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COZEN O'CONNOR

Texas Supreme Court Clarifies Scope and Application of the "Anti-Technicality" Statute

In *Greene v. Farmers Insurance Exchange*, the Texas Supreme Court clarified the scope and application of § 862.054 of the Texas Insurance Code, the "anti-technicality" statute, holding that the clause would only operate in situations where the policyholder affirmatively violated an obligation created under the policy. The court further held that public policy did not change this result, despite the concurring opinion of two justices that argued that the court's opinion created confusion as to whether and when public policy would dictate a different result. Specifically, the concurrence argued that the majority opinion failed to distinguish the instant case from prior cases involving a "nonmaterial breach" by a policyholder.

Underlying Facts

LaWayne Greene (the insured) owned a home that was insured with Farmers Insurance Exchange (insurer). The policy contained a vacancy clause stating that coverage would be suspended effective 60 days after the home was vacated. The insured moved into a retirement home and notified the insurer of that move. The insurer did not offer, and the insured did not purchase, additional coverage for the "vacant" property, even though such coverage was available for purchase via a state approved form. Several months after moving, the insured's property caught fire from a neighboring property. The insured made a claim for loss and the insurer denied that claim based on the vacancy provision.

The Trial Court Applies the Anti-Technicality Statute and Grants Summary Judgment to the Insured

The insured filed suit against the insurer, contending that the insurer breached the insurance contract by failing to pay for the fire loss. The insured also asserted various bad faith and statutory claims stemming from the coverage denial. In the lawsuit, the parties stipulated that the vacancy of the property did not cause or contribute to the loss of the property, as the fire originated at a neighboring property and spread to the insured premises. On motion for summary judgment, the insured argued that § 862.054 of the Texas Insurance Code, the anti-technicality statute, precluded the insurer from denying the claim based on the vacancy provision. The anti-technicality statute states:

> Sec. 862.054. Fire Insurance: Breach by Insured; Personal Property Coverage
>
> Unless the breach or violation contributed to cause the destruction of the property, a breach or violation by the insured of a warranty, condition or provision of a fire insurance policy or contract of insurance on personal property, or of an application for the policy or contract:
>
> (1) Does not render the policy or contract void; and
>
> (2) Is not a defense to a suit for loss.

In the alternative, the insured argued that public policy precluded the claim denial because the vacancy did not prejudice the insurer.

The trial court granted the insured's motion for summary judgment and rendered final judgment in favor of the insured on the breach of contract claim.

The Court of Appeals Reverses the Trial Court and Holds That the Anti-Technicality Statute Does Not Apply

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The insurer appealed. The court of appeals reversed the summary judgment granted to the insured and rendered judgment in favor of the insurer. The court of appeals held that because the vacancy provision "unambiguously" excluded coverage after the house was vacant for 60 days, describing the vacancy provision in terms of a breach or violation was a non-sequitur, *i.e.* the policy did not require the insured to reside in the property and the insured's decision to move out did not "breach" any obligation imposed by the policy. Therefore, by its own terms, the anti-technicality statute would not prevent the insurer from asserting the vacancy as a defense to the insured's claim. Further, the court of appeals held that public policy did not require a showing of prejudice to the insurer as a precondition for asserting the vacancy clause to deny the insured's the claim.

The Texas Supreme Court Clarifies the Scope and Application of the Anti-Technicality Statute

The insured sought review of the court of appeals' ruling, claiming that prior Texas case law applied the anti-technicality statute in similar situations. The insured also argued that permitting the claim denial in the absence of prejudice violated other Texas Supreme Court precedent. The insured highlighted: (1) the insurer's stipulation that the vacancy did not contribute to the fire loss; and (2) the insured's notice to the insurer that she had vacated the property in advance of the loss.

The Texas Supreme Court noted that the vacancy provision defined the coverage provided by the policy. As such it could not be "breached" or "trigger" a breach. Stated differently, the insured purchased coverage for an occupied property, not a vacant property. The policy did not require the insured to reside in the insured premises. Therefore, the insured did not "breach" the terms of the policy by vacating the premises and the anti-technicality statute did not apply according to its terms.

