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1/22/20 Mass. Law. Wkly. (Pg. Unavail. Online)
2020 WLNR 2670760

Massachusetts Lawyers Weekly
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January 22, 2020

Section: News

Insurance Innocent coinsured Fire

Mass. Lawyers Weekly Staff

Where (1) a plaintiff owned a home as a tenant in common with her fianc, (2) the fianc set fire to the home intentionally without any involvement on the part of the plaintiff, and (3) the defendant insurance company denied the plaintiff's claim for coverage, relying on an intentional loss exclusion in the policy that barred recovery when any coinsured intentionally caused a loss, the exclusion violated the standard policy language mandated under G.L.c. 175, 99, but the plaintiff is entitled to only one-half of the insurance proceeds.

"The two dispositive questions at issue in this appeal are related: first, whether an innocent coinsured may collect on a standard fire insurance policy when another coinsured intentionally sets fire to the insured premises, and second, if the coinsured may recover, how to determine the extent of that recovery. We conclude that the standard fire insurance policy set by statute imposes several, rather than joint, rights and obligations on the insureds, and the insurer's redrafting of the statutorily defined policy language to make either insured responsible for the actions of the other in setting the fire was in violation of the statute. We reach this conclusion notwithstanding a 1938 decision of this court, Kosior v. Continental Ins. Co., 299 Mass. 601 (1938), which denied equitable relief for an innocent coinsured spouse whose husband deliberately set fire to the house to recover insurance proceeds. We conclude that the Kosior case, which contains little analysis and appears to be based on outdated assumptions about the marital relationship and the legal rules associated therewith, is distinguishable, even if it remains good law. The holding in that case, however, provides a good faith basis for the insurer's decision to deny coverage in the instant case, precluding recovery by the plaintiff under G.L.c. 93A.

"We hold that the policy proceeds in this case are severable, and that the plaintiff is entitled to only one-half of the insurance proceeds. Finally, we conclude that the walkway, the stairway, the railings, and the retaining wall fall under the policy's coverage for the plaintiff's dwelling. Accordingly, we affirm the decision of the Superior Court judge, granting in part and denying in part the parties' cross-motions for summary judgment."

Aquino v. United Property & Casualty Company (Lawyers Weekly No. 10-011-20) (38 pages) (Kafker, J.) The case was heard by Paul D. Wilson, J., on motions for summary judgment. Seth H. Hochbaum for the plaintiff; David F. Hassett (Michael S. Melville also present) for the defendant; the following submitted briefs for amici curiae: Michael L. Snyder for Metropolitan Property and Casualty Insurance Company; Kathy Jo Cook, Thomas R. Murphy, Kevin J. Powers, Patrick M. Groulx and John G. Mateus for Massachusetts Academy of Trial Attorneys (Docket No. SJC-12705) (Jan. 21, 2020).

Click here to read the full text of the opinion.

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Language: EN

Other Indexing: (United Property & Casualty Company) (Michael S. Melville; Paul Wilson; Paul Wilson; David F. Hassett; Michael L. Snyder; Kathy Jo Cook; Kosior; Thomas S. Murphy; Thomas S. Murphy; John G. Mateus; Seth H. Hochbaum; Patrick M. Groulx; Aquino; Kevin J. Powers)

Keywords: (Opinion Digests)Legal activity (lawsuits etc.)Keywords:

Word Count: 471

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