

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
TRIAL DIVISION—CIVIL

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JACK TROCKI DEVELOPMENT COMPANY, INC.

*Plaintiff*

v.

ROBERT H. WISE MANAGEMENT COMPANY, INC.

*et al.*

*Defendants*

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: December Term, 2015  
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: Case No. 03063  
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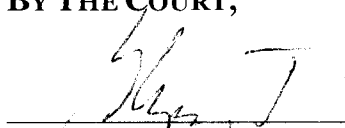
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: Commerce Program  
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: Control No. 17122019  
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**ORDER**

AND NOW, this 8<sup>th</sup> day of March, 2018, upon consideration of the motion for summary judgment of defendant Great Lakes Reinsurance (UK) Plc., the response in opposition of plaintiff Jack Trocki Development Company, Inc., the respective *memoranda* of law, and the reply brief of defendant, it is **ORDERED** that the motion for summary judgment is **GRANTED** and the complaint of plaintiff is **DISMISSED** as to defendant Great Lakes Reinsurance (UK), Plc.

BY THE COURT,

  
\_\_\_\_\_  
GLAZER, J.

Jack Trocki Development-ORDOP



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COMMERCE PROGRAM

**MEMORANDUM OPINION**

The motion for summary judgment requires this court to determine whether damage to real property caused by an infiltration of water is excluded from coverage pursuant to the language of a policy of insurance. For the reasons below, the court finds that such damage is excluded from coverage and the complaint is dismissed as to defendant/insurer.

Plaintiff is Jack Trocki Development Company, Inc. (the “Insured”), owner of a condominium unit (the “Trocki Unit”), located in Philadelphia, Pennsylvania. Defendant is Great Lake Insurance Plc. (the “Insurer”), a company licensed to conduct business in Pennsylvania. At all times relevant to this action, the Trocki Unit was covered under a commercial policy of insurance (the “Policy”), issued by the Insurer and purchased by the Insured.<sup>1</sup>

In March 2011, the Trocki Unit was damaged by water seeping-in from the roof, and on July 8, 2014, the Insured submitted a claim of loss to the Insurer.<sup>2</sup> On July 15, 2014, an insurance adjuster (the “Adjuster”), inspected the roof of the condominium on behalf of the Insurer. At the request of the Insurer, a second inspection took place on December 3, 2014. The second inspection was conducted by a civil engineer named James C. Druecker (“Druecker”). Druecker forwarded his report (the “Druecker Report”) to the Adjuster. In the report, Druecker stated as follows:

[i]n summary ... there is no evidence of storm ... damage to the roof over ... [the Trocki Unit]. There is no evidence that the interior conditions and damages are sudden and accidental, but there are indications that they are the result of ongoing occurrences. There is water damage at spots on

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<sup>1</sup> Insurance policy No. GLC–3151, Exhibit B to the instant motion for summary judgment.

<sup>2</sup> Admission of Insurer in its response to the Insured’s first set of interrogatories, ¶ 23.

the ceilings.<sup>3</sup>

On December 20, 2014, the Adjuster forwarded a letter to the Insured. In the letter, the Adjuster directed the Insured's attention to a special form within the Policy, No. CP-10-30-04-02. Specifically, the Adjuster pointed to a provision explicitly excluding from coverage any damage caused by wear and tear, as well as any damage caused by rust or other corrosion, decay, deterioration, hidden defects, or "by any quality in property that causes it to damage or destroy itself."<sup>4</sup> In addition, the letter incorporated the conclusions from the Druecker Report and stated as follows:

[o]ur inspection of the roof confirmed no wind or hail damage to the roof....

In accordance with policy provisions stated above, this type of interior water damage is not covered unless the roof/walls sustain damage from a Covered Cause of Loss. Therefore ... [the Insurer] must respectfully decline coverage for your claim.<sup>5</sup>

On February 23, 2016, the Insured filed a complaint against the condominium association and certain individuals, and against the Insurer. In Counts VI through VIII of the complaint, the Insured asserts against the Insurer the respective claims of breach of contract, bad faith, and breach of the implied covenant of good faith and fair dealing. The complaint specifically and exclusively asserts in its breach-of-contract claim that the Insurer "denied coverage based upon an exclusion in the policy under Section B(2)(d)(1) 'for wear and tear,'" based upon the Insurer's view that the roof had been damaged as a result of "ongoing occurrences."<sup>6</sup> The Complaint concludes by stating that—

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<sup>3</sup> Letter dated December 3, 2014 from Druecker to Presidential Adjusting Services, Exhibit D to the instant motion for summary judgment.

<sup>4</sup> Policy, Exhibit B to the instant motion for summary judgment, CAUSES OF LOSS—SPECIAL FORM, NO. CP-10-30-04-02.

