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Vera M. Stout v. Washington Fire and Marine Insurance Company : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

UNIVERSITY OF UTAH
OCT 29 1963

VERA M. STOUT,
Plaintiff-Respondent,

vs.

WASHINGTON FIRE AND MARINE
INSURANCE COMPANY, a
corporation,

Defendant-Appellant.

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Case
No. 9873

FILED
MAY 29 1963
Court, Supreme Court, Utah

APPELLANT'S BRIEF

Appeal From The Judgment of The Third District Court
for Salt Lake County, Honorable A. H. Ellett, Judge.

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APPELLANT'S BRIEF

NATURE OF THE CASE

This is an action under a fire insurance policy to recover for personal property destroyed by fire.

DISPOSITION IN LOWER COURT

At the pre-trial hearing upon a stipulation of facts, the parties submitted to the Court upon written memoranda the point of liability which hinged upon the meaning of the word "premises" in the policy. The Court ruled that "premises" included a tire recapping shop located at the rear of the lot upon which the insured dwelling stood, and the defendant was liable for the full value of personal property stored therein which was

destroyed by fire, rather than ten per cent (10%) of the value as provided for unscheduled personal property located "off premises." Defendant appeals from this judgment.

RELIEF SOUGHT ON APPEAL

Defendant seeks reversal of the judgment and judgment in its favor as a matter of law as to the extent of its liability as will be herein set forth.

STATEMENT OF FACTS

On June 6, 1961 Plaintiff secured a policy of fire insurance from Defendant insuring a frame dwelling used as her home. The policy provided inter alia for coverage on "Unscheduled Personal Property" in the total amount of Six Thousand Dollars (\$6,000.00). By the terms of the policy as set forth under the caption "Coverage C—Unscheduled Personal Property" two alternatives are provided for:

1. "*On Premises*: This policy covers unscheduled personal property usual or incidental to the *premises as a dwelling* owned, worn or used by an insured while on the premises, etc.", in actual value up to \$6,000.00, and

2. "*Away From Premises*: This policy also covers unscheduled personal property AS DESCRIBED AND LIMITED while elsewhere than on the premises, anywhere in the world, owned, worn or used by insured * * *. THE LIMIT of this company's liability for such property while away from premises shall be an additional amount of insurance equal to ten per cent (10%) of the

amount specified for Coverage C and in no event less than One Thousand Dollars (\$1,000.00).” (Emphasis added)

Located 50 to 75 feet to the rear of the frame dwelling insured but on the same lot was a building used as a tire recapping shop by plaintiff's family. It is not disputed by plaintiff that the insurance rate on such tire recapping shop was higher than the rate on the frame dwelling because of the increased fire hazard inherent in the nature of the work done in the shop. While defendant did not insure the tire recapping shop, it is admitted by plaintiff that she had fire insurance on said recapping shop with another company, but the fire insurance did not cover any personal property stored therein.

At a time prior to August 2, 1961 and while plaintiff's insurance contract with defendant was in force, plaintiff stored in the tire recapping shop certain items of personal property which apparently were an overflow from the storage facilities in her home. It is admitted that these items of personal property were of a household nature and were not connected with the business of the tire recapping shop.

On or about August 2, 1961 the tire recapping shop burned, and the personal property alluded to herein was destroyed by fire. While the element of damages has never been presented to a court or jury, plaintiff sues for approximately Five Thousand Dollars (\$5,000.00) as the value of the personal property lost, and the Insurance Company, defendant herein, has taken

the position that it is liable only to the extent of ten per cent (10%) of the actual value of said property as per the provisions of the policy as above set forth, defendant taking the position that the destroyed personal property was not on the premises insured. Judge Ellett ruled the recapping shop was a part of the premises which has the effect of making the defendant liable for the actual value of the destroyed property up to \$6,000.00.

ARGUMENT

POINT I

THE COURT ERRED IN HOLDING THAT THE WORD "PREMISES" INCLUDED THE TIRE RECAPPING SHOP, THUS MAKING DEFENDANT LIABLE FOR THE FULL VALUE OF PERSONAL PROPERTY DESTROYED WHEN BY A STRICT INTERPRETATION OF THE TERMS OF THE CONTRACT AND THE APPLICABLE LAW THE TIRE RECAPPING SHOP WAS NOT A PART OF THE PREMISES INSURED, AND THE COMPANY'S LIABILITY BY THE TERMS OF THE CONTRACT SHOULD THEREFORE BE ONLY TEN PER CENT (10%) OF THE VALUE OF SAID PERSONAL PROPERTY, OR \$1,000.00, WHICHEVER IS THE GREATER.

