SUPREME COURT OF NORTH DAKOTA

K & L Homes, Inc. v. American Family Mutual Insurance Co.

2013 ND 57 (N.D. 2013) · No. 20120060 · Decided April 5, 2013

SUMMARY

The North Dakota Supreme Court reversed and remanded summary judgment in favor of American Family Mutual Insurance Company. The court held that, under the facts presented, faulty workmanship by a subcontractor could constitute an "occurrence" causing covered property damage under a post-1986 commercial general liability policy. The court directed further proceedings concerning coverage for damages awarded against the homebuilder.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Mary Muehlen Maring; Carol Ronning Kapsner; Daniel J. Crothers; Gerald W. VandeWalle; Dale V. Sandstrom
JURISDICTION	North Dakota
DECIDED	April 5, 2013
DOCKET	20120060
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	K & L Homes appealed from summary judgment for American Family in K & L's action for declaratory judgment, breach of contract, and bad faith seeking coverage under a commercial general liability policy for damages awarded in an underlying construction-defect action.
STANDARD OF REVIEW	Summary judgment and interpretation of the insurance contract are reviewed de novo. The court views the evidence and reasonable inferences in the light most favorable to the party opposing summary judgment.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	K & L Homes, Inc. v. American Family Mutual Insurance Company

TOPICS

insurance coverage · construction defects · declaratory relief insurance · contract interpretation · appellate procedure

PRACTICE AREAS

insurance coverage · construction defect insurance · insurance contract interpretation · appellate procedure

QUESTIONS PRESENTED

1. Whether faulty workmanship by a subcontractor that causes damage to a contractor's completed project can constitute an occurrence under a standard post-1986 commercial general liability policy.
2. Whether the resulting cracks, unevenness, and shifting constitute property damage under the policy.
3. Whether the subcontractor exception to the policy's your-work exclusion can preserve coverage for damage to the contractor's work arising from a subcontractor's work.
4. Whether summary judgment for the insurer was proper when factual questions remained concerning whether the faulty work and resulting damage were unexpected and unintended and whether other exclusions applied.

HOLDINGS

1. Faulty workmanship may constitute an occurrence under a commercial general liability policy if the faulty work was unexpected and not intended by the insured and the resulting property damage was not anticipated or intentional.
2. Cracks, unevenness, and shifting in the home constitute physical injury to tangible property and therefore may qualify as property damage under the CGL policy.
3. When a general contractor is liable for damage to work performed by a subcontractor, or for damage to the general contractor's own work arising from a subcontractor's work, the subcontractor exception to the your-work exclusion preserves coverage that the exclusion would otherwise negate.
4. Summary judgment for American Family was improper because the record required further factual determinations concerning whether the faulty work and resulting property damage were unexpected and unintended and whether other exclusions applied.

KEY QUOTATIONS

> *"We conclude faulty workmanship may constitute an "occurrence" if the faulty work was "unexpected" and not intended by the insured, and the property damage was not anticipated or intentional, so that neither the cause nor the harm was anticipated, intended, or expected."* (¶ 26)

> *"We reverse the trial court's summary judgment. We conclude an "occurrence" may exist within the CGL policy coverage. We remand for the trial court to determine the facts, including whether the faulty work and the resulting property damage was unexpected and unintended."* (¶ 28)

FACTUAL BACKGROUND

K & L Homes built and sold a newly constructed house to the Lenos. The house developed cracks, unevenness, and shifting allegedly caused by improper footings and inadequately compacted soil; K & L had hired Dakota Ready Mix to perform footing and foundation work. The Lenos obtained a $254,629.25 judgment against K & L on breach-of-contract and implied-warranty claims. American Family had defended K & L under a reservation of rights but later denied coverage under K & L's post-1986 commercial general liability policy.

PROCEDURAL HISTORY

The underlying homeowners' action resulted in a $254,629.25 judgment against K & L for breach of contract and implied warranties based on defects in a newly constructed home. American Family defended K & L under a reservation of rights but denied coverage after judgment. The district court denied K & L's partial-summary-judgment motion and granted American Family's cross-motion, ruling that the subcontractor's faulty workmanship was not an occurrence and that the damage was outside the initial grant of coverage. The North Dakota Supreme Court reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The district court must determine whether the faulty work and resulting property damage were unexpected and unintended and must consider American Family's assertions that other policy exclusions apply.

CASES CITED

- ACUITY v. Burd & Smith Constr., 2006 ND 187, 721 N.W.2d 33
- Leno v. K & L Homes, Inc., 2011 ND 171, 803 N.W.2d 543
- Tibert v. Nodak Mut. Ins., 2012 ND 81, 816 N.W.2d 31
- Wisness v. Nodak Mut. Ins., 2011 ND 197, 806 N.W.2d 146
- Wall v. Pennsylvania Life Ins., 274 N.W.2d 208, 216 (N.D. 1979)
- United States Fire Ins. v. J.S.U.B., Inc., 979 So. 2d 871 (Fla. 2007)
- Sheehan Constr. v. Continental Cas. Co., 935 N.E.2d 160 (Ind. 2010), modified, 938 N.E.2d 685
- Lamar Homes, Inc. v. Mid-Continent Cas. Co., 242 S.W.3d 1 (Tex. 2007)
- American Family Mut. Ins. Co. v. American Girl, Inc., 673 N.W.2d 65 (Wis. 2004)
- Fisher v. American Family Mut. Ins., 1998 ND 109, 579 N.W.2d 599
- Grinnell Mut. Reinsurance v. Thies, 2008 ND 164, 755 N.W.2d 852
- State v. N.D. State Univ., 2005 ND 75, 694 N.W.2d 225
- Schleuter v. Northern Plains Ins., 2009 ND 171, 772 N.W.2d 879
- Sandberg v. American Family Ins. Co., 2006 ND 198, 722 N.W.2d 359
- Greystone Constr. v. Nat'l Fire & Marine Ins., 661 F.3d 1272 (10th Cir. 2011)