<sup>5</sup> Letter dated December 20, 2014 from the Adjuster to the Insured, Exhibit E to the instant motion for summary judgment.

<sup>6</sup> Complaint, ¶ 97.

[the Insurer's] interpretation of the Policy is incorrect and at odds with the plain language of the Policy, because it ignores **the exception** to the aforementioned exclusion for a specified cause of loss –which includes water damage.<sup>7</sup>

On April 24, 2017, an expert named Gary Mednick issued a report on behalf of the Insured (the “Mednick Report”). In the Mednick Report, the expert notes that damage to the Trocki Unit had been caused by the intrusion of water.<sup>8</sup> The Mednick Report also contains a list of necessary repairs and an estimate of probable costs, but does not address the causes that resulted in the intrusion of water.<sup>9</sup>

On December 18, 2017, the Insurer filed the instant motion for summary judgment. On January 18, 2018, the Insured filed a response in opposition to the motion for summary judgment, and on February 6, 2018, the Insurer filed a reply brief to the response in opposition of the Insured. Discovery is closed.

#### DISCUSSION

The standards for summary judgment are well-settled:

[a]fter the relevant pleadings are closed, but within such time as not to unreasonably delay trial, any party may move for summary judgment in whole or in part as a matter of law.... if, after the completion of discovery relevant to the motion, **including the production of expert reports**, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury....<sup>10</sup>

[A] record that supports summary judgment ... (1) shows the material facts are undisputed or (2) contains insufficient evidence of facts to make out a prima facie cause of action or defense.<sup>11</sup>

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<sup>7</sup> Id., ¶ 98 (emphasis supplied).

<sup>8</sup> Mednick Report: Observations, ¶ 3, Exhibit H to the motion for summary judgment.

<sup>9</sup> Id.: Recommendation and Estimate.

<sup>10</sup> Criswell v. Atl. Richfield Co., 115 A.3d 906, 909 (Pa. Super. 2015) (citing Pa. R.C.P. 1035.2) (emphasis supplied).

<sup>11</sup> Id.

The Insured's breach-of-contract claim exclusively alleges that the Insurer denied coverage by improperly ignoring an exception to the wear-and-tear exclusion contained in the Policy. To decide this issue, the court shall interpret each pertinent section of the Policy, keeping in mind that "[t]he task of interpreting a contract is ... performed by a court rather than by a jury" and that the goal of such task is "to ascertain the intent of the parties as manifested by the language of the written instrument."<sup>12</sup>

The Policy states as follows:

BUILDING AND PERSONAL PROPERTY COVERAGE FORM

\* \* \*

A. Coverage.

We will pay for direct physical loss of or damage to the Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss.<sup>13</sup>

\* \* \*

CAUSES OF LOSS—SPECIAL FORM

A. Covered Causes of Loss.

When Special is shown in the Declarations, Covered Causes of Loss means Risks of Direct Physical Loss, unless the loss is:

1. Excluded in Section B., Exclusions; or
2. Limited in Section C., Limitations that follow.

**B. Exclusions**

\* \* \*

**2. We will not pay for loss or damage caused by**

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<sup>12</sup> *Humberston v. Chevron U.S.A., Inc.*, 75 A.3d 504, 510 (Pa. Super. 2013).

<sup>13</sup> Policy, Exhibit B to the instant motion for summary judgment, BUILDING AND PERSONAL PROPERTY COVERAGE FORM, NO. CP-00-10-04-02, pp. 1 of 14, 3 of 14.

or resulting from any of the following:

\* \* \*

d. (1) Wear and Tear;

(2) Rust or other corrosion, decay, deterioration, hidden or latent defect or any quality in property that causes it to damage or destroy itself.

\* \* \*

**But if an excluded cause of loss that is listed [above] in 2.d.(1) through (7) results in a “specified cause of loss” ... we will pay for the loss or damage caused by that “specified cause of loss...”**

\* \* \*

- f. Continuous or repeated seepage or leakage of water, or the presence of condensation of humidity, moisture or vapor, that occurs over a period of 14 days or more.
3. We will not pay for loss or damage caused by or resulting from any of the following, 3.a. through 3.c. But if an excluded cause of loss that is listed in 3.a. though 3.c. results in a Covered Cause of Loss, we will pay for the loss or damage covered by that Covered Cause of loss.

\* \* \*

c. Faulty, inadequate or defective:

- (1) Planning, zoning. Development, surveying siting;  
(2) Design Specifications, workmanship, repairs, construction, renovation, remodeling, grading, compaction; or  
(3) Materials used in repair, construction renovation or remodeling; or  
(4) Maintenance;  
of part or all of any property on or of the described premises.

