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

Utah Supreme Court

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IN THE SUPREME COURT
OF THE STATE OF UTAH
FILED
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VERA M. STOUT,

Plaintiff-Respondent,

vs.

WASHINGTON FIRE AND MARINE
INSURANCE COMPANY, a
corporation,

Defendant-Appellant.

Clerk, Supreme Court, Utah

Case No.
9873

RESPONDENT'S BRIEF

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Defendant-Appellant.

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9873

RESPONDENT'S BRIEF

STATEMENT OF THE KIND OF CASE

This is an action to recover for the value of unscheduled personal property due to destruction by fire under a policy of insurance issued by the defendant.

DISPOSITION IN LOWER COURT

The trial Judge granted a Summary Judgment in favor of plaintiff. The parties submitted to the court the question of whether the defendant was obligated under the terms of the policy to pay the value of the destroyed unscheduled personal property. The question was submitted upon a Stipulation of Facts and Briefs. Plaintiff-Respondent seeks affirmation of the judgment by the Trial Court.

STATEMENT OF FACTS

The plaintiff lives at 842 East 4500 South Street in Salt Lake City, Utah. The lot on which her home and other buildings are located is approximately 92 feet wide and 471 feet deep. The building used as the home is located towards the front of the lot. Approximately 25 feet behind the home was the building that was destroyed by fire.

On August 2, 1961, the building situated to the rear of plaintiff's home was completely destroyed by fire, including all of the contents therein. This building was used by the plaintiff as a tire recapping shop and the plaintiff also used a part of the building as a storage shed in which she kept the unscheduled personal property that was destroyed in the fire and

for which she seeks to recover the value of said property.

The sole issue of law to be determined herein is whether the parties meant by the word "premises" as used in the policy of insurance, the lot and all of the buildings thereon or whether the word "premises" should be defined to mean only the building used as a dwelling.

ARGUMENT

POINT I

THE MEANING AND INTENT OF THE WORD "PREMISES" AS USED IN THE POLICY OF INSURANCE SHOULD, IF POSSIBLE, BE DETERMINED FROM THE POLICY ITSELF.

Any doubts or uncertainties as to the effect of the policy of insurance or to its meaning are to be construed so as to resolve said doubts or uncertainties against the defendant in as much as that company prepared and issued the policy. Commercial Credit Corporation vs. Premier Insurance Company, 12 Utah 2d 321.

The policy of insurance under general conditions defines the word "premises" as follows:

“The unqualified word “premises” means the premises described in the declaration including grounds, garages, stables and other out buildings incidental thereto and private approaches thereto.”

In attempting to determine the meaning and scope of the word “premises,” all of the facts and the nature of the claim should be given consideration. For example a building on the premises used as a business would not be incidental to the use of the property as a dwelling. However, a part of that same building used for storage of household effects and property of a personal nature would be incidental to the use of the property as a dwelling. Therefore, there is no question but what a claim for damage to the building as an appurtenant structure would not be covered. There is no attempt in this case to make any claim for damage to the building. The claim is for personal property stored in the building. It also must be remembered that the personal property was not property used in the business but property incidental to a dwelling, such as gardening equipment, camping equipment, outdoor furniture, bicycles, equipment for horse back riding, etc. The appellant seems to be taking the position that the law in this case should be the same as if a claim were made for the damage to the building used as a business. The cases cited in Appellant’s Brief are to this effect.

The appellant admits that the tire recapping building was on the premises, (page 5 and 6 of his Brief), but attempts to avoid liability by quoting the policy as follows:

“The described building is not seasonal and no business pursuits are conducted at the premises thereof, exceptions if any. (no exceptions noted).”

However, it must be remembered that the insurance agent of the insurer, or the insurer, prepared and filled out the policy. Further, the same insurance agent wrote a policy of insurance on the tire recapping shop but did not place said insurance with this company.

It was never intended by the insured that premises should refer only to the building used as a dwelling. The policy provides under Perils Insured Against in reference to wind storm or hail “personal property kept in building(s)” using the word buildings in the plural form. The plural form of “buildings” is used in Section 5 in two different places referring to damage caused to personal property by steam or hot water heating systems. The plural form is again used in regards to Section 12, Falling Objects. Excluding loss to personal property by falling objects unless the buildings containing the property shall

first sustain damage. The plural form "building(s)" is used in Section 13, Section 14, Section 15, Section 16, and Section 17. It is to be noted that Section 14 provides for coverage for outdoor equipment as a direct result of the collapse of a building. Under extensions of coverage, Section 3, Consequential Loss, the policy provides for coverage to unscheduled personal property while contained in a building at the described location. There is no indication that the building must be a dwelling. Under "Special Limits of Liability," Section 1, provides for a loss deductible of \$50.00 to personal property "in the open." Section 2 is identical. Section 3 provides that "this company shall not be liable in any one loss with respect to the following named property: (E) for more than \$500.00 on water craft including their trailers whether licensed or not, furnishings, equipment and outboard motors, nor for any loss by wind storm or hail to such property not inside fully enclosed buildings. (Except row boats and canoes on the premises.)" It is to be noted that row boats and canoes on the premises are fully covered without the limitation of \$500.00.

From the foregoing it is obvious that the insured meant to insure all of the personal property of the insured while on the total area of the lot or in any one of the buildings located on the lot. There are

items of personal property specifically covered that are not reasonably kept in the dwelling, such as the outdoor equipment specifically mentioned in Section 14, the water craft including their trailers and row boats and canoes.

