SUPREME COURT OF TEXAS

Richard Fiess and Stephanie Fiess v. State Farm Lloyds

Fiess v. State Farm Lloyds, 202 S.W.3d 744 (Tex. 2006) · No. No. 04-1104 · Decided August 31, 2006

SUMMARY

The Supreme Court of Texas answered a certified question from the United States Court of Appeals for the Fifth Circuit concerning whether an ensuing-loss provision in a Texas HO-B homeowners insurance policy provided coverage for mold contamination caused by otherwise covered water damage. The court held that the policy's express exclusion for loss caused by mold was unambiguous and was not overridden by the ensuing-loss provision. Two justices dissented, concluding that the provision was reasonably susceptible to an interpretation restoring coverage for certain mold losses.

CASE DETAILS

COURT	Supreme Court of Texas
WRITING FOR THE COURT	Justice Scott Brister; Chief Justice Jefferson; Justice Hecht; Justice Wainwright; Justice Green; Justice Johnson; Justice Willett; Justice Brister; Justice Medina; Justice O'Neill
JURISDICTION	Texas
DECIDED	August 31, 2006
DOCKET	No. 04-1104
DISPOSITION	other
PROCEDURAL POSTURE	The Supreme Court of Texas answered a certified question from the United States Court of Appeals for the Fifth Circuit concerning whether an ensuing-loss provision in a Texas HO-B homeowners policy provided coverage for mold contamination caused by otherwise covered water damage.
STANDARD OF REVIEW	De novo review of policy interpretation and summary judgment; whether an insurance-policy provision is ambiguous is a question of law.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Texas
PARTIES	Richard Fiess, Stephanie Fiess v. State Farm Lloyds

TOPICS

insurance coverage | casualty insurance litigation | contract interpretation | appellate procedure

PRACTICE AREAS

Insurance law | Property insurance | Contract interpretation | Appellate procedure

QUESTIONS PRESENTED

1. Whether the HO-B policy's ensuing-loss provision provided coverage for mold contamination caused by water damage that was otherwise covered by the policy.
2. Whether the policy's mold exclusion was ambiguous when read together with the ensuing-loss provision.
3. Whether prior versions of the HO-B policy, the Texas Department of Insurance's interpretation, or extrinsic evidence could create an ambiguity in the current policy.

HOLDINGS

1. The policy does not provide coverage for mold contamination merely because the mold resulted from water damage. The certified question was answered no.
2. The policy is unambiguous as to the mold exclusion; ambiguity cannot be created by differing interpretations, prior policies, an agency's nonformal interpretation, or a public policy concern.
3. The court declined to overrule Lambros and reaffirmed its construction of the ensuing-loss language.
4. The court did not decide the precise scope of the term 'water damage,' but held that mold coverage cannot be created by treating every leak or drip as water damage.

KEY QUOTATIONS

> *"The question instead is whether the language in an insurance policy provides such coverage — no more and no less."* (at 746)

> *"Ambiguities in the plain language must be settled in favor of consumers, but they must appear in the policy itself — we cannot create ambiguities from previous policies, an agency's interpretation, or a "mold crisis.""* (at 746)

> *"where the language is plain and unambiguous, courts must enforce the contract as made by the parties, and cannot make a new contract for them, nor change that which they have made under the guise of construction."* (at 753)

FACTUAL BACKGROUND

The Fiesses' home sustained substantial flood damage from Tropical Storm Allison, and mold was discovered when damaged drywall was removed. An examiner concluded that some mold resulted from pre-flood roof, plumbing, HVAC, door, and window leaks. State Farm paid $34,425 for mold remediation in areas associated with small pre-flood water leaks but maintained that mold damage was excluded under the policy.

PROCEDURAL HISTORY

After discovering mold in their home, the Fiesses sued State Farm in state court. State Farm removed the action to federal court and obtained summary judgment on the ground that the policy excluded mold and that the ensuing-loss provision did not restore coverage. The Fiesses appealed, and the Fifth Circuit certified the insurance-coverage question to the Supreme Court of Texas.

DISPOSITION

other

REMAND INSTRUCTIONS

None. The court answered the Fifth Circuit's certified question no.

CASES CITED

- Lambros v. Standard Fire Insurance Co., 530 S.W.2d 138 (Tex. Civ. App.—San Antonio 1975, writ ref'd)
- Balandran v. Safeco Insurance Co. of America, 972 S.W.2d 738 (Tex. 1998)
- National Union Fire Insurance Co. v. Hudson Energy Co., Inc., 811 S.W.2d 552 (Tex. 1991)
- National Union Fire Insurance Co. v. CBI Industries, Inc., 907 S.W.2d 517 (Tex. 1995)
- Progressive County Mutual Insurance Co. v. Sink, 107 S.W.3d 547 (Tex. 2003)
- Aetna Casualty & Surety Co. v. Yates, 344 F.2d 939 (5th Cir. 1965)
- Gustafson v. Alloyd Co., 513 U.S. 561 (1995)
- E. Texas Fire Insurance Co. v. Kempner, 27 S.W. 122 (Tex. 1894)
- Texas Farm Bureau Mutual Insurance Co. v. Sturrock, 146 S.W.3d 123 (Tex. 2004)
- Kelley-Coppedge, Inc. v. Highlands Insurance Co., 980 S.W.2d 462 (Tex. 1998)
- Grain Dealers Mutual Insurance Co. v. McKee, 943 S.W.2d 455 (Tex. 1997)
- Sharp v. State Farm Fire and Casualty Insurance Co., 115 F.3d 1258 (5th Cir. 1997)
- Continental Casualty Co. v. Downs, 81 S.W.3d 803 (Tex. 2002)
- City of Corpus Christi v. Public Utility Commission of Texas, 51 S.W.3d 231 (Tex. 2001)
- Christensen v. Harris County, 529 U.S. 576 (2000)
- Employers Casualty Co. v. Holm, 393 S.W.2d 363 (Tex. Civ. App.—Houston 1965, no writ)
- Allstate Insurance Co. v. Smith, 450 S.W.2d 957 (Tex. Civ. App.—Waco 1970, no writ)
- Park v. Hanover Insurance Co., 443 S.W.2d 940 (Tex. Civ. App.—Amarillo 1969, no writ)
- Weiner v. Wasson, 900 S.W.2d 316 (Tex. 1995)
- National Union Fire Insurance Co. v. CBI Industries, Inc., 907 S.W.2d 517 (Tex. 1995)
- State ex rel. McWilliams v. Town of Oak Point, 579 S.W.2d 460 (Tex. 1979)
- Foreca, S.A. v. GRD Development Co., 758 S.W.2d 744 (Tex. 1988)
- City of Keller v. Wilson, 168 S.W.3d 802 (Tex. 2005)