UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Universal Image Productions, Inc. v. Federal Insurance Co.

475 F. App'x 569 (6th Cir. 2012) · No. 10-1564 · Decided April 10, 2012

SUMMARY

The Sixth Circuit affirmed summary judgment for Federal Insurance Company in a coverage dispute involving mold and bacterial contamination at Universal Image Productions' leased premises. Applying Michigan law, the court held that Universal had not shown a direct physical loss or damage because no insured property sustained tangible damage and the premises were not rendered uninhabitable or substantially unusable.

CASE DETAILS

COURT	United States Court of Appeals for the Sixth Circuit
WRITING FOR THE COURT	Griffin, Circuit Judge; Keith, Circuit Judge; Stranch, Circuit Judge
JURISDICTION	Federal
DECIDED	April 10, 2012
DOCKET	10-1564
DISPOSITION	affirmed
PROCEDURAL POSTURE	After the district court granted Federal summary judgment in a diversity action concerning coverage for mold and bacterial contamination, Universal appealed.
STANDARD OF REVIEW	De novo review of the district court's grant of summary judgment; the evidence is viewed in the light most favorable to the nonmoving party.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Universal Image Productions, Inc., also known as Universal Images v. Federal Insurance Company

TOPICS

insurance coverage · casualty insurance litigation · summary judgment · standard of review · appellate procedure

PRACTICE AREAS

insurance coverage · commercial litigation · appellate procedure

QUESTIONS PRESENTED

1. Whether mold, bacterial contamination, odor, and related operational disruption constituted direct physical loss or damage to insured property under the property insurance policy.
2. Whether the Evergreen building was rendered uninhabitable or substantially unusable so as to constitute direct physical loss despite the absence of tangible structural damage.
3. Whether Universal presented a genuine issue of material fact sufficient to preclude summary judgment.

HOLDINGS

1. Universal did not suffer direct physical loss or damage because it presented no evidence of tangible physical damage to insured property. Cleaning and moving expenses, lost undamaged improvements, and lost business income were economic losses rather than tangible physical losses.
2. Universal did not establish that the Evergreen building was uninhabitable or substantially unusable during remediation, and therefore could not establish direct physical loss under that alternative theory.
3. Universal did not establish that odor caused direct physical loss because the odor was localized, did not persist, and did not damage or require replacement of insured property.

KEY QUOTATIONS

> *"Universal did not suffer any tangible damage to physical property, nor were the Evergreen premises rendered uninhabitable or substantially unusable."* (475 F. App'x at 581)

FACTUAL BACKGROUND

Universal operated a television post-production business in leased commercial premises in Southfield, Michigan. After heavy rain, water intrusion, mold, bacteria, and odor were detected in the building's ductwork and walls, leading to HVAC shutdown, operational disruption, relocation of operations, and eventual vacatur during remediation. Experts did not recommend evacuation, did not identify notable airborne contamination requiring evacuation, and found no damage to Universal's physical property; remediation was completed by December 2002. Universal sought coverage for leasehold improvements, cleaning and moving expenses, lost business income, and other alleged losses under its property policy.

PROCEDURAL HISTORY

Universal filed suit in Michigan state court in May 2006 after Federal denied its property-insurance claim. Federal removed the action to the United States District Court for the Eastern District of Michigan based on diversity jurisdiction. Following discovery, the district court granted Federal's motion for summary judgment, concluding that Universal had not suffered direct physical loss. The Sixth Circuit affirmed.

DISPOSITION

affirmed

CASES CITED

- Longaberger Co. v. Kolt, 586 F.3d 459, 465 (6th Cir. 2009)
- Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986)
- Smith Wholesale Co. v. R.J. Reynolds Tobacco Co., 477 F.3d 854, 861 (6th Cir. 2007)
- Garden City Osteopathic Hospital v. HBE Corp., 55 F.3d 1126, 1130 (6th Cir. 1995)
- Erie Railroad Co. v. Tompkins, 304 U.S. 64 (1938)
- FL Aerospace v. Aetna Casualty & Surety Co., 897 F.2d 214, 218-19 (6th Cir. 1990)
- Heniser v. Frankenmuth Mutual Insurance Co., 534 N.W.2d 502, 504-05 (Mich. 1995)
- Mahnick v. Bell Co., 662 N.W.2d 830, 833 (Mich. Ct. App. 2003)
- Acorn Investment Co. v. Michigan Basic Property Insurance Ass'n, No. 284234, 2009 WL 2952677, at *1-*2 (Mich. Ct. App. Sept. 15, 2009) (per curiam)
- de Laurentis v. United Services Automobile Ass'n, 162 S.W.3d 714, 716-18, 723 (Tex. Ct. App. 2005)
- Citizens Insurance Co. v. Pro-Seal Service Group, Inc., 730 N.W.2d 682, 687 (Mich. 2007)
- Columbiaknit, Inc. v. Affiliated FM Insurance Co., No. Civ. 98-434-HU, 1999 WL 619100, at *6-*7 (D. Or. Aug. 4, 1999)
- MRI Healthcare Center of Glendale, Inc. v. State Farm General Insurance Co., 115 Cal. Rptr. 3d 27, 37-38 (Cal. Ct. App. 2010)
- Mastellone v. Lightning Rod Mutual Insurance Co., 884 N.E.2d 1130, 1144 (Ohio Ct. App. 2008)
- Port Authority of New York & New Jersey v. Affiliated FM Insurance Co., 311 F.3d 226, 236 (3d Cir. 2002)
- Prudential Property & Casualty Co. v. Lillard-Roberts, CV-01-1362-ST, 2002 WL 31495830, at *9 (D. Or. June 18, 2002)
- Murray v. State Farm Fire & Casualty Co., 509 S.E.2d 1, 16-17 (W. Va. 1998)
- Western Fire Insurance Co. v. First Presbyterian Church, 437 P.2d 52, 55 (Colo. 1968)
- Essex Insurance Co. v. BloomSouth Flooring Corp., 562 F.3d 399, 406 (1st Cir. 2009)
- Arbeiter v. Cambridge Mutual Fire Insurance Co., No. 9400837, 1996 WL 1250616, at *2 (Mass. Super. Ct. Mar. 15, 1996)
- Farmers Insurance Co. of Oregon v. Trutanich, 858 P.2d 1332, 1335 (Or. Ct. App. 1993)