In reaching this conclusion, the court distinguished its prior holding in *Puckett v. U.S. Fire Ins. Co*, 678 S.W.2d 936 (Tex. 1984). In *Puckett*, the insurer denied coverage for an aviation accident where the policyholder did not obtain a certificate of airworthiness for the plane in question. Both parties agreed that pilot error, as opposed to airplane malfunction, caused the loss. Under these facts, the Texas Supreme Court held that public policy prevented the insurer from denying coverage based on the absence of an airworthiness certificate, an absence characterized as a "mere technicality." The *Greene* decision distinguished *Puckett* by stating that the vacancy provision was not a "technicality," but rather was a material provision defining the coverage provided by the policy. The court further distinguished *Puckett* by relying on the legislative grant of authority to the Texas Department of Insurance to prescribe and approve forms to be used by insurance companies writing in Texas. After *Puckett*, the TDI was specifically tasked with ensuring all forms comported with public policy, and the TDI approved the insurance form containing the vacancy provision.

The court further distinguished *Greene* from other cases holding that a showing of prejudice by an insurer was a prerequisite to a denial. These cases included *Hernandez v. Gulf Group Lloyds*, 875 S.W.2d 691 (Tex. 1994)(holding prejudice was required to enforce "settlement without consent" clause), *P.A.J. v. Hanover*, 243 S.W.3d 630 (Tex. 2008)(holding prejudice was required to enforce a denial based on failure to provide notice of a claim), *Prodigy Communications Corp. v. Agric. Excess & Surplus Ins. Co.*, 288 S.W.3d 374 (Tex. 2009)(holding prejudice was required to enforce a denial based on failure to provide notice "as soon as practicable"), and *Lennar Corp. v. Markel Am. Ins. Co.*, 413 S.W.3d 750 (Tex. 2013)(holding prejudice was required to enforce "settlement without consent" clause). The court held that, in each of the cited cases, the breach by the policyholder was not material, as the breach did not prevent the insurer from receiving the benefit of the bargain embodied by the policy. In the instant case, however, the insured did not breach an obligation imposed by the policy and requiring prejudice as requested by the insured would re-write the risk being insured from an "occupied" residence to an "unoccupied" residence. Therefore, a "prejudice" analysis was not warranted.

Finally, the court held that public policy considerations did not dictate a different result. The court, referring to *Puckett*, noted that the anti-technicality statute showed a public policy against allowing an insurer to deny coverage based on a technicality. However, the court held that the vacancy clause was no mere technicality as it defined the coverage provided by the policy. The court also noted that a general public policy expressed in the anti-technicality statute would be outweighed by the specific public policy expressed in the homeowner's coverage forms comprising the policy as approved by the Texas Department of Insurance.

Concurrence

Justice Boyd filed a concurring opinion, in which Justice Willett joined. The concurrence agreed in whole with the majority's reasoning and result, but posited that the opinion provided little guidance to consumers, insureds, the TDI and Texas courts as to when a showing of prejudice would be required. The concurrence compared *Greene* to each of the four decisions that the court distinguished. In critiquing the majority's basis for distinguishing those cases, the concurring justices noted that while they agree the material-breach analysis does not apply because the vacancy provision was not an obligation, the notice and consent provisions in the court's previous opinions similarly were not obligations either – that is, they also involved the scope of coverage.

Implications

Although *Greene* provides a rationale for why a vacancy clause differs from a "consent to settle" clause or notice requirement, the opinion provides little insight as to how Texas courts will construe other policy clauses or treat the violations of those clauses. Further, the *Greene* opinion did not reach other questions regarding the scope and application of the anti-technicality statute, such as whether the statute would apply to claims involving a loss to real property, as the statute's terms are limited to personal property losses. The *Greene* opinion did not reach this issue as a consideration of damages was unnecessary when the entire loss had been denied properly. Additionally, because the facts in the *Greene* dispute involved a fire loss specifically, the court was not asked to consider, and did not consider, whether the anti-technicality statute could apply to non-fire losses or to losses insured by non-fire insurance carriers. However, *Greene* makes clear that, at a minimum, Texas courts should examine the intended scope of bargained-for coverage and the existence of a breach by the policyholder when determining whether particular coverage exclusions can be applied. As a result, carriers and policyholders alike should carefully examine the terms and scope of the issued policy when dealing with claims and claim denials.

To discuss any questions you may have regarding the issues discussed in this Alert, or how they may apply to your particular circumstances, please contact Gregory S. Hudson at (832) 214-3909 or ghudson@cozen.com.