The sole issue of law to be determined herein is the definition of the word "premises" as used in the policy of insurance as it relates to unscheduled personal property. If the Court finds that the tire recapping shop is a part of the premises insured by defendant, then defendant is liable for the actual value of the personal household property stored and destroyed therein. Conversely, if the Court finds that the tire recapping

shop was not a part of the premises insured, then the defendant's liability is limited to ten per cent (10%) of the value of the personal property, or \$1,000.00, whichever is greater.

In defining "premises" we are not here concerned with conventional or dictionary definitions. The policy itself specifically defines the word as it applies to the contractual relationship of the parties. In at least three places in the insurance contract the company defines premises for purposes of its liability assumption. Under the statement of Declarations appearing at the top of the first unnumbered page following Page 4 of the contract we read:

"Declarations

The premises occupied by the Named Insured is situated in a building occupied by not more than families. The described premises is occupied by not more than one family in addition to the Named Insured's family and by not more than two roomers or boarders."

On Page 3, under General Conditions, at 2.(d) we read:

"General Conditions Premises

The unqualified word "premises" means the premises described in the Declarations, including grounds, garages, stables and other outbuildings *incidental thereto*, and private approaches thereto." (Emphasis added)

On the face or title page of the contract the tire recapping shop is excluded from the premises insured

by the statement appearing in the center of said title page, which reads:

“The described dwelling of frame construction is occupied by not more than two families and not more than two roomers or boarders per family. . . . The described dwelling is not seasonal and *no business pursuits are conducted at the premises thereof*: Exceptions if any. (No exceptions noted) (Emphasis added)

From the above definitions it is clear that “premises” relates to a “building” (singular and not plural) which is to be used as a *dwelling*, together with grounds, garages, etc., *incidental* to that singular dwelling as a *dwelling*. A tire recapping shop, therefore, which is used not as an incident to the occupancy of the dwelling, but rather as a business operation, does not come within the definition.

This position is further supported by the fact that the paragraphs of coverage concerning unscheduled personal property refer both to the personal property on premises and the same personal property away from premises, providing specific coverage in each instance. The paragraph relating to personal property on premises provides “this policy covers unscheduled personal property *usual or incidental to the occupancy of the premises as a dwelling. . . .*”, again emphasizing a singular building or dwelling and occupancy as a dwelling.

The question of what building or buildings are to be included in defining premises in an insurance policy in a fact situation strikingly similar to the one at bar appears in the case of *Rickerson v. German-American*

Insurance Company of New York, 32 N.Y. Suppl. 1026. The policy of insurance in that case described the premises insured as "a brick building and additions, No. 160 M Street, occupied by stores and dwellings." There were in that case a two story brick building occupied as a store on the ground floor and dwellings on the second floor, with a brick factory building on the rear portion of the land described. The two buildings were connected by a frame structure, the walls of which in part were the walls of the brick buildings. Passage from one brick building to the other was impossible through the frame structure, except by going through windows. The court ruled that the rear building was not part of the premises and not covered by the insurance policy. The court said in part:

"The question presented is whether the policy in question covered the rear building as well as the front. It is to be observed that there is only *one building* insured, with the additions to such building, which it is represented in the policy were occupied as stores and dwellings. It is difficult to conceive how the rear building is to be considered as an addition to the front building, there being no connection between the two, because this small frame structure cannot be considered a connection. It certainly was not intended to connect the rear with the front building, nor was it used for any such purpose. The fact of the existence of windows in the front and rear buildings, making it possible to crawl into this frame structure, temporary in its nature, in no manner made the large brick factory an addition to the smaller building on the front. And furthermore, by the terms of the policy, the building insured is represented as being

occupied for stores and dwellings, and it is only the front building that answers this description. The rear building was used almost entirely as a factory, with a very small portion of it occupied as a store for the sale of the goods manufactured therein. Under these circumstances, it is difficult to see how, under the terms of the policy as it reads, it is possible to include this rear factory building. As has already been observed, the buildings were absolutely independent of each other, *and intended for different uses*; and the mere fact that this frame structure adjoined each building could in no way make the rear building an addition to the front building, any more than it could make the front building an addition to the rear." (Emphasis added)

In the case at bar the building in which the personal property was located, for the loss of which plaintiff seeks to recover, was used as a tire recapping shop, was located some distance from the home, had no connection with the home as a home or dwelling, was not a building appurtenant to the dwelling as a garage or outdoor privy would be, and can in no wise be considered a "dwelling." The reasoning of *Rickerson v. German-American Insurance Company of New York* case, *supra*, therefore seems compelling here.

The provisions of the policy relating to business and business pursuits lend further emphasis in that connection. The policy provides on its face "described *dwelling* is not seasonal and no business pursuits are conducted *at the premises* thereof;" again it is to be noted that the word "premises" designates a singular *dwelling* as *Rickerson, supra*, designated a singular building.

