SUPREME COURT OF CONNECTICUT

Travelers Insurance Co. v. Namerow, 261 Conn. 784

805 A.2d 764 (2002) · Decided October 22, 2002

SUMMARY

The Connecticut Supreme Court, on en banc reconsideration, held that the pleadings and the intentional-loss exclusion in the homeowners insurance policy raised the civil arson defense. The court further held that motive is not an essential element of that defense, although evidence of motive may support the inference that the insured caused the fire. The court affirmed the judgments for Travelers Insurance Company.

CASE DETAILS

COURT	Supreme Court of Connecticut
WRITING FOR THE COURT	Katz, J.; Sullivan, C.J.; Borden, J.; Norcott, J.; Zarella, J.
JURISDICTION	Connecticut
DECIDED	October 22, 2002
DISPOSITION	affirmed
PROCEDURAL POSTURE	The defendants appealed from judgments entered for Travelers after a jury trial in consolidated actions concerning coverage under a homeowners insurance policy. After the Supreme Court initially affirmed, it granted the defendants' motion for reconsideration en banc limited to whether the pleadings raised the civil arson defense and whether motive was an element of that defense.
STANDARD OF REVIEW	The interpretation of pleadings and insurance-policy provisions is reviewed as a question of law. The propriety of jury instructions is reviewed to determine whether the charge correctly stated the governing law and was adequate in light of the pleadings and evidence.
PRECEDENTIAL VALUE	Published Connecticut Supreme Court opinion; precedential state appellate authority.
PARTIES	Robert Namerow, Barbara Namerow v. Travelers Insurance Company

TOPICS

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

PRACTICE AREAS

insurance | insurance coverage | appellate procedure | contracts

QUESTIONS PRESENTED

1. Whether the pleadings and homeowners insurance policy raised the civil arson defense.
2. Whether motive is an essential element that an insurer must prove to establish civil arson and avoid liability under an intentional-loss exclusion.
3. Whether the trial court properly refused to instruct the jury that Travelers had to prove motive.

HOLDINGS

1. The pleadings raised the civil arson defense because they alleged that the fire was incendiary and that the loss resulted from acts committed by or at the direction of the insured with intent to cause the loss.
2. Motive is not an essential element of the civil arson defense. An insurer need prove that the fire was intentionally caused by the insured or at the insured's direction, but motive may be considered as circumstantial evidence rather than as a mandatory element.

KEY QUOTATIONS

> *"Therefore, we conclude that motive is not an essential element in civil arson cases, and that, accordingly, the trial court's instructions in the present case were proper."* (at 804)

FACTUAL BACKGROUND

Travelers issued the Namerows a homeowners insurance policy covering fire loss but excluding loss caused by an act committed by or at the direction of the insured with intent to cause a loss. A fire destroyed most of the Namerows' home, and Travelers paid $50,000 in advances and approximately $374,577.83 to the mortgagee. Investigators found unweathered gasoline in the Mercedes-Benz and garage, concluded that gasoline had been poured in the garage, and determined that the fire was incendiary. The Namerows maintained that the fire accidentally began in the Mercedes-Benz, while Travelers contended that the Namerows caused or directed the fire.

PROCEDURAL HISTORY

Travelers sued the Namerows to recover insurance advances paid after a fire destroyed most of their home. The Namerows separately sued Travelers on multiple contract, tort, and statutory theories. The actions were consolidated and tried to a jury, which returned verdicts for Travelers; the trial court rendered judgment accordingly. The Supreme Court initially affirmed, declined to review an unpreserved evidentiary claim, and later reconsidered the jury-instruction issue en banc. On reconsideration, it affirmed the judgments.

DISPOSITION

affirmed

CASES CITED

- Travelers Ins. Co. v. Namerow, 257 Conn. 812, 778 A.2d 168 (2001)
- Cahill v. Board of Education, 198 Conn. 229, 502 A.2d 410 (1985)
- Beaudoin v. Town Oil Co., 207 Conn. 575, 542 A.2d 1124 (1988)
- Price v. Bouteiller, 79 Conn. 255, 64 A. 227 (1906)
- Tedesco v. Stamford, 215 Conn. 450, 576 A.2d 1273 (1990)
- Giulietti v. Connecticut Ins. Placement Facility, 205 Conn. 424, 534 A.2d 213 (1987)
- Dornfried v. October Twenty-Four, Inc., 230 Conn. 622, 646 A.2d 772 (1994)
- Doe v. Yale University, 252 Conn. 641, 748 A.2d 834 (2000)
- Hertz Corp. v. Federal Ins. Co., 245 Conn. 374, 713 A.2d 820 (1998)
- Heyman Associates No. 1 v. Ins. Co. of Pennsylvania, 231 Conn. 756, 653 A.2d 122 (1995)
- Verrastro v. Middlesex Ins. Co., 207 Conn. 179, 540 A.2d 693 (1988)
- Corosa Realty v. Covenant Ins. Co., 16 Conn. App. 684, 548 A.2d 473 (1988)
- Souper Spud, Inc. v. Aetna Casualty & Surety Co., 5 Conn. App. 579, 501 A.2d 1214 (1985), cert. denied, 198 Conn. 803, 503 A.2d 172 (1986)
- Aetna Casualty & Surety Co. v. Pizza Connection, Inc., 55 Conn. App. 488, 740 A.2d 408 (1999)
- O-So Detroit, Inc. v. Home Ins. Co., 973 F.2d 498, 501-502 (6th Cir. 1992)
- Jamaica Time Petroleum, Inc. v. Federal Ins. Co., 366 F.2d 156, 157 (10th Cir. 1966), cert. denied, 385 U.S. 1024 (1967)
- Sutton v. Northern Ins. Co. of New York, 681 F. Supp. 1221, 1224 n.4 (S.D. Miss. 1988)
- Moore v. Farmers Ins. Exchange, 111 Ill. App. 3d 401, 444 N.E.2d 220 (1982)
- Johnson v. Auto-Owners Ins. Group, 202 Mich. App. 525, 509 N.W.2d 538 (1993), cert. denied, 445 Mich. 936, 521 N.W.2d 606 (1994)
- Freeman v. St. Paul Fire & Marine Ins. Co., 72 N.C. App. 292, 324 S.E.2d 307 (1985), cert. denied, 313 N.C. 599, 330 S.E.2d 609 (1985)
- Giambra v. Aetna Casualty & Surety Co., 315 Pa. Super. 231, 461 A.2d 1256 (1983)