaintiff, Leroy Venisse ("Venisse"), acknowledges that the "cause of loss [in this case] was due to excessive humidity and moisture caused by a failed/leaking Duct System." *See* Plaintiff's Response, p. 2; Affidavit of Plaintiff's Forensic Inspector, Jose Uz, ¶ 11 ("... the excessive humidity and moisture affecting the subject residence originates from a failed/leaking Duct system"). But in his view

the duct work is not part of the air conditioning "system" for purposes of the water damage exclusion or, at the very least, the policy is ambiguous on this point and must therefore be construed in favor of coverage.

For the reasons discussed below the Court concludes that the "loss" Plaintiff seeks compensation for falls comfortably within the scope of the "Water Damage Exclusion Endorsement." The Defendant is therefore entitled to Final Summary Judgment.[1]

II. ANALYSIS

Plaintiff again acknowledges that the "loss" at issue here was caused by excess humidity and moisture originating in the home's duct system. The homeowner's policy issued by Federated – policy number FH-0000080126-11 – is an "all risk" policy that contains the following exclusion:[2]

SECTION I –EXCLUSIONS

> We do not insure for loss caused directly or indirectly by any of the following. Such loss is excluded regardless of any other cause or event contributing concurrently or in any sequence to the loss. These

[1] Plaintiff points out that while covering this division Judge Ruiz denied summary judgment, and urges the Court not to "undo" his ruling. The record, however, reflects that the prior motion was denied "without prejudice" because at that time the origin of the loss was unsettled. Furthermore, even if Judge Ruiz had denied summary judgment on an identical record, this Court always has the power to reconsider such an interlocutory ruling. *Wasa Intern. Ins. Co. v. Hurtado*, 749 So. 2d 579 (Fla. 3d DCA 2000).

[2] An "all risk" policy provides coverage "for all fortuitous loss or damage other than that resulting from willful misconduct or fraudulent acts," unless "the policy expressly excludes the loss from coverage." *Fayad v. Clarendon Nat. Ins. Co.*, 899 So. 2d 1082 (Fla. 2005); *Citizens Prop. Ins. Corp. v. Munoz*, 158 So. 3d 671 (Fla. 2d DCA 2014) ("an insured seeking coverage pursuant to an 'all risk' policy must prove only that a loss occurred to the property during the policy period").

> exclusions apply whether or not the loss event results in widespread damage or affects a substantial area.
>
> (5) Discharge or overflow of water or steam from within a plumbing, heating, *air conditioning* or automatic fire protective sprinkler *system* or from within a household appliance

See Policy, Water Damage Exclusion Endorsement (emphasis added). The question then is again simple: is the "duct" work part of a home's air conditioning "system"?

The legal principles to be applied in resolving that question are well settled. Like any contract, an insurance agreement is "construed in accordance with the plain language of the policy as bargained for by the parties." *Fayad v. Clarendon Nat. Ins. Co.*, 899 So. 2d 1082 (Fla. 2005); *Auto-Owners Ins. Co. v. Anderson*, 756 So. 2d 29, 33 (Fla. 2000). The Court should read the policy "as a whole, endeavoring to give every provision its full meaning and operative effect," and the contract should receive a construction that is "reasonable, practical, sensible, and just." *See Gen. Star Indem. Co. v. W. Florida Vill. Inn, Inc.*, 874 So. 2d 26 (Fla. 2d DCA 2004). And "[i]f the relevant policy language is susceptible to more than one reasonable interpretation, one providing coverage and the [other] limiting coverage, the insurance policy is considered ambiguous," *Taurus Holdings, Inc. v. U.S. Fid. & Guar. Co.*, 913 So. 2d 528, 532 (Fla. 2005), and must be liberally construed in favor of coverage. *Washington Nat. Ins. Corp. v. Ruderman*, 117 So. 3d 943 (Fla. 2013); *St. Paul Fire & Marine Ins. Co. v. Llorente*, 156 So. 3d 511 (Fla. 3d DCA 2014). It

also is well settled that the interpretation of an insurance contract presents a question of law because: (a) the interpretation of an unambiguous contract provision raises no factual dispute; and (b) even if the relevant provision is found to be ambiguous (i.e., susceptible to more than one reasonable interpretation) the ambiguity is to be construed against the insurer and in favor of coverage. *See Penzer v. Transp. Ins. Co.*, 29 So. 3d 1000 (Fla. 2010); *Stuyvesant Ins. Co. v. Butler*, 314 So. 2d 567 (Fla. 1975); *Jones v. Utica Mut. Ins. Co.*, 463 So. 2d 1153, 1157 (Fla. 1985).

