2004 WL 574676

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of Connecticut,
Judicial District of Fairfield.

GEMINI COLOR LAB, INC.

v.

HARTFORD CASUALTY INSURANCE CO.

No. CV020391504S.
|
March 8, 2004.

Attorneys and Law Firms

Rosati & Rosati, Stratford, for Gemini Color Lab Inc.

Stuart G. Blackburn Law Offices, Windsor Locks, for Hartford Casualty Insurance Company.

Opinion

RUSH, J.

***1** Gemini Color Lab, Inc. (the plaintiff) instituted the present action against the Hartford Casualty Insurance Company (the defendant) seeking to recover sums claimed to have been due under a policy of insurance as a result of property damage caused by water. The defendant has denied coverage for the loss.

The policy of insurance contains a section on exclusions which excludes losses caused by "(1) Flood, surface water, waves, tides, tidal waves, overflow of any body of water, or their spray, all weather driven by wind or not"; and "(3) water that backs up from a sewer or drain." The policy also contains an endorsement (super stretch coverage) which provides insurance coverage for losses caused by "(2) Backup of Sewers or Drain Water."

On August 11, 2000 the Town of Stratford was subjected to a flash flooding condition which caused water to rise to a level of two and one half to three feet above ground level around the perimeter of plaintiff's property.

There is no doubt that water entered onto the plaintiff's property. The plaintiff claims that the water entered the property as a result of a backup from a drain connected to the sanitary sewer and therefore the loss is within the endorsement of the policy of insurance. The plaintiff presented expert evidence to establish that claim. The defendant claims that the water entered the property as a result of the flooding created by the rising water around the perimeter of the building and accordingly the loss is excluded under the terms of the policy of insurance. The defendant presented expert evidence to establish that claim.

The court finds that the damage to the plaintiff's property was caused by a backup of water through the drain on the plaintiff's property that was connected to the sanitary sewer. While the water level did rise around the perimeter of the plaintiff's building, that condition lasted only for a short period of time and within a couple of hours the flooding condition around the perimeter would have dissipated. The doors around the perimeter of the plaintiff's building were specifically inspected, and, while not water tight, they were insulated so as to provide a sufficient barrier to water entering the building at that source. The water coming from the doors would be incidental and in itself would not have reached a level inside of the building to have caused the damage in issue. Large quantities of water could enter the sanitary sewer system through the various manhole covers in the system causing an overload of the sanitary sewage system resulting in the backing up of water through the drain considering the nature of construction of the sewage system, the time of the storm, and the quantities of water entering the system, it would not be anticipated that raw sewage would be discharged into the building. Accordingly, the musty or low tide odor observed after the rain storm would be consistent with a back up from the sanitary sewer system drain.

***2** The defendant asserts that even if water were to have backed up through the sanitary sewer system, that back up was still caused by a flood and therefore coverage does not exist. However, "when the loss is a consequence of the invasion of the insured premises by non flood water, even though the invasion may have been proximately caused by flood water, the exclusion does not apply." *State Farm Lloyd v. Marchetti,* 962 S.W.2d 58, 61 (Court of Appeals, Texas) (1997).

The parties are in agreement that if a covered loss exists the policy limits are in the amount of $150,000.00. Following the loss the plaintiff purchased some $800,000.00 worth of equipment and attributes $334,998.89 of that amount to losses sustained as a result of the entry of water into the building. Payments for losses are covered in the policy as follows:

We will not pay more for loss or damage on a replacement cost[1] basis than the least of:

(i) the cost to replace, on the same premises, the lost or damaged property with other property of comparable material and quality and used for the same purpose; or
(ii) the amount you actually spend that is necessary to repair or replace the lost or damaged property.

Following the loss, the plaintiff experienced numerous breakdowns of the equipment and in many instances cannibalized parts of one piece of equipment to help make other equipment operable. The plaintiff also purchased used equipment when necessary and on occasions purchased new equipment. On other occasions the same type of equipment was not available in the market place and the plaintiff therefore purchased comparable equipment in order to keep his operation running.

The court therefore finds that the damages sustained by the plaintiff far exceeds the $150,000.00 policy limit.

Accordingly, judgment may enter in favor of the plaintiff against the defendant in the amount of $150,000.000.

All Citations

Not Reported in A.2d, 2004 WL 574676, 36 Conn. L. Rptr. 605

Footnotes

1 "In effect, replacement cost coverage goes beyond making the insured whole ... It also relieves the homeowner, however, of the obligation to fund the depreciation portion of a loss and shifts that obligation to the insurer, a benefit for which the homeowner pays an additional premium." *Northrop v. Allstate Insurance Co.*, 247 Conn. 242, 245 n. 3 (1998).