

Sec. First Ins. Co. v. Czelusniak

Court of Appeal of Florida, Third District

May 13, 2020, Opinion Filed

No. 3D19-589

Reporter

2020 Fla. App. LEXIS 6494 *

Security First Insurance Company, Appellant, vs.
John Czelusniak, Appellee.

Notice: NOT FINAL UNTIL DISPOSITION OF
TIMELY FILED MOTION FOR REHEARING.

Prior History: [*1] An Appeal from the Circuit
Court for Miami-Dade County, David C. Miller,
Judge.

the insured's motion for directed verdict on the basis of the concurrent cause doctrine because the policy included an anti-concurrent cause provision, which provided that when a covered cause and noncovered cause combined to cause a loss, all losses directly and indirectly caused by those events were excluded from coverage; and the anti-concurrent cause provision, coupled with the undisputed evidence that the loss was caused by a combination of both excluded and covered perils, foreclosed the analysis of whether the jury could legally or factually separate the damage caused by water coming through the door, which was not an expressly excluded cause, from water coming through the walls and windows, which were expressly excluded causes.

Core Terms

insurer, anti-concurrent, windows, door, express exclusion, trial court, undisputed, walls, concurrent cause doctrine, directed verdict, exterior wall, water damage, endorsement, penetrating, all-risk, coverage, proximate cause, concurrently, contributing, indirectly, provisions, directing, excludes, interior, sequence, coming, perils, roof

Outcome

Directed verdict reversed; case remanded.

LexisNexis® Headnotes

Case Summary

Overview

HOLDINGS: [1]-The trial court erred in granting

Insurance Law > ... > Property

Insurance > Coverage > All Risks

Insurance Law > Types of Insurance > Property

Insurance > Exclusions

[HNI](#) [↓] Coverage, All Risks

With an all-risk policy, the insured is only required to prove that damage occurred during the policy period. Subsequently, the burden shifts to the insurer to prove that one of the policy exclusions bars coverage. If the insurer does not meet its burden, the insurer must cover the loss.

Insurance Law > ... > Property

Insurance > Coverage > All Risks

Insurance Law > Types of Insurance > Property

Insurance > Exclusions

[HN2](#) [↓] Coverage, All Risks

In all-risk policies, construction is governed by the language of the exclusionary provisions.

Insurance Law > ... > Property

Insurance > Obligations > Covered Losses

[HN3](#) [↓] Obligations, Covered Losses

Generally, when independent perils converge and no single cause can be considered the sole or proximate cause, it is appropriate to apply the concurring cause doctrine. However, when the insurer explicitly avoids the application of the concurring-cause doctrine with an anti-concurrent cause provision, the plain language of the policy precludes recovery. An anti-concurrent cause provision is a provision in a first-party insurance policy that provides that when a covered cause and noncovered cause combine to cause a loss, all losses directly and indirectly caused by those events are excluded from coverage.

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(Sunrise), for appellant.

Best & Menendez and Virginia M. Best; Law Offices of Anthony Accetta, P.A., and Anthony Accetta; Law Office of Lazaro Vazquez, P.A., and Lazaro Vazquez; Eduardo Gomez, for appellee.

Judges: Before FERNANDEZ, LOGUE, and SCALES, JJ.

Opinion by: FERNANDEZ

Opinion

FERNANDEZ, J.

Security First Insurance Company appeals the trial court's order granting a directed verdict in favor of John Czelusniak, the insured. Upon review of the record, we reverse the directed verdict due to the anti-concurrent cause provision in Security First's water damage exclusion endorsement.

