SUPREME COURT OF SOUTH CAROLINA

Harleysville Group Insurance v. Heritage Communities, Inc.

420 S.C. 321 (2017) · Decided July 26, 2017

SUMMARY

The South Carolina Supreme Court addresses cross-appeals concerning insurance coverage for construction defects at two condominium developments. The court considers whether resulting property damage and punitive damages were covered under commercial general liability policies, the application of a time-on-the-risk allocation, and the sufficiency of the insurer's reservation-of-rights letters. The court holds that generic reservations coupled with policy excerpts were insufficient to preserve coverage defenses concerning actual damages and emphasizes the insurer's duties when controlling the defense.

CASE DETAILS

COURT	Supreme Court of South Carolina
WRITING FOR THE COURT	John W. Kittredge, J.; Donald W. Beatty, C.J.; Kaye G. Hearn, J.; James E. Moore, A.J.; Costa M. Pleicones, A.J.
JURISDICTION	South Carolina
DECIDED	July 26, 2017
DISPOSITION	affirmed
PROCEDURAL POSTURE	Cross-appeals from declaratory judgment actions concerning coverage under commercial general liability insurance policies for construction-defect damages. The matters were certified from the court of appeals to the Supreme Court of South Carolina under Rule 204(b), SCACR.
STANDARD OF REVIEW	Because the declaratory actions concerned whether insurance coverage existed, they were actions at law. In an action at law tried without a jury, factual findings are not disturbed unless there is no evidence reasonably supporting them; the appellate court's scope of review is limited to correcting errors of law. Evidentiary rulings and other matters within the trial court's discretion are reviewed for abuse of discretion and resulting prejudice.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Harleysville Group Insurance v. Heritage Communities, Inc., Magnolia North Property Owners' Association, Riverwalk at Arrowhead Country

Club Horizontal Property Regime

TOPICS

insurance coverage | construction defects | duty to indemnify | declaratory relief insurance | appellate procedure

PRACTICE AREAS

insurance coverage | construction law | commercial litigation | appellate procedure

QUESTIONS PRESENTED

1. Whether the property owners' associations could challenge the adequacy of Harleysville's reservation of rights.
2. Whether generic reservation-of-rights letters, together with copies of policy provisions, sufficiently reserved Harleysville's right to contest coverage for actual damages.
3. Whether punitive damages were covered under the CGL policies' insuring agreement.
4. Whether the expected-or-intended exclusion barred coverage for punitive damages.
5. Whether actual loss-of-use damages were subject to time-on-the-risk allocation.
6. Whether punitive damages were subject to time-on-the-risk allocation.
7. Whether the general jury verdicts could be allocated using the time-on-the-risk formula despite the possibility that they included noncovered damages.
8. Whether the Special Referee abused his discretion in selecting the damage periods, policy periods, and allocation method and in resolving miscellaneous trial issues.

HOLDINGS

1. Under the exceptional circumstances presented—where the insured was defunct, the property owners' associations held final judgments, and the policy permitted direct suit—the associations could stand in the insured's shoes and challenge the adequacy of Harleysville's reservation of rights.
2. A reservation-of-rights letter that merely gives generic notice of potential noncoverage and attaches or incorporates policy provisions is insufficient to reserve the insurer's right to contest specific coverage issues, particularly when the insurer controls the defense.
3. Punitive damages were covered because the policies required payment of sums the insured became legally obligated to pay as damages arising from an occurrence, and the policies did not unambiguously limit covered damages to compensatory or actual damages.
4. The expected-or-intended exclusion did not bar coverage for punitive damages because Harleysville failed to prove that Heritage intended both the conduct and the specific property damage that resulted.
5. Actual loss-of-use damages at Riverwalk were progressive damages and therefore were subject to allocation under the time-on-the-risk formula.

6. Punitive damages were not subject to reduction under the time-on-the-risk multiplier on the facts of these cases.

KEY QUOTATIONS

> *"We agree with the Special Referee that generic denials of coverage coupled with furnishing the insured with a copy of all or most of the policy provisions (through a cut-and-paste method) is not sufficient."* (420 S.C. at 338)

> *"We find there is evidence in the record to support the Special Referee's finding that Harleysville's reservation letters were insufficient to reserve its right to contest coverage of actual damages"* (420 S.C. at 343)

> *"At the heart of the time-on-the-risk theory is the idea that the policy period is a temporal limitation upon an insurer's indemnity obligation."* (420 S.C. at 355)

FACTUAL BACKGROUND

Two condominium developments, Magnolia North and Riverwalk, were constructed between 1997 and 2000 and later developed substantial construction defects, including building-code violations, structural deficiencies, and water intrusion. The property owners' associations obtained general jury verdicts for actual and punitive damages against Heritage entities after Heritage conceded liability for negligent construction. Harleysville had defended the underlying suits while issuing reservation-of-rights letters, and then sought a declaration regarding coverage and allocation under its CGL policies.

