

SUPERIOR COURT
OF THE
STATE OF DELAWARE

E. SCOTT BRADLEY
JUDGE

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February 15, 2013

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***RE: William Bennett & Debra Bennett v. USAA Casualty Ins. Co., et al.
C.A. No: S10C-02-010***

Dear Counsel:

This is my decision on the Cross-Motions for Summary Judgment in this case involving a dispute over insurance coverage for a condominium unit that was damaged when a toilet inside it broke, allowing water to run throughout the unit.

The plaintiffs, Debra and William Bennett, own a condominium unit at the Plantations East condominium complex in Lewes, Delaware. They have an insurance policy with defendant USAA Casualty Insurance Company, covering both the real

and personal property in their condominium unit. The Plantations East Condominium Association, Inc. has an insurance policy with defendant Philadelphia Indemnity Insurance Company. Both insurance companies have refused to pay the Bennetts' claims, resulting in the plaintiff filing suit against both of them.¹ USAA argues that its policy with the Bennetts is secondary to the PIIC policy and that it does not have an obligation to pay until the PIIC policy is exhausted. PIIC argues that its policy with the condominium association does not cover the Bennetts' claims.

STANDARD OF REVIEW

This Court will grant summary judgment only when no material issues of fact exist, and the moving party bears the burden of establishing the non-existence of material issues of fact.² Once the moving party meets its burden, the burden shifts to the non-moving party to establish the existence of material issues of fact.³ The Court views the evidence in a light most favorable to the nonmoving party.⁴ Where the moving party produces an affidavit or other evidence sufficient under *Superior Court*

¹Both insurance companies, despite their current positions, offered to pay certain portions of the Bennetts' claims. The Bennetts' damages are discussed in detail in a report prepared by McHenry Adjustment Company, Inc.

² *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979).

³ *Id.* at 681.

⁴ *Id.* at 680.

Civil Rule 56 in support of its motion and the burden shifts, the non-moving party may not rest on its own pleadings, but must provide evidence showing a genuine issue of material fact for trial.⁵ If, after discovery, the non-moving party cannot make a sufficient showing of the existence of an essential element of the case, then summary judgment must be granted.⁶ If, however, material issues of fact exist or if the Court determines that it does not have sufficient facts to enable it to apply the law to the facts before it, then summary judgment is not appropriate.⁷

DISCUSSION

The USAA Policy, Section I, – Conditions, 6. Other Insurance, provides:

...If, at the time of the loss, there is other insurance in the name of a corporation or association of property owners covering the same property covered by this policy, this insurance will be in excess over the amount recoverable under such insurance.

The PIIC policy contains a three-page Condominium Association Coverage Endorsement that modifies the coverage in the main policy in certain important respects. The applicable portions state:

Property Coverage Form

A. Covered Property

⁵ *Super. Ct. Civ. R. 56(e); Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986).

⁶ *Burkhart v. Davies*, 602 A.2d 56, 59 (Del. 1991), *cert. den.*, 112 S.Ct. 1946 (1992); *Celotex Corp.*, 477 U.S. 317 (1986).

⁷ *Ebersole v. Lowengrub*, 180 A.2d 467, 470 (Del. 1962).

Section A.1., Covered Property, is deleted and replaced by the following:

1. Covered Property

Covered Property, as used in this Coverage Form, means the following types of property for which a Limit of Insurance is shown in the Declarations.

.....

b. "Buildings" described in the Declarations, including: ...

(6) Any of the following types of property contained within a unit, if your Condominium Association Agreement requires you to insure it:

(a) Your fixtures, improvements and alterations that are a part of the "buildings",

(b) Your appliances, such as those used for refrigerating, ventilating, cooking, dishwashing, laundering, security or housekeeping; and

(c) Fixtures, installations or additions owned by unit-owners and comprising that part of the "buildings" within the unfinished interior surfaces of the perimeter walls, floors and ceilings of the individual units:

(i) Initially installed in accordance with the original plans and specifications, or replacements of like kind or quality as those initially installed; or

(ii) As existed at the time the unit was initially conveyed, if the original plans and specifications are not available.

(d) Floor coverings, wall coverings and ceiling coverings within individual units, if your Condominium Association Agreement required you to insure it.

(e) Additional property as described in the Schedule, or in the Declarations.

(7) But "buildings" do not include:

(a) Floor coverings, wall coverings and ceiling coverings

within individual units except as provided under b.(6)(d) above:

(b) Electrical fixtures, appliances, air conditioner or heating equipment, water heaters or built-in cabinets which are located within an individual unit and which the unit-owner is required to repair or replace, and

(c) Personal property owned by, used by or in the care, custody or control of a unit-owner except for personal property listed in paragraph b.(6) above.

With respect to coverage for fixtures, installations and additions provided in paragraph b.(6) above, each unit-owner will be considered an additional insured.

I previously ruled that the Plantation East Condominium Association, Inc. had no obligation to provide insurance for a unit owner's unit or personal property, making all of the types of items listed in paragraph b.(6) not covered by PIIC's insurance policy. Paragraph b.(7) goes on to exclude from coverage a unit owner's floor coverings, electrical fixtures, appliances, air conditioning and heating equipment, water heaters,⁸ and personal property. Given my prior ruling, the nature of the Bennetts' damages, and the exclusionary and limiting language of paragraphs A.1.b.(6) and (7) of the PIIC policy, I have concluded that there is no insurance coverage for the Bennetts' claims under the PIIC policy. Therefore, I will grant PIIC's Motion for Summary Judgment.

⁸ The exclusion in paragraph b.(7)(b) applies to these items if a unit owner is required to repair or replace them. Under the condominium documents for the Plantation East Condominium, the units owners do have that responsibility (see the Code of Regulations, Plantations East, Section 6, Subsection (c)(1), Maintenance and Repair of Units and Common Elements – Repair by Unit Owner.

Now that I have concluded that Plantation East Condominium Association, Inc. had no policy “covering the same property covered by” USAA’s policy, I conclude that USAA’s policy is not “excess over the amount recoverable under” PIIC’s policy. Therefore, I will grant the Bennetts’ Motion for Summary Judgment and deny USAA’s Motion for Summary Judgment on the issue of insurance coverage. I can not make a decision on the Bennetts’ claim that USAA acted in bad faith because there are not enough facts in the record before me detailing the process that USAA undertook to determine that the PIIC policy covered the Bennetts’ claims.

However, I will grant USAA’s Motion for Summary Judgment on the Bennetts’ claim for breach of the Unfair Trade Practices Act because no private cause of action exists under it.⁹

IT IS SO ORDERED.

/s/ E. Scott Bradley
E. Scott Bradley

⁹ *Yardley v. U.S. Healthcare, Inc.*, 698 A.2d 979, 988 (Del. Super. 1996)