


Supreme Court Copy

In the
Supreme Court
of the
State of California

SUPREME COURT
FILED

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Deputy

S179252

CENTURY NATIONAL INSURANCE COMPANY,

Plaintiff-Respondent,

v.

JESUS GARCIA, SR. and THEODORA GARCIA,

Defendants-Appellants.

CALIFORNIA COURT OF APPEAL · SECOND APPELLATE DISTRICT · NO. B209616
SUPERIOR COURT OF LOS ANGELES · MAUREEN DUFFY-LEWIS · NO. BC379522

APPELLANTS' REPLY BRIEF ON THE MERITS

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APPELLANT'S REPLY BRIEF ON THE MERITS

A. INTRODUCTION

Appellants Jesus Garcia, Sr. and Theodora Garcia (“Appellants”) hereby respectfully submits the following Reply Brief in response to Century National Insurance Company's ("Respondent") Respondent's Brief.

B. RESPONDENT HAS ATTEMPTED TO REWRITE INSURANCE CODE SECTION 2017

After reviewing this Court’s decision in *Minkler v Safeco Insurance Co.* (2010) S174016 counsel reread Respondent’s insurance policy. CT.09 through 033.¹ It would appear that Respondent took solace from unfortunate language in *Watts v. Farmers Ins. Exchange* (2002) 98 Cal. App. 4 1246 that would appear to give Respondent the lawful ability to change statutory language by merely modifying its contract of insurance. Evidence of this is seen at CT 017, paragraph 10 and CT 025 under Concealment or Fraud, the clauses in question. In both sections the statutory word “the insured” is changed to “an insured” to eliminate the claim of innocent coinsureds. No one would seriously argue that a person should profit by an intentional act. The Appellants did not set their house on fire. Jesus Garcia, Jr. even if allowed by law, could not profit from this fire as he had nothing to claim. Respondent seems to believe that it can by modifying its contract change the language of the statutorily mandated fire

¹ All references are the Clerk’s Transcript unless otherwise noted and surplus zeros are removed.

insurance policy. If that were the case and if a factually identical case to *Watts, supra*, arose under Respondent's policy, then a different result would obtain in that case. Where there is statutory law to the contrary, an exclusion provision in an insurance contract is not enforceable to the extent that it is in conflict with the statutory scheme. In other words, an insurer cannot contractually limit its liability in contravention of a statute. *Howell v. State Farm Fire & Casualty Co.* (1990) 218 Cal. App. 3d. 1446. If Respondent's position is maintained, then the effect is for it to provide less coverage under the fire insurance portion of the policy than that provided by *Insurance Code* §2071 and would void a reasonable person's expectation that his or hers actions are treated separately from other insureds. Since no discovery has been conducted, it would be interesting to learn if Respondent notified the Appellants in writing that their coverage was being diminished, especially below the minimum required by the standard language.

C. MINKLER HAS ALTERED THE ALLEGED INCONSISTCY BETWEEN THE LIABILITY SECTION OF A HOMEOWNERS INSURANCE POLICY AND THE STANDARD LANGUAGE OF THE FIRE INSURANCE PORTION OF THE POLICY

Respondent has consistently argued that since an insurance company under the liability portion of a homeowners policy can use the language "an insured", "any insured", instead of "the insured", thereby denying protection to an otherwise innocent coinsured when another

insured commits a tort and that to hold to the contrary under the fire insurance portion of the policy would be illogical. While the result may appear illogical upon casual observation, that result is dictated by the fact that liability coverage is not part of the standard fire insurance policy and therefore not subject to *Insurance Code* §2070 .

Respondent's policy has three provisions directly on point in *Minkler, supra*. As in *Minkler, supra*, Respondent's policy excludes liability coverage for innocent co-insureds under EXCLUSIONS, paragraph 1 a. CT 024. As in *Minkler, supra*, Respondent's policy contains a severability clause under CONDITIONS, paragraph 2. CT 024. Under GENERAL CONDITIONS starting at CT 025 and continuing to CT 025 and in particular we find paragraph 11 which states: Conflict of Terms. "If there are terms of this policy which conflict with laws of the state where issued, the terms are amended to conform to such laws.

What are the reasonable expectations of the average insured? This Court answered that question in *Minkler, supra*, and ruled that the severability clause created ambiguity when viewed against the exclusionary clause in the policy. If we were to adopt Respondent's argument, we would now have an illogical result wherein under the liability portion of its homeowners policy, an innocent co-insured would be covered, but that same insured would lose coverage under the fire insurance portion of the policy. Based on this Court's discussion in *Minkler, supra*, there can be

no doubt about the legal meanings of the words “the”, “an” or “any” insured and the benefit or detriment to an innocent coinsured depending on which word is used in the policy.

As this Court further stated in *Minkler, supra*:

Here, even if Betty’s homeowners policies excluded liability coverage for injuries intentionally caused by “an” insured, she had, in light of the policies’ severability clause, an objectively reasonable expectation that the policies would cover her so long as her own conduct did not fall within the intentional acts exclusion. She had no reason to expect that David’s residence in her home, and his consequent status as an additional insured on her homeowners policies, would *narrow* her own coverage, and the protection of her separate assets, against claims arising from *his* intentional acts.

How is this any different for Jesus Garcia, Sr. and Theodora Garcia?

Why would the Garcias believe that the intentional act of their son, not even a named insured would literally cost them their home? Their position is actually stronger. The standard policy language uses the term “the insured” throughout and *Insurance Code* §2070 provides that coverage has to be equal or greater than that of *Insurance Code* §2071. They would reasonably believe that Respondent’s policy would provide them with at least the minimum coverage of the standard fire insurance policy.

Respondent’s argument that the Code does not talk about intentional acts is inapplicable as described in the Opening Brief.

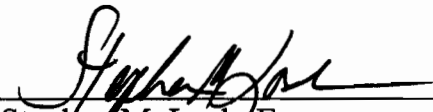
D. CONCLUSION

For the reasons set forth above, Appellants respectfully request the Trial Court's ruling sustaining Respondent's Demurrer without leave to amend and dismissing Appellants' Cross Complaint be reversed.

Dated: July 27, 2010

RESPECTFULLY SUBMITTED,
BEVERLY HILLS LAW ASSOCIATES

By: _____



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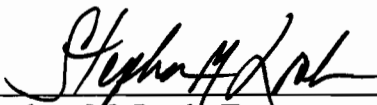
CERTIFICATE OF COMPLIANCE

Counsel of Record hereby certifies that pursuant to Rule 8.204(c)(1) or 8.504(d)(1) of the California Rules of Court, the enclosed Reply Brief on the Merits is produced using 13-point or greater Roman type, including footnotes, and contains 974 words, which is less than the total words permitted by the rules of court. Counsel relies on the word count of the computer program used to prepare this brief.

Dated: July 27, 2010

RESPECTFULLY SUBMITTED,
BEVERLY HILLS LAW ASSOCIATES

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State of California)
County of Los Angeles)
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I, Stephen Moore, declare that I am not a party to the action, am over 18 years of age and my business address is: 354 South Spring St., Suite 610, Los Angeles, California 90013.

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Signature: Stephen Moore

