SUPREME COURT OF TEXAS

D.R. Horton-Texas, Ltd. v. Markel International Insurance Company, Ltd.

D.R. Horton-Texas, Ltd. v. Markel International Insurance Co., 300 S.W.3d 740 (Tex. 2009) · No. No. 06-1018 · Decided December 11, 2009

SUMMARY

The Supreme Court of Texas addressed whether an insurer's duty to indemnify is dependent on its duty to defend under the eight-corners doctrine. The court held that the duties are distinct and that an insurer may owe a duty to indemnify even when no duty to defend arises, because indemnity depends on facts established and the policy terms. The court affirmed the judgment on the duty to defend, reversed the judgment on the duty to indemnify, and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Texas
WRITING FOR THE COURT	Justice Wainwright
JURISDICTION	Texas
DECIDED	December 11, 2009
DOCKET	No. 06-1018
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	D.R. Horton appealed from summary judgment for Markel in an insurance coverage dispute involving duties to defend and indemnify. The Supreme Court of Texas affirmed the judgment on the duty to defend, reversed it on the duty to indemnify, and remanded.
STANDARD OF REVIEW	Summary judgment is reviewed de novo.
PRECEDENTIAL VALUE	Published, precedential opinion of the Supreme Court of Texas.
PARTIES	D.R. Horton-Texas, Ltd. v. Markel International Insurance Company, Ltd.

TOPICS

duty to indemnify · duty to defend · insurance coverage · construction defects · summary judgment

PRACTICE AREAS

insurance law · construction law · civil procedure · appellate procedure

QUESTIONS PRESENTED

1. Whether D.R. Horton preserved its argument that extrinsic evidence should be admitted as an exception to the eight-corners doctrine in determining Markel's duty to defend.
2. Whether the absence of a duty to defend necessarily establishes that Markel had no duty to indemnify D.R. Horton.
3. Whether evidence submitted by D.R. Horton raised fact questions concerning coverage and Markel's duty to indemnify.

HOLDINGS

1. D.R. Horton waived its argument for an exception to the eight-corners doctrine because it did not raise that argument in the trial court or court of appeals until its second motion for rehearing.
2. The duty to indemnify is distinct from and independent of the duty to defend; an insurer may have a duty to indemnify even when the duty to defend never arises.
3. Summary judgment for Markel on the duty to indemnify was improper because D.R. Horton's evidence raised fact questions regarding Ramirez's work, D.R. Horton's additional-insured status, and potential coverage under the CGL policy.

KEY QUOTATIONS

> *"We do not decide D.R. Horton's argument for this Court to recognize an exception to the eight-corners doctrine because it did not raise this argument in the trial court or in the court of appeals until its second motion for rehearing"* (743)

> *"We hold that even if Markel has no duty to defend D.R. Horton, it may still have a duty to indemnify D.R. Horton as an additional insured under Ramirez's CGL insurance policy."* (744)

> *"The insurer and the putative insured may introduce evidence in coverage litigation to establish or refute the insurer's duty to indemnify."* (745)

FACTUAL BACKGROUND

James and Cicely Holmes sued D.R. Horton after discovering mold in their home, alleging that defects in the chimney, roof, vent pipes, windows, window frames, and flashing allowed water intrusion. The homeowners' petition identified only D.R. Horton and did not implicate subcontractor Rosendo Ramirez, whose masonry work and repairs allegedly contributed to the defects. Ramirez's CGL policy with Markel named D.R. Horton as an additional insured, but Markel refused to defend; D.R. Horton hired its own counsel and settled the underlying action before trial.

PROCEDURAL HISTORY

Homeowners sued D.R. Horton for construction defects and mold damage. Markel refused to defend D.R. Horton under a subcontractor's CGL policy that named D.R. Horton as an additional insured. The trial court granted Markel summary judgment on both the duty to defend and duty to indemnify, and the court of appeals affirmed. The Supreme Court affirmed the duty-to-defend ruling because D.R. Horton waived its proposed exception to the eight-corners doctrine, but reversed the duty-to-indemnify ruling and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand the duty-to-indemnify issue to the trial court for proceedings consistent with the opinion, including consideration of evidence and the policy's terms, conditions, exclusions, and exceptions.

CASES CITED

- GuideOne Elite Insurance Co. v. Fielder Road Baptist Church, 197 S.W.3d 305, 310 (Tex. 2006)
- Farmers Tex. County Mut. Ins. Co. v. Griffin, 955 S.W.2d 81, 82, 84 (Tex. 1997)
- Utica Nat'l Ins. Co. v. Am. Indem. Co., 141 S.W.3d 198, 203-05 (Tex. 2004)
- King v. Dallas Fire Ins. Co., 85 S.W.3d 185, 187 (Tex. 2002)
- Trinity Universal Ins. Co. v. Cowan, 945 S.W.2d 819, 821-22 (Tex. 1997)
- Pine Oak Builders, Inc. v. Great Am. Lloyds Ins. Co., 279 S.W.3d 650, 654, 656 (Tex. 2009)
- Progressive County Mut. Ins. Co. v. Sink, 107 S.W.3d 547, 551 (Tex. 2003)
- Provident Life & Accident Ins. Co. v. Knott, 128 S.W.3d 211, 216 (Tex. 2003)
- State Farm Life Ins. Co. v. Beaston, 907 S.W.2d 430, 433 (Tex. 1995)
- Valence Operating Co. v. Dorsett, 164 S.W.3d 656, 661 (Tex. 2005)
- McConnell v. Southside Indep. Sch. Dist., 858 S.W.2d 337, 341 (Tex. 1993)
- City of Houston v. Clear Creek Basin Auth., 589 S.W.2d 671, 677-79 (Tex. 1979)
- James v. Brown, 637 S.W.2d 914, 917 (Tex. 1982)
- Reser v. State Farm Fire & Cas. Co., 981 S.W.2d 260, 263 (Tex. App.—San Antonio 1998, no pet.)
- Grimes Constr., Inc. v. Great Am. Lloyds Ins. Co., 188 S.W.3d 805, 818 (Tex. App.—Fort Worth 2006), rev'd on other grounds, 248 S.W.3d 171 (Tex. 2008)
- Nat'l Union Fire Ins. Co. v. Puget Plastics Corp., 532 F.3d 398, 404 (5th Cir. 2008)
- Swicegood v. Med. Prot. Co., No. Civ.A.3:95-CV-0335-D, 2003 WL 22234928, at *14 (N.D. Tex. Sept. 19, 2003)