While there is no doubt that an exclusion susceptible to more than one *reasonable* meaning must be construed in favor of the insured, *see Excelsior Ins. Co. v. Pomona Park Bar & Package Store*, 369 So. 2d 938 (Fla. 1979), a policy is not ambiguous merely "because the litigants ascribe different meanings to the language employed—something that occurs every time the interpretation of a contract is litigated." *City of Pompano Beach v. Beatty*, 222 So. 3d 598, 600 (Fla. 4th DCA 2017). So in determining whether an insurance contract is truly "ambiguous," the Court's duty is to apply its terms as they would be understood by the "man-on-the-street", and ascertain whether the provision at issue is *reasonably* susceptible to more than one meaning. *State Farm Fire & Cas. Co. v. Castillo*, 829 So. 2d 242 (Fla. 3d DCA 2002). The Court should not strain to find "ambiguity" when the policy, as plainly written, is subject to only one *reasonable* construction. Nor should the Court "re-write" the parties' agreement under the guise of judicial construction.

Gulliver Sch., Inc. v. Snay, 137 So. 3d 1045 (Fla. 3d DCA 2014) ("[w]here contracts are clear and unambiguous, they should be construed as written, and the court can give them no other meaning"); *Pol v. Pol*, 705 So. 2d 51, 53(Fla. 3d DCA 1997) ("a court cannot rewrite the clear and unambiguous terms of a voluntary contract").

Though the word "system" is not defined in the Federated policy, this lack of a definition does not an ambiguity make. *See Jefferson Ins. Co. of New York v. Sea World of Florida, Inc.*, 586 So. 2d 95 (Fla. 5th DCA 1991). Rather, the Court may – and should – look to the word's accepted meaning. *See Sosa v. Safeway Premium Fin. Co.*, 73 So. 3d 91, 104 (Fla. 2011) (when a term is not defined, courts must look to its plain and ordinary meaning, which can be discerned from a dictionary). As our Supreme Court noted in *Sch. Bd. of Escambia County v. State*, 353 So. 2d 834 (Fla. 1977), a "system" is generally defined as "a complex unity formed of many often diverse parts subject to a common plan or serving a common purpose." *Id.* at 838, citing *Webster's Third New International Dictionary (unabr.1960). See also,* Webster's New World Dictionary, defining "system" as "a group of devices or artificial objects or an organization forming a network especially for distributing something or serving a common purpose, a telephone *system,* a heating *system,* a highway *system,* a computer *system*" (emphasis added). Similarly, the Florida Building Code, Residential 6th Edition (2017), defines "Air-Conditioning System" as "[a] system that consists of heat exchangers, blowers, filters, supply, exhaust and

return-air systems, and shall include any apparatus installed in connection therewith". *See* Chapter 2, Section R202, Definitions.

Applying these settled legal principles and definitions here, this Court has no difficulty concluding that the ordinary "man" (or "woman") on-the-street would understand that the duct work in a home, which delivers cooled air (or heat) from the air conditioning unit to the residence, is part of the "air conditioning system." This is precisely why that necessary distribution component is commonly referred to as an "ac-duct." The duct work is an integral part of a unit which serves a common plan or purpose; namely, to disburse cooled air (or heat) from the air conditioning unit to the rooms in the house. And just as a hose is part of a gas pump, duct work is part of a home's ac "system."

To be sure, Federated could have made the exclusion longer and more complicated by trying to identify and list each and every component part of every referenced "system," including the ac "system," plumbing "system," sprinkler "system", etc. But its failure to do so does not, in this Court's view, render the exclusion ambiguous. The carriers responsibility is to draft its policy "so that the average person can clearly understand what he is buying," not to comprehensively define every word and phrase used. *Hartnett v. S. Ins. Co.*, 181 So. 2d 524 (Fla. 1965). And when an insurer does fail to clearly draft its policy, this Court has not hesitated to find its contract ambiguous and resolve that ambiguity in favor of

coverage. *See, e.g., Sky Bell Asset Mgmt., et. al., vs. Nat. Union Fire Ins. Co. of Pittsburgh, P.A. et. al.,* 23 Fla. L. Weekly Supp. 535a (11th Jud. Cir. Dec. 17, 2015); *Sharon Urscheler v. Coastal Construction,* 24 Fla. L. Weekly Supp. 31a (11th Jud. Cir. April 22, 2016); *Suarez v. State Farm,* 24 Fla. L. Weekly Supp. 27c (11th Jud. Cir. April 14, 2016). This policy, however, clearly placed the insured on notice – in plain English – that a "loss" caused by leaky duct work is excluded from coverage, as duct work is undoubtedly part of the home's air conditioning "system."

The Defendant's Renewed Motion for Summary Judgment is GRANTED. Final Summary Judgment is hereby entered in favor of Defendant and Plaintiff shall go hence without day. The Court reserves jurisdiction to address any post judgment matters including, but not limited to, any motions for attorney's fees and costs.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida this 18th day of January, 2018.

MICHAEL A. HANZMAN
CIRCUIT COURT JUDGE

Copies furnished to:
Sagi Shaked, Esquire
sagi@shakedlaw.com
Sebastian A. Larrea, Esquire
slarrea@kirwanspellacy.com
Alex Zatik, Esquire
azatik@kirwanspellacy.com