FLORIDA THIRD DISTRICT COURT OF APPEAL

Jeremy Koss, et al. v. Florida Insurance Guaranty Association, etc.

Koss · No. 3D21-1904 · Decided April 9, 2025

SUMMARY

The Florida Third District Court of Appeal affirmed summary judgment for Saint Johns Insurance Company in a dispute over water damage caused by a plumbing-system backup. The court held that the policy's water-damage exclusions applied regardless of the water's source and that the Limited Water Damage Coverage Endorsement capped covered losses at $10,000. The court also concluded that tear-out and other additional coverages did not apply because the underlying loss was excluded.

CASE DETAILS

COURT	Florida Third District Court of Appeal
WRITING FOR THE COURT	Lobree, J.; Fernandez, J.; Gordo, J.
JURISDICTION	Florida Third District Court of Appeal
DECIDED	April 9, 2025
DOCKET	3D21-1904
DISPOSITION	affirmed
PROCEDURAL POSTURE	The Kosses appealed a final summary judgment entered in favor of Saint Johns Insurance Company, Inc.; Florida Insurance Guaranty Association was substituted as appellee after Saint Johns became insolvent.
STANDARD OF REVIEW	De novo review applies to an order granting final summary judgment and to interpretation of an insurance policy.
PRECEDENTIAL VALUE	published
PARTIES	Jeremy Koss, Laura Koss v. Florida Insurance Guaranty Association

TOPICS

insurance coverage · contract interpretation · breach of contract · standard of review · appellate procedure

PRACTICE AREAS

insurance law · insurance coverage · contracts · appellate practice

QUESTIONS PRESENTED

1. Whether the policy's water-damage exclusions applied to damage caused by sewage water discharged from the home's cast-iron plumbing system.
2. Whether the policy provided separate or additional coverage for tear-out costs and other indirect losses beyond the $10,000 limit in the Limited Water Damage Coverage Endorsement.

HOLDINGS

1. The policy unambiguously excluded the Kosses' water damage because it excluded water, sewage, or other substances backing up through sewers or drains and water below the ground that seeped or leaked into a building regardless of source. The exclusion therefore applied even though the water originated from the home's plumbing system.
2. The Kosses were not entitled to additional coverage for tear-out costs or other indirect losses because those coverages applied only when the underlying loss resulted from a covered peril. Tear-out costs were part of the water-damage loss, not a separate and distinct coverage, and the Limited Water Damage Coverage Endorsement limited the covered water-damage claim to $10,000.

KEY QUOTATIONS

> *"Insurance policy construction is a question of law subject to de novo review."* (at 6)

> *"an insurance policy must be enforced in accordance with its unambiguous terms."* (at 6)

> *"The plain language of this section therefore excludes damage caused by water that exists below the ground which seeps or leaks into a building "regardless of its source.""* (at 8)

> *"Accordingly, we conclude the trial court properly found that the Kosses' claim was limited to $10,000 from the Limited Water Damage Coverage Endorsement."* (at 12)

FACTUAL BACKGROUND

The Kosses reported water damage to their home after a sewer-line or cast-iron-plumbing backup, which resulted in the discharge of sewage water. Saint Johns paid $10,000 under a Limited Water Damage Coverage Endorsement but denied additional coverage based on the policy's water-damage exclusions. The policy excluded water, sewage, or other substances backing up through sewers or drains and water below the ground that seeped or leaked into a building regardless of source.

PROCEDURAL HISTORY

The Kosses sued Saint Johns for breach of an insurance policy, alleging that the insurer failed to pay all losses arising from water damage caused by a plumbing-system backup. The parties filed competing amended motions for summary judgment. The circuit court granted Saint Johns' motion, denied the Kosses' motion, and entered an amended order concluding that the policy excluded the claimed losses and that the Limited Water Damage Coverage Endorsement provided only $10,000 in coverage. The Kosses appealed.

DISPOSITION

affirmed

CASES CITED

- Volusia County v. Aberdeen at Ormond Beach, L.P., 760 So. 2d 126, 130 (Fla. 2000)
- Arguelles v. Citizens Property Insurance Corp., 278 So. 3d 108, 111 (Fla. 3d DCA 2019)
- Government Employees Insurance Co. v. Macedo, 228 So. 3d 1111, 1113 (Fla. 2017)
- Penzer v. Transportation Insurance Co., 29 So. 3d 1000, 1005 (Fla. 2010)
- Fireman's Fund Insurance Co. v. Levine & Partners, P.A., 848 So. 2d 1186, 1187 (Fla. 3d DCA 2003)
- Eastern Florida Hauling, Inc. v. Lexington Insurance Co., 913 So. 2d 673, 676 (Fla. 3d DCA 2005)
- Cheetham v. Southern Oak Insurance Co., 114 So. 3d 257, 260, 263 (Fla. 3d DCA 2013)
- Panettieri v. People's Trust Insurance Co., 344 So. 3d 35, 38-40 (Fla. 4th DCA 2022)
- Liebel v. Nationwide Insurance Co. of Florida, 22 So. 3d 111, 115 (Fla. 4th DCA 2009)
- GeoVera Specialty Insurance Co. v. Glasser, 337 So. 3d 8, 13 (Fla. 4th DCA 2022)
- State Farm Mutual Automobile Insurance Co. v. Pridgen, 498 So. 2d 1245, 1248 (Fla. 1986)
- People's Trust Insurance Co. v. Banks, 388 So. 3d 862, 865 (Fla. 3d DCA 2023)
- Herrington v. Certain Underwriters at Lloyd's London, 342 So. 3d 767, 770 (Fla. 4th DCA 2022)