UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Toussie v. Allstate Insurance Company

No. 20-1035, United States Court of Appeals for the Second Circuit (January 26, 2021)

SUMMARY

The Second Circuit affirmed dismissal of a breach of contract claim under a Standard Flood Insurance Policy (SFIP) because the insured failed to notify the insurer of non-receipt of renewal notices as required by 44 C.F.R. pt. 61, app. A(1), § VII(H)(3). The court vacated dismissal of a negligence claim against Allstate for its agent's misapplication of a premium payment, holding that the district court erred in finding the misapplication benefitted the insured as a matter of law, and remanded for consideration of agency and NFIP preemption issues.

CASE DETAILS

COURT	United States Court of Appeals for the Second Circuit
WRITING FOR THE COURT	GUIDO CALABRESI; REENA RAGGI; DENNY CHIN
JURISDICTION	Federal
DECIDED	January 26, 2021
DOCKET	20-1035
DISPOSITION	affirmed in part, vacated in part, and remanded
PROCEDURAL POSTURE	Appeal from the United States District Court for the Eastern District of New York (Block, J.) from grant of summary judgment.
STANDARD OF REVIEW	We review an award of summary judgment de novo, resolving all ambiguities and drawing all inferences in favor of the non-movant, and we will affirm only if the record reveals no genuine dispute of material fact.
PRECEDENTIAL VALUE	Unpublished
PARTIES	Robert Toussie v. Allstate Insurance Company

TOPICS

insurance coverage · summary judgment · negligence · civil procedure · standard of review

QUESTIONS PRESENTED

1. Whether the district court erred in granting summary judgment dismissing the breach of contract claim based on Allstate's failure to send renewal notices.
2. Whether the district court erred in granting summary judgment dismissing the negligence claim on the ground that the misapplication of the premium payment benefitted Toussie.

HOLDINGS

1. The district court did not err because Toussie failed to notify Allstate of non-receipt of renewal notices as required by the SFIP, and no policy was in effect at the time renewal notices would have been sent.
2. The district court erred because the coverage was not interchangeable, Allstate did not pay the policy limit, and Toussie had a claim for damages beyond what he received.

KEY QUOTATIONS

> *"If you or your agent notified us, not later than one year after the date on which the payment of the renewal premium was due, of non-receipt of a renewal notice before the due date for the renewal premium, and we determine that the circumstances in the preceding paragraph apply, we will mail a second bill providing a revised due date, which will be 30 days after the date on which the bill is mailed."* (5)

> *"All disputes arising from the handling of any claim under a NFIP policy are governed exclusively by the flood insurance regulations issued by Federal Emergency Management Agency, the National Flood Insurance Act of 1968, as amended, and Federal common law."* (7)

> *"For the foregoing reasons, we AFFIRM the judgment to the extent that the district court dismissed the breach of contract claim, we VACATE the judgment to the extent the district court dismissed the negligence claim, and we REMAND for further proceedings."* (9)

FACTUAL BACKGROUND

Toussie and his wife owned two properties in Brooklyn, each insured against flooding under a Standard Flood Insurance Policy (SFIP) issued by Allstate pursuant to the National Flood Insurance Program (NFIP). The premium for the policy on 290 Exeter Street was misapplied to the policy on 285 Coleridge Street, causing the 290 Exeter policy to lapse. Hurricane Sandy damaged both properties in October 2012; Allstate paid for damage to 285 Coleridge but denied coverage for 290 Exeter. Toussie sued for breach of contract and negligence.

PROCEDURAL HISTORY

The district court granted Allstate's motion for summary judgment and denied Toussie's cross-motion for summary judgment, dismissing with prejudice Toussie's breach of contract and negligence claims.

DISPOSITION

affirmed in part, vacated in part, and remanded

REMAND INSTRUCTIONS

On remand, the district court should consider the issue of preemption, and if the negligence claim is not preempted, it may be dismissed without prejudice for consideration in state courts. Also, factual issues regarding agency should be resolved.

CASES CITED

- Jacobson v. Metro. Prop. & Cas. Ins. Co., 672 F.3d 171, 174 (2d Cir. 2012)
- Hicks v. Baines, 593 F.3d 159, 166 (2d Cir. 2010)
- Spong v. Fidelity Nat'l Prop. & Cas. Ins. Co., 787 F.3d 296 (5th Cir. 2015)