

Case study on concord general mutual insurance company v. green and company build...

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Business Law Case Analysis

FACTS

Green initiated a construction plan of thirty four homes in lee on March of 2004. The homes were to be known as Thurston Woods. In order to construct chimneys for the homes, Green signed a contract with Birch Masonry; experts in chimney constructions. Middlesex Mutual insured all construction works done by Birch Masonry thus assuming liability in case of any liabilities as stipulated in the contract signed between Birch Masonry and their clients. Therefore, in order to do business with Green, Birch ordered their insurer to add Green to the policy as an additional named insured. Mutual complied with Birch's orders. On the other hand, Green had signed and, thus, contracted with Concord General with regards to his own commercial general liability policy. Green finished construction all homes at Thurston Woods and they were also installed with chimneys made by Birch Masonry. However, no sooner had the homes been completed and occupied, than Green started receiving numerous complains about these homes. Their occupants started complaining about defects in the chimneys, especially the flue size. Green assured the home occupants that he would repair and improve the chimneys, and bring them to ' code'. However, because of delays in repairs, the homeowners decided to bring suits against the owner of the homes- Green in the superior courts. Green then requested Concord General who whom he held a commercial liability policy with, to furnish him with an indemnification and a defense. This was pursuant to a reservation of rights within their contract. Concord General complied with Green request and supplied them with a defense.

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In order to find out the extent of the defects in the chimneys, Green inserted carbon II oxide detectors inside the chimneys in each of the homes. This was before any of the suits filed by all the stakeholders in this case were either heard or finally settled. The detectors revealed unacceptable and dangerous levels of carbon II oxide gas from numerous chimneys. The home owners also started reporting that the flue gases that the chimneys had become so defective that they were seeping flue gases into their houses. To prove these allegations, Green hired independent investigators to conduct tests in all the installed chimneys. Their report revealed that all these chimneys were defective and in each one of them was allowing a significant amount of carbon II oxide to seep into the homes. Some of the home owners had made repairs and, therefore, Green reimbursed them their costs. He also paid for repairs in all the other chimneys that had not been fixed. This led to Green and the homeowners settling their cases outside courts while some withdrew altogether.

On the other hand, Concord General initiated this suit to request for a declaratory judgment against Middlesex, the Homeowners and Green in order to get redress for the insurance coverage. The remaining parties had filed motions and cross-motions to request proceeding for summary judgment after the homeowners complains were handled. Green argued that, inter alia, property damage was an ' occurrence' under the policies. Therefore, he posited that leaking carbon II oxide should be regarded as an ' occurrence' because it was property damage. The trial court disagreed. The trial court granted judgment in the favor of Middlesex and Concord General. Green appealed.

ISSUES

The issue before the Supreme Court was whether the trial court erred in its findings that the chimneys that were leaked carbon II oxide were not to be regarded as property and could, therefore, not be regarded as an ' occurrence'.

DECISION

The decision of the trial court was affirmed by the Supreme Court. REASON All evidence adduced in the trial court and all inferences made from the facts and evidence must be interpreted in the most favorable sense towards the party that is opposing summary judgment. An affirmation to grant a party summary judgment will be awarded if all the evidence adduced in court provides no genuine issue and the requesting party is entitled by law to receive the summary judgment.

According to Green, property damage resulted after the fault chimneys allowed carbon II oxide to seep through into the homes. This, he argues, should be regarded as an ' occurrences' under all policy that insure things. On the other hand, Middlesex and Concord General argue that this is not covered under their insurance policy. They argue that it is not property damage as nothing was damaged when the dangerous gases were seeped into the homes. They assert that this is tantamount to faulty workmanship which falls outside the jurisdiction of their insurance contracts.

In order to give a fair and just judgment, the court asserted that in a declaratory judgment that sought to determine the extent of coverage of an insurance contract, the onus of proof is with the insurer. It is immaterial

which party brought the suit to court. In ordinary circumstances, the onus of proof is always on the accuser. Therefore, a critical analysis is required on the language used to draft the policy. This is not only a question of fact, but a question of law as stipulated in the statute or the contract. A reasonable man by stander test is applicable in this case. This means that the court will attach the meaning of the words used in the policy, as a prudent or reasonable man would take them to mean, who is not party to the case. Therefore, a policy is to be interpreted in the ordinary and natural meaning, which it brings forth after a more than casual perusal of the contract as a whole. The court is supposed to disregard any ambiguous or unclear terms and read the document objectively. Middlesex policy and Concord General's policy with Green have similar texts and would all be accorded a similar meaning. They both provide insurance cover for " property damage" and " bodily injury" only if the cause of such an injury or damage is an " occurrence". These policies also provided definitions for property damage and an " occurrence".

Moreover, the court considered its past ruling on similar subject matter. Previous court ruling held that an occurrence get caused by faulty workmanship. This includes the damage inflicted on property other than the work product. The court reasoned that according to the policy document before the court, they did not offer commercial liability to for fault workmanship. However, it provided for insurance cover if the faulty workmanship caused damage to property or caused bodily injury. The property damaged must be something else apart from the insured work product. If the insured work product is damaged, then there are no covers

under the insurance contract for commercial liability. Therefore, according to the court, in order for Green to receive summary judgment in his favor, he must demonstrate to the court that he suffered damaged through an occurrence to something other than the chimneys under the contract. From the facts of the case, no bodily injury occurred or property damage was caused by the carbon II oxide fumes seeped through the chimneys, to the homes.

However, Green argued that entry of the Carbon II oxides fumes into the homes environment was enough property damage. He argued that entry of the fumes were tantamount to alteration of material dimension. He relied on previous case law that he deemed offered similar facts evidence to the case before the court. He argued that a previous court ruling had held that odor should be regarded as physical injury if it permeated into a house and leads to owners of that house vacating.

However, the other parties argued that no physical injury was caused in this case by the seeped carbon II oxide and, therefore, no material alteration of property occurred. None of the homeowners had suffered any injury.

Moreover, no property in the homes was affected by the fumes. The repairs also mainly concerned correcting faulty areas. Despite Green's weighty argument that it bad law to require a person to be injured by the fumes to receive redress, the court reasoned that that was the essence of insurance covers.

Reference

Concord General Mutual Insurance Company v. Green & Company Building and Development Corporation, Merrimack No. 2009-699 (THE SUPREME COURT OF NEW HAMPSHIRE September 17, 2010).