
STATE OF MINNESOTA
IN COURT OF APPEALS

Michael Cisar and Sharron Betsinger,
Appellants,

vs.

**Lisa J. Slyter, Town & Country Insurance Agency, Inc.,
Spring Vale Mutual Insurance Company and
North Star Mutual Insurance Company,**

Respondents.

APPELLANTS' SHORT LETTER ARGUMENT

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Michael Cisar and Sharron Betsinger

Appellants,

APPELLANTS' SHORT LETTER ARGUMENT
PURSUANT TO RULE 128.01, SUBD. 2

vs.

**Lisa J. Slyter, Town & Country Insurance
Agency, Inc., Spring Vale Mutual Insurance
Company and North Star Mutual Insurance Company,**

Respondents.

In accordance with the requirements of Rule 128.01, Subd. 2 of the Minnesota Rules of Civil Appellate Procedure, the appellants submit this short letter argument in support of their appeal of the Order of Dismissal issued in this matter, by Judge James T. Reuter of the Pine County District Court on December 15, 2010.

Appellants' Action Against the Respondent Insurers

Introduction and Background

This action was brought by the Appellants against the Respondent Insurers who jointly issued insurance coverage on the Appellants' home and farm. The combination policy provided coverage for damage or total loss of the Appellants' home, with a policy limit of \$557,300.

This action arises out of a disagreement between the Appellants and the Respondent Insurers as to the proper amount of damages payable to the Appellants as the result of the total loss of their home by fire, on April 23, 2008.

One of the Respondent Insurers, Spring Vale, is a township mutual insurance company. Thus, Spring Vale is subject to, and the beneficiary of, the terms of Minn. Stat. §67A. Such

terms include Minn. Stat. §67A.25, Subd. 2, which allows Spring Vale to be “excluded from all provisions of the insurance laws of this state” in many, but not all, circumstances.

On April 23, 2008, the Appellants’ home was destroyed by fire. The Appellants made a claim against the Respondent Insurers for the policy limit of \$557,300. Respondent Insurers refused to pay the policy limit of \$557,300, claiming that their obligation was limited to the actual cash value replacement cost of the Appellants’ home.

Under Minn. Stat. §67A.191, Subd 2, **(Page B-13 of Appendix B)** if *homeowner’s insurance* is included in the combination policy sold to the Appellants by the Respondent Insurers, *all portions* (emphasis added) of the combination policy providing homeowner’s insurance, including those issued by a township mutual insurance company, are subject to the provisions of Minn. Stat. §65A and sections 72A.20 and 72A.201.

Minn. Stat. §65A is the Minnesota statute that governs Fire and Related Insurance and Minn. Stat. §72A.20 and §72A.201 are the Minnesota statutes that relate to insurance company claims practices.

Minn. Stat. §65A defines the terms and limitations that must be incorporated into the various forms of insurance that cover residential properties and their residents. Minn. Stat. §65A is applicable to the insurance written on virtually all residential properties in Minnesota.

The Respondent Insurers are desperate to avoid the application of Minn. Stat. §65A to this fire loss and claim their limited exclusion from the application of Minnesota insurance laws, under Minn. Stat. §67A.25, Subd. 2. **(Page B-10 of Appendix B)**

If the Respondent Insurers are subject to the provisions of Minn. Stat. §65A, in this case, they would be required to

- 1) allow the Appellants to commence an action against them within two years of the fire loss; as required by Minn. Stat. §65A.01, Subd 3; **(Page B-23 of Appendix B)** and

- 2) pay the Appellants the balance of their policy limit of \$557,300, as required by Minn. Stat. §65A.08, Subd 2.

On March 18, 2009, an Appraisal was conducted, pursuant to language contained within the homeowner's insurance policy (**Page B-7 of Appendix B**) that prescribes an appraisal as the proper procedure to resolve valuation issues between the parties "if the parties fail to agree on the actual cash value of an item or amount of loss." The Appraisal Award, attached as **Page B-37 of Appendix B**, determined the Loss Actual Cash Value (ACV) of the residence to be \$445,655. Following the Appraisal, the Respondent Insurers made a voluntary payment to the Appellants of \$445,655 (the ACV) for the Appellants' building loss. This payment represented the undisputed portion of the Appellants' property damage claim. The Insurers did not demand, nor did the Appellants' offer, any release from further claims for the balance of the \$557,300 coverage limit, in exchange for these payments.

The section of the homeowner's insurance policy that prescribes the Appraisal procedure (**Page B-7 of Appendix B, Lines 55-57**) limits the Appraisal process by stating that

"The appraisers shall not have the power or authority to resolve or determine coverage issues or disputes (emphasis added) under this policy."

Thus, the insurance *coverage issue* remains unresolved.

The coverage issue is whether, as the Appellants' contend, pursuant to the terms of the policy and Minnesota Statute 65A.08, the Respondent Insurers are obligated to pay the policy limit of \$557,300, covering the Appellants' home. The Respondent Insurers contend that their obligation is limited to the undisputed ACV of \$445,655, which has been paid. This lawsuit was commenced in April, 2010, more than one year, and less than two years, after the April 23, 2008, fire loss.