\* \* \*

C. Limitations

The following limitations apply to all policy forms and endorsements, unless otherwise stated.

1. We will not pay for loss or damage to property, as described and limited in this section. In addition, we will not pay for any loss that is a consequence of loss or damage as described and limited in this section.

\* \* \*

- c. The interior of any building or structure, or to personal property in the building or structure, caused by or resulting from rain, snow, sleet, ice, sand or dust, whether driven by wind or not, unless:

- (1) The building or structure first sustains damage by a Covered Cause of Loss to its roof or walls through which the rain, snow, sleet, ice, sand or dust enters; or
- (2) The loss or damage is caused by or results from thawing of snow, sleet or ice on the building or structure.

\* \* \*

G. Definitions.

\* \* \*

- (2) **“Specified Causes of Loss” means the following:** Fire, lighting, explosion, windstorm or hail; smoke, aircraft or vehicles; riot or civil commotion; vandalism; leakage from fire extinguishing equipment, sinkhole collapse; volcanic action, falling objects; weight of snow, ice or sleet; **water damage.**

\* \* \*

- c. **Water damage means accidental discharge or leakage of water or steam as the direct result of the breaking apart or cracking of a plumbing, heating, air conditioning or other system or appliance (other than sump pump system including its related equipment and parts), that is located on the described premises and contains water or steam.**<sup>14</sup>

The plain language from the foregoing provisions indicates that the Insurer

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<sup>14</sup> Policy, Exhibit B to the instant motion for summary judgment, CAUSES OF LOSS—SPECIAL FORM NO. CP-10-30-04-02, pp. 1 through 5 of 9, p. 9 of 9.

agreed to pay for damages caused by a “Covered Cause of Loss.”<sup>15</sup> In turn, the section titled “CAUSES OF LOSS—SPECIAL FORM, at Section B.2.d.(1–2), specifically excludes from coverage certain types of loss, including loss caused by wear-and-tear, rust or other corrosion, decay, deterioration, hidden or latent defect, or any quality in property which causes the property to damage or destroy itself.<sup>16</sup> However, at the end of Section B.2.d., the Policy carves-out an exception by stating that, if an excluded cause of loss such as the loss caused by wear-and-tear results in a “specified cause of loss,” then the Insurer will pay damages arising therefrom.<sup>17</sup> Next, to determine whether the afore-quoted exception applies to the wear-and-tear exclusion, the court examines the definition of “specified cause of loss,” as found in Special Form No. CP-10-30-04-02. A reading of that definition shows that “**water damage**” is one of the items included in the Policy as a “specified cause of loss”; therefore, “**water damage**” appears to qualify as damages for which the Insurer will pay. Finally, the court turns to the definition of “water damage” to determine whether the exclusion is negated by the exception. A reading of the definition of “**water damage**” shows that such damage refers to the “**accidental discharge or leakage of water or steam**” which results from the breaking or cracking of plumbing, heating, air conditioning or other system other than a sump pump and its equipment, “that is located on the ... premises **and contains water or steam.**”<sup>18</sup>

In this case, the Insured does not allege anywhere in its complaint that damage to the Trocki Unit was caused by an accidental leakage of water or steam

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<sup>15</sup> *Id.*, see also, BUILDING AND PERSONAL PROPERTY COVERAGE FORM—A. Coverage, quoted at p. 5, *supra*.

<sup>16</sup> Policy, see CAUSES OF LOSS—SPECIAL FORM, B.2.d.(1–2), quoted at pp. 5–6, *supra*.

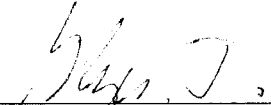
<sup>17</sup> *Id.*, at p. 6.

<sup>18</sup> *Id.*, at Definitions, at p. 7 *supra*.



resulting from the breakage or cracking of a plumbing, heating, air conditioning, or other system containing water or steam, and its expert report fails to offer any opinion as to the cause of the infiltration. Therefore, the exception to the exclusion, as invoked by the Insured, is inapplicable in this case. In addition, the Insured has failed to provide any evidence rebutting the Insurer's conclusion that damage to the Trocki Unit was caused by an ongoing occurrence such as wear-and-tear. By offering no evidence to rebut the expert report submitted by the Insurer, the Insured has "failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury."<sup>19</sup> For this additional reason, the motion for summary judgment is granted and the complaint is dismissed as to the Insurer.

**BY THE COURT,**

  
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**GLAZER, J.**

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<sup>19</sup> Criswell v. Atl. Richfield Co., 115 A.3d 906, 909 (Pa. Super. 2015) (citing Pa. R.C.P. 1035.2).