SEVENTH COURT OF APPEALS OF TEXAS AT AMARILLO

In re Century Surety Company, Relator

In re Century Surety · No. 07-15-00386-CV · Decided November 2, 2015

SUMMARY

This document is Century Surety Company's reply to the real party in interest's response to Century's petition for writ of mandamus in the Seventh Court of Appeals of Texas. It argues that Century did not waive its contractual appraisal rights, that the opposing party failed to establish prejudice, and that the trial court should sever and abate extra-contractual claims following Century's settlement offer. The filing concerns an original proceeding arising from the 320th Judicial District Court of Potter County, Texas.

CASE DETAILS

COURT	Seventh Court of Appeals of Texas at Amarillo
JURISDICTION	Texas
DECIDED	November 2, 2015
DOCKET	07-15-00386-CV
DISPOSITION	other
PROCEDURAL POSTURE	Reply brief in Century Surety Company's petition for writ of mandamus challenging the trial court's rulings on appraisal and severance and abatement of extra-contractual insurance claims.
STANDARD OF REVIEW	Mandamus relief requires the relator to show that the trial court clearly abused its discretion and that no adequate remedy by appeal exists. The brief contends that the trial court abused its discretion by misapplying the law concerning appraisal, waiver, prejudice, severance, and abatement.
PRECEDENTIAL VALUE	none
PARTIES	Century Surety Company, Relator v. 1408 S. Jefferson, LLC, Real Party in Interest, Don R. Emerson, Respondent

TOPICS

writ of certiorari · appellate procedure · insurance · contract interpretation · commercial litigation

PRACTICE AREAS

appellate procedure | insurance | contracts | remedies | commercial litigation

QUESTIONS PRESENTED

1. Whether Century waived its contractual right to appraisal by defending the litigation, participating in discovery and mediation, or delaying its appraisal demand.
2. Whether 1408 S. Jefferson, LLC was required to show prejudice to establish waiver of the appraisal right and, if so, whether it demonstrated prejudice.
3. Whether Century's Rule 167 settlement offer covering all monetary claims required severance and abatement of the extra-contractual claims from the breach-of-contract claim.
4. Whether the trial court abused its discretion so that mandamus relief should issue.

KEY QUOTATIONS

> *“An impasse is not the same as a disagreement about the amount of loss. Ongoing negotiations, even when the parties disagree, do not trigger a party's obligation to demand appraisal.”* (Page 2)

> *“Rather, impasse requires "a mutual understanding that neither will negotiate further.""* (Page 2)

> *“Century's settlement offers on all of 1408 J's monetary claims require severance and abatement of the extra-contractual claims from the breach-of-contract action.”* (Page 9)

FACTUAL BACKGROUND

1408 S. Jefferson, LLC asserted insurance-related claims against Century Surety Company concerning property loss, including breach-of-contract and extra-contractual bad-faith claims. The parties negotiated, participated in mediation, and continued settlement discussions after suit was filed. Century invoked a policy appraisal provision after an alleged impasse and made a Rule 167 settlement offer covering all of the real party's monetary claims. Century argued that the appraisal clause was mandatory, that it had not waived appraisal or caused prejudice, and that the settlement offer required severance and abatement of the extra-contractual claims.

PROCEDURAL HISTORY

1408 S. Jefferson, LLC sued Century Surety Company in the 320th Judicial District Court of Potter County, Texas. Century moved to compel appraisal and to sever and abate the extra-contractual claims after making a settlement offer under Texas Rule of Civil Procedure 167. The trial court allegedly denied or improperly analyzed Century's motions, prompting Century to seek mandamus relief in the Seventh Court of Appeals.

DISPOSITION

other

CASES CITED

- Elledge v. Friberg-Cooper Water Supply Corp., 240 S.W.3d 869 (Tex. 2007)
- In re Acadia Ins. Co., 279 S.W.3d 777 (Tex. App.—Amarillo 2007, orig. proceeding)

- In re GuideOne Nat'l Ins. Co., 2015 WL 5050233 (Tex. App.—Dallas Aug. 27, 2015, orig. proceeding)
- In re GuideOne Nat'l Ins. Co., 2015 WL 5766496 (Tex. App.—Amarillo Sept. 29, 2015, orig. proceeding)
- In re State Farm Mut. Auto. Ins. Co., 395 S.W.3d 229 (Tex. App.—El Paso 2012, orig. proceeding)
- In re Trinity Universal Ins. Co., 64 S.W.3d 463 (Tex. App.—Amarillo 2001, orig. proceeding)
- In re Universal Underwriters of Tex. Ins. Co., 345 S.W.3d 404 (Tex. 2011)
- Jai Bhole, Inc. v. Employers Fire Ins. Co., 2014 WL 50165 (S.D. Tex. Jan. 7, 2014)
- Lund v. Giauque, 416 S.W.3d 122 (Tex. App.—Fort Worth 2013, no pet.)
- Palestine Contractors, Inc. v. Perkins, 386 S.W.2d 764 (Tex. 1964)