Respondent Insurers' Motion to Dismiss

On May 24, 2010, the Respondent Insurers filed a motion for summary judgement in the District Court of Pine County, Minnesota. The basis for the Respondent Insurers' motion was limited to two issues:

- 1) the claimed applicability of the one year statute of limitation contained within the policy language (**Page B-7 of Appendix B, Lines 55-57**) and
- 2) the claim that Respondent North Star was entitled to dismissal because North Star claimed not to have issued the fire insurance coverage for the Appellants' home; and that North Star had no direct contact with the Appellants.

The Respondent Insurers' submission to the Trial Court contended that

- 1) the insurance policy issued to the Appellants contains a one year statute of limitations for claims brought against the Respondent Insurers; and
- 2) that the Appellants' claims in this matter were not commenced within one year of the loss.

Respondent Insurers' submission did not advise the Trial Court of any of the potential exceptions to the applicability of the one year statute or address why these potential exceptions are inapplicable to the Appellants' claims.

In their Memorandum, the Respondent Insurers concluded that

"Spring Vale asserts that its one year policy period of limitations cited herein above, is clear, unambiguous, reasonable and enforceable, *so that this Court need not look any further to dismiss.*" (emphasis added)

Exceptions to the One Year Statute of Limitations

The Respondent Insurers have good reason to urge the Court to "not look any further to dismiss."

The Appellants' Memorandum (**Pages A-5 to A-9 of Appendix A**) provided a detailed description of the basis for potential exceptions to the one year statute. These exceptions are contained within the policy language and Minnesota statutes, and are supported by statutory language, the advertising of Respondent Insurer North Star (**Pages B-24 to B-26 of Appendix B**) and the opinion of Richard A. Greene, an independent insurance claim consultant, and probable expert witness. (**Pages B-32 to B-36 of Appendix B**)

The Appellants presentation provided a lengthy and detailed description of the application of Minn. Stat. §67A.191, Subd 2, (**Page B-13 of Appendix B**). Appellants discussed each of the statutes that make up the "trail" between Minn. Stat. §67A.191, Subd 2 and the conclusion that the Appellants' insurance policy with the Respondents did include *homeowner's insurance*, and was, therefore subject to the provisions of Minn. Stat. §65A.191.

The definition of "Homeowner's insurance" in Minn. Stat. §65A.27, Subd., (**Page B-13 of Appendix B**) broadly defines the coverage to

"include, *but not be limited to*, (emphasis added) policies that are *generally described* (emphasis added) as homeowner's policies, mobile/manufactured homeowner's policies, dwelling owner policies, condominium owner policies, and tenant policies."

Clearly, the definition is broadly based upon the use of the premises for residential purposes, as opposed to the location of the premises. There is no language in the statute that would support a conclusion that the intent of the statute was to treat a home located on a farm differently than a home located at any other location.

The Appellants' should be afforded the benefits of Minn. Stat. §65A in the same fashion they are available to virtually all other Minnesota homeowners, because those benefits have been determined by the Minnesota Legislature to be a reasonable and fair manner to market homeowner's insurance to residents of the state of Minnesota.

Appellants' Action Against the Respondent Agent and Agency

Introduction and Background

This is an action brought by the Appellants against the Respondents Lisa J. Slyter (Agent), and Town & Country Insurance Agency, Inc. (Agency), who jointly participated in the issuance of a homeowner's insurance policy, titled "Combination Package Policy" covering the Appellants' home located at Willow River, Minnesota.

The facts describing the resolution of the Appellants' claims and their resulting loss are essentially the same facts previously related. These facts, and the arguments of the Appellants to the Trial Court, are described in far greater detail in the Plaintiff's Memorandum in Opposition to the Defendant Agent and Agency's Motion for Summary Judgement (**Appendix C**) and the Exhibits submitted to the Trial Court (**Appendix D**). These documents have been submitted for the Court's review and consideration of this matter, and little more can be added to those submissions.

Trial Court Decision

On December 15, 2010, the Trial Court issued an order granting the motions for summary judgement sought by each of the Respondents. The Trial Court's decision recited the facts provided by the parties, but provided minimal insight into the basis of the decisions.

The order in favor of the Respondent Insurers cited Minn. Stat. §67A.25, subd. 2, and applicable case law, as well as the plain language of the insurance policy contract that any litigation must be initiated within one year of the date of loss.

The Order in favor of the Respondent Agent and Agency cited no basis for the Order.

Conclusion

The Trial Court dismissed the Appellants' claims without citing the basis for the adoption of the Respondents' positions and the rejection of the Appellants' arguments. Under these circumstances, the Appellants can add little to the materials that were presented to the Trial Court by their written submissions and the presentation made at the oral arguments of the Respondents' motions.

Appellants' respectfully request a review and reconsideration of the Respondents respective motions for summary judgement, as presented to the Trial Court, in Pine County.

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