One can well imagine appellant's dilemma in the present case. It is difficult to sustain the argument that the tire recapping shop was not on the premises in view of the definition of "premises" in the policy. The other alternative for the appellant is to argue that the personal property is not covered if stored in a place where business is conducted. The appellant has tried to solve this dilemma by arguing that if a building is used for one purpose, such as a garage, it would be on the premises, but if converted to a business use it would not be on the premises. This is illogical and it is submitted that if a building is on the premises for one purpose it is also on the premises for any other purpose.

This policy of insurance is in two sections. Section 1 refers to coverage on the dwelling, appurtenant private structures, unscheduled personal property and additional living expense. Section 2 coverage includes comprehensive personal liability, medical payments, and physical damage to property of others. Under the section on Provisions Applicable to Section

2 coverage, the policy very clearly excludes coverage from business property. The policy then further describes business property as property on which the business is conducted.

The above exclusion refers only to coverage for comprehensive personal liability and does not apply to Section 1 coverage of the policy which is unscheduled personal property and it is submitted that if the insurer had intended to exclude personal property from coverage while located on business property he would have done so. There is nothing in the policy in regards to unscheduled personal property that excludes coverage for said property while located on business property.

In view of the great detail with which all of the exclusions in the policy are spelled out (there are perhaps a hundred exclusions in regards to coverage on unscheduled personal property), it seems incredible that the insurer would have entirely overlooked or omitted such a substantial exclusion from the policy if it had intended that there should be no coverage on unscheduled personal property if located on business property. *Huber and Rollin Construction Company v. City of South Salt Lake*, 7 Utah 2d 273.

POINT II

THE WORD "PREMISES" SHOULD BE GIVEN ITS USUAL OR NORMAL MEANING.

In determining the intent of the policy the test to be applied is would the meaning be plain to a person of ordinary intelligence and understanding viewing the matter fairly and reasonably in accordance with the usual and natural meaning of the words and in the light of the existing circumstances including the purposes of the policy. *Auto Lease Company vs. Central Mutual Insurance Company*, 7 Utah 2d 336.

The wording of the policy in regards to unscheduled personal property states:

"On premises this policy covers unscheduled personal property usual or incidental to the occupancy of the premises or dwelling, owned, worn or used by an insured while on the premises."

Premises is defined in Websters dictionary as follows:

"The property conveyed in a deed; hence in general, a piece of land or of real estate; sometimes, especially in fire insurance papers, a building or buildings on land." Websters

New International Dictionary, Second Edition,
1946.

This Mississippi Supreme Court has defined the word “premises” as follows:

“The word “premises” has varying meanings, usually determined by the context, and when used with respect to property means land, tenements and appurtenances.” *Rignall vs. State*, 98 So. 444, 134 Miss. 169.

An Oklahoma case states the following:

“House, home or premises includes the curtilage surrounding a dwelling home, the area of land surrounding a house and actually or by legal construction forming one enclosure with it.” *Ratzell vs. State Okl.*, 228 P 166.

Under a Will giving a wife six months to vacate the premises, it was held premises to mean, “a distinct portion of real estate, land or lands, land with its appurtenances as buildings,—a building and its adjuncts.” *Ruble vs. Ruble*, Texas, 264, S. W. 1018.

The word “premises when used with reference to conveyances “in common parlance is used to signify lands with their appurtenances.” *F. F. Proctor Troy Properties Co. vs. Dugan Store* 181 N. Y. S. 786.

Where lease is of premise, “premises” generally

means land and buildings thereon. *Bachenheiner vs. Plam Spring Management Corp.*, 116 C. A. 2d 580, 254 P2d 153.

In an action on a fire insurance policy covering a lumber yard and its contents, wherein there was number of buildings and piles of stock, all within a common enclosure, and also a lot across the street disconnected from the main yard, the main yard, with the property therein was held to be the premises, and the lot across the street held to be separate premises. *Mangold vs. American Insurance Company of Newark*. 99 Neb. 656, 157 N. W. 632.

In a suit on a fire insurance policy, which defendant alleged insured has breached by failing to keep a set of books containing a record of the property on the premises, held, insured did keep requisite books, "premises includes not only buildings, but land upon which they are situate." *Merchants and Manufactures Lloyds Insurance Exchange vs. Southern Trading Company of Texas*, Texas, 204 S. W. 352.

CONCLUSION

It is respectfully submitted that the decision in this case must be determined from a careful examination of the policy. Any doubts as to the meaning of the policy should be resolved against the insurer and the purpose of the policy should be considered. The words used in the policy should be given their usual or natural meaning.

An examination of the policy will conclusively show that personal property was intended to be covered while on the premises. Further, "premises" was intended to include the total area of the lot and all the buildings thereon. The natural and normal meaning of "premises" is an enclosure or unit of property and all the buildings thereon. The policy provides for coverage to outdoor equipment, boats and trailers while on the premises. Obviously, the insurer did not intend to limit coverage to these items while in the dwelling only.

The fact that the destroyed personal property was kept in a place of business is immaterial as long as the place of business is on the premises. There is no exclusion on personal property because it is stored in a place of business. Part of the policy, not applicable to personal property, provides for an exclusion in re-

gards to a part of the premises on which a business is conducted. It is therefore reasonable to assume that if the insurer had intended to exclude coverage on personal property stored in a place of business he would have done so.

Respectfully submitted,

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