

Court Applies Exclusions for Diminution in Property Value, Abuse of Process and Malicious Prosecution

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In an unreported decision, the United States District Court for the Eastern District of Pennsylvania, applying Pennsylvania law, has held that exclusions in a public officials policy barred coverage for claims brought by real estate owners against a township and its public officials alleging interference with contract, abuse of process and wrongful use of civil proceedings. *Gen. Star Nat'l Ins. Co. v. Palmer Township*, 2004 WL 1175729 (E.D. Pa. May 27, 2004).

The insurer issued a public officials and employment practices liability insurance policy that provided coverage to the township and its officials. The policy contained exclusions providing that "[t]his insurance does not apply to any CLAIM made against the insured: (d) for any damage arising from bodily injury, sickness, disease, or death of any person, or for damages to or destruction of any property including diminution of value or loss of use...(e) [f]or false arrest, false imprisonment, libel, slander, defamation, invasion of privacy, wrongful eviction, assault, battery, malicious prosecution, or abuse of process by any insured."

In the underlying action, a group of real estate owners brought suit in a state trial court against the township and certain of its publicly elected officials, alleging that the owners were improperly denied the right to develop and use their real estate in the manner in which they desired. The insurer initially undertook the defense of the officials. The trial court later dismissed six of the nine counts brought against the defendants, leaving only counts alleging: (1) interference with prospective and current contractual relations concerning the real estate, (2) abuse of process and (3) wrongful use of civil proceedings. After the dismissal of the six counts, the insurer filed a declaratory judgment action, contending that since the policy specifically excluded coverage for the remaining counts in the complaint it had no duty to defend or indemnify.

The district court granted the insurer's motion for summary judgment. The court first determined that there was no ambiguity in the language of the exclusions at issue and that it would therefore give effect to their plain meaning. Addressing the interference with contract count, the court found that coverage was excluded for this count since it stated a claim for the diminution in value of the plaintiffs' contract rights and real property. Turning its attention to the abuse of process count, the court agreed with the insurer that this claim was expressly barred by the language of the policy, which excluded coverage for claims for abuse of process. In

so finding, the court rejected the officials' argument that the abuse of process exclusion was inapplicable because the abuse of process count alleged "malicious use of process," which was not the same as "abuse of process." The court found that "such a distinction can only be made in a hypertechnical analysis by attorneys who could find ambiguity in any term." Finally, the court found that the "malicious prosecution" exclusion barred coverage for the count alleging "wrongful use of civil proceedings," noting that the only difference between the two types of allegations is that the former is a common law claim while the latter is statutory. The court also cited Pennsylvania precedent holding that "insurance policies which provide[] coverage for claims of malicious prosecution cover[] claims for wrongful use of civil proceedings."

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