TRAUB LIEBERMAN

INSURANCE LAW BLOG

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Illinois Appellate Court Address the Scope of the Term “Resident” in Homeowners Policy

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In Farmers Ins. Exch. v. Cheekati, 2022 IL App (4th) 210023, the 4th District Court of Appeals for the State of Illinois addressed whether the term “resident” in a homeowners policy included a tenant leasing the insured premises. The Insureds owned property which was insured through Farmers under a homeowner’s policy. Unable to sell the property, the Insureds entered into a two-year lease agreement with a tenant. Several months after entering into the lease agreement, the tenant allegedly sustained physical injuries inside of the rented premises when a staircase collapsed. The tenant sued the Insureds and the matter was tendered to Farmers. Thereafter, Farmers denied coverage based on an exclusionary provision in the homeowner’s policy. Specifically, the policy contained a "Liability Exclusions" section, which provided:

> "Coverage E (Personal Liability) *** and *personal injury* coverage, if covered under this policy, do not apply to: *Any insured or other residents of the residence premises*. We do not cover bodily injury or personal injury to: (a) any *insured*; or (b) any resident of the *residence premises*, whether resident in the *dwelling* or a *separate structure*." (Emphases in original.)

It was undisputed that the tenant did not qualify as an Insured. The parties did not, however, agree on whether the tenant qualified as a "resident." According to the Court, Farmers argued the tenant was a resident of the insured premises because she lived there pursuant to a two-year lease. The Insureds on the other hand took the position that a "tenant" does not fall with the scope of “resident” because the homeowner’s policy used the term "tenant" in two different provisions such that "resident" cannot include “tenants”. Correspondingly, according to the Insureds, the resident exclusion was ambiguous and should be construed against Farmers. The Court did not agree.

The Court began its analysis by noting that the term “resident” was not defined in the policy such that the term must be given its "plain, ordinary and popular meaning” and will be construed with reference to the average, ordinary, normal, reasonable person. Turning to the dictionary definition of “resident" the Court noted that it includes "a person who resides in a place." And that the term “reside” is further defined as "to dwell permanently or for a considerable time". There was no dispute that there was a lease giving the tenant the right to live in the home. The Court therefore determined that the tenant “dwelt” in the home and had signaled an intent to live in the home for a considerable amount of time by signing a two-year lease. Thus, according to the Court, considering the plain, ordinary, and popular meaning of "resident," led to the conclusion that the tenant was a “resident” when the injury took place. For this reason, the Court concluded that the resident exclusion applied to preclude coverage.

As for the Insured’s argument that the resident exclusion was ambiguous, the Court rejected the Insured’s “attempt to inject ambiguity into the policy”. The Court observed that the Insureds offered no reasonable interpretation for "resident" other than their claim that it cannot include "tenants." The Court found that such an argument was not a reasonable, alternative interpretation to the plain, ordinary meaning of "resident" from the dictionary. Per the Court, separating “tenants” from “residents” for purposes of the resident exclusion because the policy used “tenant” in two unrelated policy provisions amounts to the Insureds suggesting a “creative possibility” and not a reasonable interpretation. And simply because the parties disagree as to a terms interpretation does not create ambiguity. In ruling against coverage, the Court concluded that the parties did not intend for the policy to cover injuries sustained by anyone residing in the home, including the injured tenant.