PROCEDURAL HISTORY

Property owners' associations obtained judgments against Heritage entities in underlying construction-defect litigation. Harleysville then filed declaratory judgment actions seeking a declaration that it had no duty to indemnify Heritage or, alternatively, an allocation of covered damages. A Special Referee found that coverage was triggered, applied a time-on-the-risk allocation to actual damages, and found punitive damages covered. The parties filed cross-appeals, which were certified to the supreme court.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The Riverwalk calculation was modified to include actual loss-of-use damages in the time-on-the-risk allocation. The Magnolia North matter was affirmed without modification. No further remand instructions were stated.

CASES CITED

- Magnolia North Property Owners' Association v. Heritage Communities, 397 S.C. 348, 725 S.E.2d 112 (Ct. App. 2012)
- Pope v. Heritage Communities, 395 S.C. 404, 717 S.E.2d 765 (Ct. App. 2011)

- Crossmann Communities of North Carolina, Inc. v. Harleysville Mutual Insurance Co., 395 S.C. 40, 717 S.E.2d 589 (2011)
- L-J, Inc. v. Bituminous Fire & Marine Insurance Co., 366 S.C. 117, 621 S.E.2d 33 (2005)
- Auto Owners Insurance Co. v. Newman, 385 S.C. 187, 684 S.E.2d 541 (2009)
- Auto-Owners Insurance Co. v. Hamin, 368 S.C. 536, 629 S.E.2d 683 (Ct. App. 2006)
- City of Hartsville v. South Carolina Municipal Insurance & Risk Financing Fund, 382 S.C. 535, 677 S.E.2d 574 (2009)
- State Farm Mutual Automobile Insurance Co. v. James, 337 S.C. 86, 522 S.E.2d 345 (Ct. App. 1999)
- Transamerica Insurance Co. v. International Broadcasting Corp., 94 F.3d 1204, 1208-09 (8th Cir. 1996)
- Stoneridge Development Co., Inc. v. Essex Insurance Co., 382 Ill. App. 3d 731, 888 N.E.2d 633 (2008)
- United National Insurance Co. v. Waterfront New York Realty Corp., 948 F. Supp. 263 (S.D.N.Y. 1996)
- Tyger River Pine Co. v. Maryland Casualty Co., 170 S.C. 286, 170 S.E. 346 (1933)
- Remodeling Dimensions, Inc. v. Integrity Mutual Insurance Co., 819 N.W.2d 602, 618 (Minn. 2012)
- Desert Ridge Resort LLC v. Occidental Fire & Casualty Co. of North Carolina, 141 F. Supp. 3d 962, 966-68 (D. Ariz. 2015)
- Magnum Foods, Inc. v. Continental Casualty Co., 36 F.3d 1491, 1498 (10th Cir. 1994)
- Weber v. Biddle, 4 Wash. App. 519, 483 P.2d 155, 159 (1971)
- Duke v. Hoch, 468 F.2d 973, 979 (5th Cir. 1972)
- Pennsylvania Threshermen & Farmers' Mutual Casualty Insurance Co. v. Thornton, 244 F.2d 823 (4th Cir. 1957)
- South Carolina Department of Natural Resources v. Town of McClellanville, 345 S.C. 617, 550 S.E.2d 299 (2001)
- State v. Tuckness, 257 S.C. 295, 185 S.E.2d 607 (1971)
- Townes Associates v. City of Greenville, 266 S.C. 81, 221 S.E.2d 773 (1976)
- Boston Gas Co. v. Century Indemnity Co., 454 Mass. 337, 910 N.E.2d 290 (2009)
- Auto Owners Insurance Co. v. Rollison, 378 S.C. 600, 663 S.E.2d 484 (2008)
- Estate of Revis v. Revis, 326 S.C. 470, 484 S.E.2d 112 (Ct. App. 1997)
- McGill v. Moore, 381 S.C. 179, 672 S.E.2d 571 (2009)
- Schulmeyer v. State Farm Fire and Casualty Co., 353 S.C. 491, 579 S.E.2d 132 (2003)
- Clark v. Cantrell, 339 S.C. 369, 529 S.E.2d 528 (2000)
- Mitchell v. Fortis Insurance Co., 385 S.C. 570, 686 S.E.2d 176 (2009)
- Genay v. Norris, 1 S.C.L. (1 Bay) 6 (1784)
- Cooper Industries, Inc. v. Leatherman Tool Group, Inc., 532 U.S. 424, 432, 121 S.Ct. 1678, 149 L.Ed.2d 674 (2001)
- Pacific Mutual Life Insurance Co. v. Haslip, 499 U.S. 1, 15-16, 111 S.Ct. 1032, 113 L.Ed.2d 1 (1991)
- Mitchell v. Federal Intermediate Credit Bank, 165 S.C. 457, 164 S.E. 136, 140 (1932)
- BB&T v. Taylor, 369 S.C. 548, 633 S.E.2d 501 (2006)

- Outboard Marine Corp. v. Liberty Mutual Insurance Co., 283 Ill. App. 3d 630, 670 N.E.2d 740, 756-67 (1996)
- American Federal Bank, FSB v. No. One Main Joint Venture, 321 S.C. 169, 467 S.E.2d 439 (1996)
- Fetner v. Aetna Life Insurance Co., 199 S.C. 79, 18 S.E.2d 521 (1942)
- Waterpointe I Property Owners' Association v. Paragon, Inc., 342 S.C. 454, 536 S.E.2d 878 (Ct. App. 2000)
