

Third District Court of Appeal

State of Florida

Opinion filed May 20, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D19-156
Lower Tribunal No. 13-21610

Lazaro Hernandez,
Appellant,

vs.

Citizens Property Insurance Corporation,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Miguel M. de la O, Judge.

Mintz Truppman, P.A., and Timothy H. Crutchfield, for appellant.

Traub Lieberman Straus & Shrewsberry LLP, and Scot E. Samis (St. Petersburg), for appellee.

Before LOGUE, HENDON, and LOBREE, JJ.

HENDON, J.

The insured, Lazaro Hernandez, appeals from a final summary judgment rendered in favor of the insurer, Citizens Property Insurance Corporation (“Citizens”). We affirm.

Hernandez alleged that his house sustained cracks to the walls and flooring as a result of vibrations caused by off-site blasting explosions. He filed a claim with Citizens and hired an engineer to evaluate the damage. The engineer concluded the damage resulted from the soil underneath the house shifting from vibrations caused by the off-site rock blasting. Citizens denied coverage and moved for summary judgment, asserting the earth-movement/settlement exclusion in the policy. The trial court granted Citizen’s motion for summary judgment, concluding that the insurance policy’s exclusion provision did not cover indirect damage to property as a result of earth movement that may have been triggered by off-site fire or explosion.¹

“Summary judgment is proper if there is no genuine issue of material fact and if the moving party is entitled to a judgment as a matter of law. Thus, our standard of review is *de novo*.” Volusia Cty. v. Aberdeen at Ormond Beach, L.P., 760 So. 2d 126, 130 (Fla. 2000) (internal citation omitted). “Insurance policy construction is a question of law subject to *de novo* review.” Gov’t Emps. Ins. Co. v. Macedo, 228 So. 3d 1111, 1113 (Fla. 2017). In addition, “a question of insurance policy

¹ For example, if the earth moves and directly causes fire or explosion in or on the property, then the property damage is covered under the policy.

interpretation, which is a question of law, [is also] subject to de novo review.” Penzer v. Transp. Ins. Co., 29 So. 3d 1000, 1005 (Fla. 2010).

Hernandez argues that the earth movement exclusion does not apply because the cause of the loss (blasting) is not expressly included within the list of nine causes that are considered “earth movement” under the subject policy. This is incorrect. The policy states that there is no coverage for damage caused by earth movement “unless direct loss by explosion ensues.” Here, the earth movement did not cause explosion or fire damage to the property. The damage resulted from indirect, off-site explosion. In that regard, the introduction to the exclusion provision states, “[W]e do not insure for loss caused directly or indirectly by any of the following [list follows]. Such loss is excluded regardless of any other cause or event contributing concurrently or in any sequence to the loss,” and “whether caused by natural or man-made activities.” [emphasis added]. The policy then lists those events associated with “earth movement.” Thus, the earth movement exclusion in the policy applies if the cause of damage described by Hernandez’s expert witness engineer fits even one of the listed categories. It fits at least two of the listed items, subsection (5), “Earth sinking, rising or shifting,” and subsection (8), “settling, cracking, or expansion of foundations.”

Furthermore, the “regardless of cause” lead-in to the exclusion provision in Citizens’ policy precludes recovery in this case. In State Farm Fire & Casualty Co.

v. Castillo, 829 So. 2d 242 (Fla. 3d DCA 2002) (“Castillo I”), this court found that the exclusion section of that homeowner’s policy contained a similar lead-in provision that provided:

We do not insure under any coverage for any loss which would not have occurred in the absence of one or more of the following excluded events. We do not insure for such loss regardless of: (a) the cause of the excluded event; or (b) other causes of the loss; or (c) whether other causes acted concurrently or in any sequence with the excluded event to produce the loss; or (d) whether the event occurs suddenly or gradually, involves isolated or widespread damage, arises from natural or external forces, or occurs as a result of any combination of these.

Id. at 243 (emphasis added). This court concluded that the exclusion, when read in conjunction with the “regardless of cause” lead-in provision, expanded the scope of the exclusion to exclude from coverage any loss resulting from earth movement regardless of the cause of the earth movement. See id. at 245.²

The facts presented to the trial court on Citizen’s motion for summary judgment included the engineer’s report finding earth movement caused by the off-site blasting vibrations led to the house shifting, resulting in cracks in walls and

² Compare, Fayad v. Clarendon Nat. Ins. Co., 899 So. 2d 1082, 1087 (Fla. 2005), in which, unlike the policy in Castillo I, the policy in Fayad did not contain a lead-in provision excluding coverage “regardless of the cause of the excluded event.” Id. at 1088. The Florida Supreme Court in Fayad held that “the overwhelming majority of courts interpreting earth movement exclusions that do not contain lead-in language precluding coverage for damage from earth movement ‘regardless’ of its cause have concluded that such exclusions apply only to earth movement that arises from natural events.” Id. at 1087 (footnote omitted). Contrary to the Fayad case, the Appellant’s policy contains a “regardless of the cause” lead-in provision that precludes recovery from indirect, off-site blasting damage.

flooring. The policy's terms excluding "earth sinking, rising, or shifting," "settling, cracking, or expansion of the foundation," "whether caused by natural or man-made activities," unambiguously precludes coverage under the policy. As there were no disputed issues of fact, and no ambiguity in the exclusion provision as applied to the facts, the trial court properly granted Citizens' motion for summary judgment.

Affirmed.