SUPREME COURT OF VIRGINIA

National Housing Building Corporation v. Acordia of Virginia Insurance Agency, Inc., 267 Va. 247

591 S.E.2d 88 (2004) · No. Record No. 030269 · Decided January 16, 2004

SUMMARY

The Supreme Court of Virginia held that a contractor could not recover remediation expenses from an insurance agency for negligently failing to name the contractor as an insured on a builders risk policy. The court concluded that the policy excluded losses caused by defective design and that no covered physical loss occurred because the anticipated damage to other property never materialized. The trial court's grant of the agency's motion to strike was affirmed.

CASE DETAILS

COURT	Supreme Court of Virginia
WRITING FOR THE COURT	Justice G. Steven Agee; Chief Justice Hassell; Justice Lacy; Justice Keenan; Justice Kinser; Justice Lemons; Justice Agee; Senior Justice Carrico
JURISDICTION	Virginia
DECIDED	January 16, 2004
DOCKET	Record No. 030269
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the trial court's grant of Acordia's motion to strike NHBC's evidence in an action alleging negligence and breach of an oral contract arising from the failure to name NHBC as an insured under a builders risk insurance policy.
STANDARD OF REVIEW	The Supreme Court reviewed the trial court's grant of the motion to strike NHBC's evidence and its legal determination that the claimed remediation expenses were not covered under the policy.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Virginia
PARTIES	National Housing Building Corporation v. Acordia of Virginia Insurance Agency, Inc., t/a Acordia of Virginia

TOPICS

insurance coverage duty to indemnify breach of contract negligence construction law

PRACTICE AREAS

insurance coverage insurance broker liability construction law contract law negligence

QUESTIONS PRESENTED

1. Whether NHBC could recover remediation expenses from Acordia when the builders risk policy would not have covered those expenses even if NHBC had been named as an insured.
2. Whether the policy's mitigation provision created coverage for expenses incurred to prevent potential damage when no covered property had suffered a loss.
3. Whether NHBC could recover the remediation expenses under a common-law duty to mitigate damages despite the absence of liability under the insurance policy.

HOLDINGS

1. The policy did not cover NHBC's remediation expenses because they arose from defective design and no covered property sustained a loss.
2. The policy's duty-to-mitigate provision did not create a right to reimbursement where no loss to covered property occurred and the claimed loss resulted from a noncovered cause.
3. NHBC could not recover the remediation expenses in contract or tort because Acordia's negligence was not a proximate cause of losses that were not covered by the policy.

KEY QUOTATIONS

> *"Such loss is a condition precedent to any compensation under the "Duties in the Event of Loss" section, A "`loss' to Covered Property", the Policy's predicate to mandatory mitigation, did not occur, and therefore no obligation to compensate NHBC arose under the Policy."* (591 S.E.2d at 91)

> *"Regardless of whether NHBC premises its theory of recovery on contract law or common law, it cannot recover damages where there is no liability."* (591 S.E.2d at 92)

FACTUAL BACKGROUND

NHBC served as general contractor for an apartment complex built on a steep slope requiring multiple retaining walls. NHBC defectively designed and built one retaining wall, which moved approximately eight feet, but no retaining wall other than that wall failed and no apartment building or other covered property sustained physical damage. NHBC undertook remedial measures to replace the defective wall and underpin uphill building foundations to prevent potential future damage, incurring expenses for which it sought recovery after Acordia failed to have NHBC listed as a named insured on a builders risk policy.

PROCEDURAL HISTORY

NHBC sued Acordia for negligence and breach of an oral contract, seeking remediation expenses incurred to repair and stabilize defective retaining walls and underpin nearby building foundations. The trial court found that

Acordia was negligent and that NHBC sustained $518,690.25 in remediation expenses, but ruled that the expenses would not have been covered by the policy even if NHBC had been named as an insured. The trial court therefore granted Acordia's motion to strike NHBC's evidence, and the Supreme Court of Virginia affirmed.

DISPOSITION

affirmed

CASES CITED

- Blue Cross & Blue Shield v. Keller, 248 Va. 618, 626, 450 S.E.2d 136, 140 (1994)
- Pilot Life Ins. Co. v. Crosswhite, 206 Va. 558, 561, 145 S.E.2d 143, 145 (1965)
- Southern Cal. Edison Co. v. Harbor Ins. Co., 83 Cal. App. 3d 747, 759-60, 148 Cal. Rptr. 106 (1978)
- Marefield Meadows, Inc. v. Lorenz, 245 Va. 255, 266, 427 S.E.2d 363, 369 (1993)
- Southern Railway Co. v. Lewis, 113 Va. 117, 120, 73 S.E. 469, 470 (1912)

INSTRUCTIONS FOR AN AI ASSISTANT