TRAUB LIEBERMAN

NEWS & EVENTS

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Traub Lieberman Partner Kathryn Keller and Associate Steven Hollis Secure Final Summary Judgment in Favor of Homeowner's Insurance Company

Related Attorneys: Kathryn Keller

Traub Lieberman Partner Kathryn Keller and Associate Steven Hollis obtained summary judgment on behalf of a major homeowners' insurer in a breach of contract action in the Ninth Judicial Circuit in and for Osceola County, Florida. The underlying claim involved a water loss in a bathroom of the Plaintiff's property allegedly resulting in substantial damage to the home. The claim had been reported by Plaintiff's counsel. The Plaintiff had retained counsel and two vendors before giving notice to the insurer. In addition, the insurer's field adjuster was not provided the opportunity to inspect the plumbing parts that had been allegedly damaged. Specifically, the drainage system had been completely removed and replaced. The insurer retained an engineer, who concluded that the removal of the original plumbing components hindered the ability of the engineer to determine their conditions prior to removal. Meanwhile, the surface conditions of the white PVC pipe appeared bright and shiny as compared to other piping. The insured had also failed to provide a signed, sworn proof of loss within sixty days after the loss.

Ms. Keller and Mr. Hollis argued that Plaintiff's Policy with the insurer imposes a duty on the Plaintiff to comply with the Duties After Loss Conditions of the Policy, including the requirement to provide immediate notice of the loss, show the damaged property, and provide a signed, sworn proof of loss within sixty days after the loss. As mentioned above, the Plaintiff had retained counsel and two vendors before providing notice of the alleged loss to the insurer. Therefore, Ms. Keller and Mr. Hollis argued that notice was not timely provided. The Court ruled in the insurer's favor on this issue. The Court also ruled in the insurer's favor on the fact that the Plaintiff never provided a sworn proof of loss to the insurer, despite being represented by counsel. Additionally, the Court made a specific finding that the insurer was prejudiced by the inability to inspect the damaged property because Plaintiff who was working with counsel and vendors experienced in handling insurance claims, made repairs and either discarded, or authorized the discarding of, the alleged damaged plumbing fixtures before the insurer could inspect the property. The Plaintiff failed to rebut the presumption of prejudice to the insurer.

The Court concluded that the Plaintiff's failure to comply with the Policy Conditions precluded recovery under the insurance policy. The Judge issued her Order Granting Defendant's Motion for Summary Judgment on February 28, 2024. Because a Proposal for Settlement was served upon the Plaintiff and was not accepted, the insurer plans to seek its attorneys' fees and costs incurred in defending the litigation.

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