NEW YORK COURT OF APPEALS

Dean v. Tower Ins. Co. of N.Y.

19 N.Y.3d 704, 979 N.E.2d 1143 (2012) · Decided October 25, 2012

SUMMARY

The New York Court of Appeals held that the term "residence premises" in the homeowners' insurance policy was ambiguous under the circumstances, where the insureds owned the property, regularly worked there, occasionally slept there, and intended to move in after completing major repairs. The ambiguity and factual issues concerning residency and occupancy precluded summary judgment for the insurer.

CASE DETAILS

COURT	New York Court of Appeals
WRITING FOR THE COURT	Ciparick, J.; Ciparick; Jones
JURISDICTION	New York
DECIDED	October 25, 2012
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal by Tower from an order of the Appellate Division, First Department, that modified Supreme Court's summary judgment order and denied summary judgment; the Court of Appeals reviewed the case on a certified question.
STANDARD OF REVIEW	Summary judgment is appropriate only when there is no genuine issue of material fact; the insurer bears the burden of establishing that an exclusion or exemption applies and is subject to no other reasonable interpretation.
PRECEDENTIAL VALUE	Published New York Court of Appeals opinion; precedential within New York.
PARTIES	Tower Insurance Company of New York v. Douglas Dean, Joanna Dean

TOPICS

insurance coverage · contract interpretation · breach of contract · contracts

PRACTICE AREAS

insurance law contract law real estate law

QUESTIONS PRESENTED

1. Whether the term "residence premises" in the homeowners insurance policy was ambiguous where the insured owned the property, regularly occupied it while making major repairs, and intended eventually to move in.
2. Whether disputed facts concerning the insured's presence, occupancy, and intent precluded summary judgment on coverage.

HOLDINGS

1. The term "residence premises" was ambiguous under the circumstances because the policy defined it as the dwelling "where you reside," did not define "reside," and did not clearly resolve whether the insured's substantial occupancy during repairs satisfied the coverage requirement.
2. Summary judgment was inappropriate because issues of fact remained as to whether Douglas Dean's daily presence in the house, together with his intent to move in with his family, satisfied the policy's residence-premises requirement.

KEY QUOTATIONS

> *"Insurance contracts must be interpreted according to common speech and consistent with the reasonable expectation of the average insured"* (707)

> *"before an insurance company is permitted to avoid policy coverage, it must satisfy the burden which it bears of establishing that the exclusions or exemptions apply in the particular case, and that they are subject to no other reasonable interpretation"* (707)

> *"The standard for determining residency for purposes of insurance coverage requires something more than temporary or physical presence and requires at least some degree of permanence and intention to remain"* (708)

> *"Thus, there are issues of fact rendering summary judgment inappropriate in this matter."* (709)

FACTUAL BACKGROUND

The Deans purchased a home in Irvington, obtained a homeowners policy effective on the scheduled closing date, and closed on May 20, 2005. After discovering extensive termite damage, Douglas Dean spent substantial time at the property repairing it, eating there daily, and occasionally sleeping there, while intending eventually to move in with his family. The house was substantially renovated when a fire destroyed it on May 15, 2006, and Tower disclaimed coverage because the dwelling was unoccupied and the Deans allegedly misrepresented their intent to live there.

PROCEDURAL HISTORY

After a fire destroyed the insured property, the Deans sued Tower for breach of the homeowners insurance contract. Supreme Court granted Tower summary judgment and dismissed the complaint. The Appellate Division modified, concluding that Tower failed to meet its prima facie burden and that the policy was ambiguous under the circumstances. The Court of Appeals affirmed and answered the certified question in the affirmative.

DISPOSITION

affirmed

CASES CITED

- Cragg v. Allstate Indem. Corp., 17 N.Y.3d 118, 122 (2011)
- Seaboard Sur. Co. v. Gillette Co., 64 N.Y.2d 304, 311 (1984)
- Breed v. Insurance Co. of N. Am., 46 N.Y.2d 351, 353 (1978)
- Government Empls. Ins. Co. v. Paolicelli, 303 A.D.2d 633, 633 (2d Dep't 2003)
- Matter of Aetna Cas. & Sur. Co. v. Gutstein, 80 N.Y.2d 773, 775 (1992)
- Matter of Allstate Ins. Co. (Rapp), 7 A.D.3d 302, 303 (1st Dep't 2004)
- Vela v. Tower Ins. Co. of N.Y., 83 A.D.3d 1050, 1051 (2d Dep't 2011)
- Page v. Nationwide Mut. Fire Ins. Co., 15 A.D.2d 306, 307 (3d Dep't 1962)
- Perrotta v. Middlesex Mut. Ins. Co., 37 A.D.2d 783, 783 (2d Dep't 1971)