

Freedman v State Farm Ins. Co.

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In 2000, plaintiffs' home was re-piped and an upstairs bathroom remodeled. In August of 2005, extensive leakage was discovered in the upstairs bathroom. One wall was discolored and wet. The drywall fell apart on touch and mold was seen on pieces of the wall. The ceiling downstairs was wet and soft. Upon removing the drywall it was discovered that a nail used to hang the drywall had been driven through a pipe. The pipe was corroded around the entry point and the water was released through that area.

The Freedmans submitted a claim to their Homeowner's carrier, and after an inspection the claim was denied. They sued, alleging breach of contract, breach of the implied covenant of good faith and fair dealing, and negligence. Cross motions for summary judgment were filed. State Farm alleged the identity of the efficient proximate cause was immaterial because each of the potential efficient causes was excluded. The plaintiffs contended that the contractor's negligence of driving the nail through the pipe was covered, and was the efficient proximate cause.

The trial court granted State Farm's motion and denied the Freedman's, finding the efficient proximate cause of the loss was excluded under the policy, and that "none of the resulting damage, such as mold, would be covered ... under the terms of the State Farm policy." The plaintiffs appealed, arguing that the contractor's negligence is the efficient proximate cause of their loss and that it is a covered peril, so the loss is covered.

The Second District Court of Appeal explained in its opinion that under the efficient proximate cause doctrine, "when a loss is caused by a combination of a covered and specifically excluded risks, the loss is covered if the covered risk was the efficient proximate cause of the loss," but "the loss is *not covered* if the covered risk was only a remote cause of the loss, or the excluded risk was the efficient proximate, or predominant cause." (*State Farm Fire & Casualty Co. v Von Der Lieth* (1991) 54 Cal.3d 1123) [The efficient proximate cause of a loss is the "predominant" or "most important"](#)

cause of the loss. (*Julian v Hartford Underwriters Ins. Co.* (2005) 35 Cal.4th 747)

The third party negligence provisions of the Freedman's policy exclude third parties' negligent conduct and defective workmanship whenever they interact with an excluded peril. Corrosion and continuous or repeated seepage or leakage of water are excluded perils under their policy. Thus, the Justices explained, the policy excludes negligent contractor-induced corrosion and contractor-induced continuous or repeated seepage or leakage of water.

The plaintiffs introduced no evidence that contractor negligence caused their loss in any way apart from the nail's role in triggering corrosion and a water leak. Accordingly, pursuant to *Julian*, the loss is not covered. The Freedmans attempt to distinguish *Julian* on the ground that the third party negligence provisions of their policy are insufficiently clear, and they rely in part on *DeBruyn v Superior Court* (2008) 158 Cal.App.4th 1213, which stated that **exclusions of some but not all manifestations of a peril are enforceable under *Julian* "as long as a reasonable insured would readily understand from the policy language which perils are covered and which are not."** Since the third-party negligence provisions in the Freedman policy **clearly exclude** the perils of contractor negligence induced corrosion and contractor negligence induced water leaks, the attempt to distinguish their case from *Julian* fails.

The plaintiffs also argue the exclusion for "continuous or repeated seepage or leakage of water" is **ambiguous**. They contend the exclusion applies only to "normal deterioration of the plumbing system," not to leaks "caused by some force other than deterioration." As the Appellate Court noted, though, the policy excludes coverage for "any loss which is caused by continuous or repeated seepage or leakage of water from a plumbing system, regardless of whether the event occurs suddenly or gradually, involves isolated or widespread damage, *or arises from natural or external forces*." The policy thus provides that leaks are excluded regardless of whether they are caused by natural forces such as normal deterioration or external forces such as a nail driven through a pipe.

Finally, the plaintiffs argue that because their policy includes an endorsement relating to mold, the damage caused by mold is covered. Within the endorsement, the policy language provides losses to the dwelling are covered if they were “caused by or directly resulted from either a specified peril under the personal property coverage or a peril otherwise excluded.” Under the agreed facts, the mold damage to the home was caused by the water leak, which was caused by corrosion, which was caused by the nail through the pipe.

Because the mold damage to the plaintiff’s home was not caused by either a specified peril under their personal property coverage or a peril not otherwise excluded, it is not covered under the mold endorsement. They are unable to identify any specified peril under their personal property coverage that caused the mold, and are thus unable to avoid the exclusion.

The judgment is affirmed.

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