There is some additional case law in a parallel area where the word "premises" has been construed. Typical of these holdings is *Sexton v. Hawkeye Insurance Company*, 69 Iowa 99, 28 NW 462, which held that where an insurance policy provides that if the insured premises should become vacant the policy should become void, "premises" referred to the *house insured* and not to the land upon which the house was located. The court said in part:

"Counsel also argue that the condition requiring occupancy applies to the land upon which the house is situated, and that as it was occupied the condition has been performed. The ground of this position is that the land is particularly described, and the condition declares that if the *premises* are vacant, the policy shall become void. Counsel thinks that the word "premises" refers to the land as well as the house. This cannot be admitted. The land is described in order to designate the location of the house; *the land is not insured; the house is*. It is very plain that the word "premises" refers to the property insured." (Emphasis added)

There is a further argument which is persuasive for the position that "premises" includes only the insured dwelling and any structures appurtenant or incidental to it as a dwelling. That is, to permit plaintiff to succeed here would be to allow him to recover for property in a building which building itself was not covered by the terms of the policy. It is admitted by the plaintiff that the tire recapping shop itself was not insured by defendant, it being a hazard expressly excluded by the terms of the policy. It would offend logic, therefore, to rule

that personal property used as incidental to the occupancy of the dwelling, which is placed in this business location with its increased hazard, was a risk intended to be assumed by the insurer. The logic of this position is clear, in view of the fact that the policy at a reduced coverage insures said personal property when "away from premises."

Finally, in the case of *Ziebarth et ux v. Fidelity and Guaranty Fire Corporation of Baltimore, Maryland*, 41 NW 2d 632. Supreme Court of Wisconsin, a policy of fire insurance issued on a dwelling house provided that the insured might apply up to ten per cent (10%) of the full amount of insurance on private structures other than the dwelling itself and located on the premises. The insureds therein had a two-car frame garage on the back of their lot. This garage was used to carry on the business of the insured which was the repairing of automobiles. The garage burned. The Supreme Court of Wisconsin held that defendant insurer was not obliged to pay the ten per cent (10%) of the policy coverage for the loss of the garage even though it was on the same lot as the insured dwelling under the following reasoning:

"The policy in question was for a dwelling house. By referring to private structures appertaining to the dwelling house its coverage was limited to buildings generally in the individual and private use of the owner. A car repair shop which was open to the public was thus definitely excluded."

It is admitted that *Ziebarth, supra*, is not precisely in point with the case at bar but certainly shows the

reasoning of the courts in defining such things as premises, private and public uses and related matters in this general field of insurance. It is defendant's position that unless an item of personal property was either located in the insured frame dwelling itself or in an outbuilding directly related to the frame building as a dwelling, such item or items of personal property, even though they were 50 feet away from said building, would not be on the premises as defined by the policy, and their loss would be compensated by the ten per cent (10%) value provision of the policy, which ten per cent (10%) valuation would follow such an item of personal property virtually to the ends of the earth. No loose dictionary definitions of premises which usually include the entire parcel of land are applicable here particularly in the light of the *Sexton* case, *supra*, which as above set forth says: "*The land is not insured; the house is.*"

Plaintiff respondent will undoubtedly take the position that the general rule that contracts are to be construed against their composers should operate against appellant herein. It is clear in the law that this doctrine does not apply when construing the *location* of the property insured. See *Jefferson County Bank v. Insurance Company of the State of Pennsylvania*, (1933) 251 Ky. 502, 65 SW 2d 474, wherein it was said in part:

"Ordinarily insurance contracts are construed against the insurers, but that is not true as to the *location* of the property insured. The policy will not be extended to property not in the terms of the description in this respect....

"If the average reasonable man were told this company had lumber in its mill, had lumber

on its open yard, and had insurance on the lumber on its yard, he would not for a moment think the lumber in the mill was insured." (Emphasis added)

CONCLUSION

It is respectfully submitted that the personal property in question was, for the purposes of this lawsuit and under the terms of the policy, "away from premises," and it would be manifestly unjust and offensive to logic to allow a person to take quantities of furniture, clothing and other personal property which was virtually an overflow from their insured dwelling and place said quantities of personal property in a building used as a tire recapping shop with a high fire potential hazard and, when the tire recapping shop burns, destroying the personal property which should have been in the dwelling, to allow him to recover the full amount of the value of said personal property.

With this in mind the policy very prudently, and fairly, limits the insurer's liability to personal property elsewhere than in the dwelling to the sum of ten per cent (10%) of the value of the property or \$1,000.00, whichever is the greater.

Respectfully submitted,

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