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Illinois Court of Appeals Addresses What It Means to “Reside” in Property for Purposes of Coverage

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In *Dardar v. Farmers Auto. Ins. Ass'n*, 2023 IL App (5th) 220357-U, the Illinois Fifth District Court of Appeals addressed an insured's suit against her property insurer after the carrier denied coverage for a fire loss. The property in question was inherited by the Plaintiff from her brother and was in the process of being renovated at the time of the fire loss. After the fire, the Plaintiff's homeowners carrier denied the claim on the grounds that the Plaintiff was not occupying the property at the time of the fire and was therefore not covered under the terms of the policy. It was undisputed that the Plaintiffs never lived in or physically occupied the home. Correspondingly, the carrier denied the claim on the basis that the policy only covered the Plaintiff's "residence premises," which was defined as: (1) the one-family dwelling where you reside; (2) the two, three, or four-family dwelling where you reside in at least one of the units; or (3) that part of any other building in which you reside. The carrier determined that the Plaintiff did not "reside" at the property and therefore were not covered under the policy terms.

After suit was filed, the carrier moved to dismiss which was granted by the trial court on the grounds that there were no facts to suggest that Plaintiff had resided in the residence at any point prior to the fire. An appeal followed wherein the Plaintiff argued that the court erred in dismissing the action because the term "reside" in the policy language was ambiguous. The Appellate Court began its analysis with a review of several cases cited by the Plaintiff which did hold that the term "reside" is ambiguous under certain circumstances. Nevertheless, the Appellate Court went on to limit the breadth of the prior rulings to the policies and circumstances at issue in the earlier decided cases. In doing so, the Court held that the term "reside" was not ambiguous in the context of the specific policy at issue. In rendering its ruling, the Appellate Court noted that in both of the cases cited by the Plaintiff, the insureds at some point lived in the residence in question, and were either still occupying it in some capacity, or were incarcerated. To the contrary, the record before the Appellate Court established that the Plaintiffs never lived on the property, were not occupying it in any way, and had not even decided whether they would move into the home once the renovations were done. Per the Court, the facts established that there was no evidence that the Plaintiff ever did "reside" at the home in any capacity.

In rendering its ruling, the Appellate Court found unpersuasive the argument that the mere fact that because "reside" has more than one definition makes it ambiguous under all circumstances. Rather, the Court noted that there was no definition of the word "reside" that would apply to the Plaintiffs under the known evidence. Thus, under the particular circumstances at issue, the term "reside" as used in subject policy was not ambiguous and the dismissal was upheld.