SUPREME COURT OF VERMONT

Rainforest Chocolate, LLC v. Sentinel Insurance Company, Ltd., 2018 VT 140

204 A.3d 1109 (Vt. 2018) · No. 2018-095 · Decided December 28, 2018

SUMMARY

The Vermont Supreme Court reviewed a summary judgment ruling in an insurance dispute arising from an employee's fraudulent electronic funds transfer. The court held that the policy's False Pretense Exclusion was ambiguous because it applied to physical loss or damage while other provisions used broader loss terminology, and therefore construed the exclusion in favor of coverage. The court reversed and remanded for determination of whether the policy's Forgery and Money and Securities provisions covered the loss.

CASE DETAILS

COURT	Supreme Court of Vermont
WRITING FOR THE COURT	Skoglund, J.; Reiber, C.J.; Robinson, J.; Carroll, J.; Davenport, Supr. J. (Ret.), specially assigned
JURISDICTION	Vermont
DECIDED	December 28, 2018
DOCKET	2018-095
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Rainforest appealed from the trial court's grant of summary judgment to Sentinel in an insurance-coverage dispute.
STANDARD OF REVIEW	Summary judgment rulings are reviewed de novo under the same standard applied by the trial court. Interpretation of an insurance policy is reviewed nondeferentially and plenarily.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Rainforest Chocolate, LLC v. Sentinel Insurance Company, Ltd.

TOPICS

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

PRACTICE AREAS

insurance coverage · insurance contract interpretation · appellate procedure

QUESTIONS PRESENTED

1. Whether the policy's False Pretense Exclusion unambiguously excluded Rainforest's loss resulting from an employee's fraudulent electronic transfer of funds.
2. Whether the loss was covered under the policy's Forgery, Money and Securities, or Computer Fraud provisions.
3. Whether the trial court properly granted summary judgment to Sentinel.

HOLDINGS

1. The False Pretense Exclusion is ambiguous because the policy's use of both "physical loss or physical damage" and "loss or damage" permits at least two reasonable interpretations concerning whether electronically transferred bank funds can suffer physical loss. Construing the ambiguity in favor of the insured, the exclusion does not bar coverage for Rainforest's nonphysical loss.
2. The Computer Fraud provision did not cover Rainforest's loss because it provides coverage only for physical loss of or physical damage to money, and the court determined that Rainforest's loss was not physical.
3. The Supreme Court did not decide whether the Forgery or Money and Securities provisions covered Rainforest's loss and remanded that question to the trial court for determination in the first instance.

KEY QUOTATIONS

> *"Vermont law "requires that policy language be accorded its plain, ordinary meaning consistent with the reasonable expectation of the insured, and that terms that are ambiguous or unclear be construed broadly in favor of coverage.""* (¶ 7)

> *"Although this Court has not previously adopted one interpretation over another, we are convinced that the False Pretense Exclusion is subject to at least two reasonable interpretations, and thus is ambiguous."* (¶ 24)

> *"We can quickly dismiss the Computer Fraud provision because it only provides coverage "for physical loss of or physical damage to 'money' . . . resulting directly from computer fraud," and because we concluded that Rainforest's loss was not physical, it is not covered under this provision."* (¶ 25)

FACTUAL BACKGROUND

Rainforest was insured under a business-owner policy issued by Sentinel. An employee received an email appearing to come from the employee's manager directing an electronic transfer of $19,875 to an outside bank account; an unknown person had actually taken control of the manager's email account. Rainforest's bank froze the account and limited the resulting loss to $10,261.36. Sentinel denied coverage, relying primarily on the policy's False Pretense Exclusion.

PROCEDURAL HISTORY

The parties filed cross-motions for summary judgment based on an agreed statement of facts. The Superior Court, Addison Unit, Civil Division, denied Rainforest's motion, granted Sentinel's motion, and entered judgment for Sentinel after concluding that the policy's False Pretense Exclusion unambiguously barred coverage. Rainforest timely appealed.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court must determine in the first instance whether the Forgery and Money and Securities provisions provide coverage for Rainforest's loss.

CASES CITED

- Jadallah v. Town of Fairfax, 2018 VT 34, ¶ 14, 186 A.3d 1111
- Shriner v. Amica Mut. Ins., 2017 VT 23, ¶ 6, 204 Vt. 321, 167 A.3d 326
- Cincinnati Specialty Underwriters Ins. v. Energy Wise Homes, Inc., 2015 VT 52, ¶ 16, 199 Vt. 104, 120 A.3d 1160
- Sperling v. Allstate Indem. Co., 2007 VT 126, ¶ 8, 182 Vt. 521, 944 A.2d 210
- Simpson v. State Mut. Life Assurance Co. of Am., 135 Vt. 554, 556, 382 A.2d 198, 199 (1977)
- Towns v. N. Sec. Ins., 2008 VT 98, ¶ 21, 184 Vt. 322, 964 A.2d 1150
- Whitney v. Vt. Mut. Ins., 2015 VT 140, ¶ 16, 201 Vt. 29, 135 A.3d 272
- Vt. Mut. Ins. v. Parsons Hill P'ship, 2010 VT 44, ¶ 21, 188 Vt. 80, 1 A.3d 1016
- Isbrandtsen v. N. Branch Corp., 150 Vt. 575, 581, 556 A.2d 81, 85 (1988)
- Ad Advert. Design, Inc. v. Sentinel Ins., No. CV 17-140-BLG-TJC, 2018 WL 4621744 (D. Mont. Sept. 26, 2018)
- In re Oakley, 344 F.3d 709, 713 (7th Cir. 2003)
- Robben & Sons Heating, Inc. v. Mid-Century Ins., 74 P.3d 1141, 1145 (Or. Ct. App. 2003)
- Schweet Linde & Coulson, PLLC v. Travelers Cas. Ins. of Am., No. C14-1883RSL, 2015 WL 3447242, at *2 (W.D. Wash. May 28, 2015)
- Schmidt v. Travelers Indem. Co. of Am., 101 F. Supp. 3d 768, 775 (S.D. Ohio 2015)
- Martin, Shudt, Wallace, Dilorenzo & Johnson v. Travelers Indem. Co. of Conn., No. 1:13-CV-0498 LEK/CFH, 2014 WL 460045, at *3 (N.D.N.Y. Feb. 5, 2014)
- Sentience Studio, LLC v. Travelers Ins., 102 Fed. Appx. 77, 81 (9th Cir. 2004)
- Harvard St. Neighborhood Health Ctr., Inc. v. Hartford Fire Ins., No. CV 14-13649-JCB, 2015 WL 13234578, at *8 (D. Mass. Sept. 22, 2015)
- Florists' Mut. Ins. v. Ludy Greenhouse Mfg. Corp., 521 F. Supp. 2d 661, 680 (S.D. Ohio 2007)
- Johnson v. Amica Mut. Ins., 1999 ME 106, ¶ 4, 733 A.2d 977
- Town of Ira v. Vt. League of Cities & Towns, 2014 VT 115, ¶ 11, 198 Vt. 12, 109 A.3d 893

- State Farm Mut. Auto. Ins. v. Colby, 2013 VT 80, ¶ 11, 194 Vt. 532, 82 A.3d 1174
- Fish v. Nationwide Mut. Ins., 126 Vt. 487, 492, 236 A.2d 648, 652 (1967)