The underlying case concerns water that entered the insured's home causing mold growth and damage to the interior. It is undisputed that the insured's insurance policy with Security First is an all-risk policy. [HNI](#) [↑] With an all-risk policy, the insured is only required to prove that damage occurred during the policy period. [Jones v. Federated Nat. Ins. Co., 235 So. 3d 936, 941 \(Fla. 4th DCA 2018\)](#). Subsequently, the burden shifts to the insurer to prove that one of the policy exclusions bars coverage. *Id.* If the insurer does not meet its burden, the insurer must cover the loss. *Id.* It is undisputed that: [*2] 1) even though damage may have occurred over a period of time, the property sustained damage in 2016 during the coverage period; 2) water came in through walls, windows,

and doors resulting in **damage** to the interior; and 3) the policy explicitly excludes water that enters through walls and windows but does not explicitly exclude water entering in through the door. Taking all of this into consideration, the trial court granted the insured's motion for directed verdict on the basis of the concurrent cause doctrine, pursuant to [Sebo v. American Home Assurance Co., Inc., 208 So. 3d 694 \(Fla. 2016\)](#). The trial court reasoned that although water entering through the door is not expressly excluded, the jury would be unable to separate the water that came in through the door (non-excluded cause) from water that came in through the walls and windows (excluded causes). However, the policy includes an anti-concurrent cause provision within the exclusion endorsement. [HN2](#) [↑] Because "in all-risk policies . . . construction is governed by the language of the exclusionary provisions," we find that the trial court erred in directing the verdict in favor of the insured in contravention of the anti-concurrent cause provision. *Id.* at 697.

[HN3](#) [↑] Generally, "when independent perils converge and [*3] no single cause can be considered the sole or proximate cause, it is appropriate to apply the concurring cause doctrine." *Id.* However, when the insurer explicitly avoids the application of the concurring-cause doctrine with an anti-concurrent cause provision¹, the plain language of the policy precludes recovery. See *Id.* at 700; [Jones v. Federated Nat. Ins. Co., 235 So. 3d 936, 941 \(Fla. 4th DCA 2018\)](#) ("If the insurer fails to establish either a sole or efficient proximate cause, and there are no applicable anti-concurrent cause provisions, then the concurrent cause doctrine must be utilized."); [Liberty Mut. Fire Ins. Co. v. Martinez, 157 So. 3d 486, 487 n.1 \(Fla. 5th DCA 2015\)](#) ("[P]arties may contract around the

concurrent cause doctrine with an anti-concurrent cause provision.").

Security First's policy, as amended by the "Water **Damage** Exclusion Endorsement," provides:

1. We do not insure for loss caused directly or indirectly by any of the following. *Such loss is excluded regardless of any other cause or event contributing concurrently or in any sequence to the loss: . . .*

c. Water **Damage**, meaning: . . .

(6) *Water penetration through the roof system or exterior walls or windows*

(Emphasis added). While there is no provision in the policy expressly excluding **damage** from water penetrating through the doors of the dwelling, the policy expressly [*4] excluded **damage** from water penetrating through the "roof system or exterior walls or windows" Because evidence of water entering through the exterior walls and windows was undisputed and is expressly excluded by the policy, the entire loss is excluded from coverage due to the anti-concurrent cause provision regardless of any other cause or event contributing concurrently or in any sequence to the loss. See [Martinez, 157 So. 3d at 486](#) (holding that, upon a plain reading of the policy language, the anti-concurrent cause provision expressly excluded the insured's loss as it specifically excluded losses that occurred directly or indirectly from subsurface water pressure).

Accordingly, the anti-concurrent cause provision, coupled with the undisputed evidence that the loss was caused by a combination of both excluded and covered perils, foreclosed the analysis of whether the jury could legally or factually separate the **damage** caused by water coming through the door from water coming through the walls and windows. Therefore, we hold that the trial court erred in directing the verdict in favor of the insured and reverse and remand for the trial court to direct the verdict in favor of Security First.

¹An anti-concurrent cause provision is a provision in a first-party insurance policy that provides that when a covered cause and noncovered cause combine to cause a loss, all losses directly and indirectly caused by those events are excluded from coverage." [Liberty Mut. Fire Ins. Co. v. Martinez, 157 So. 3d 486, 487 n.1 \(Fla. 5th DCA 2015\)](#).

Reversed and [*5] remanded with instructions.

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