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WHERE YOU SLEEP MAY NOT BE YOUR HOME

In a very recent case, *State Farm Fire & Cas. Co. v. Lange*, No. H-09-2011, 2011 WL 149482 (S.D. Tex. June 18, 2011), the United States District Court for the Southern District was asked to determine what the term “primary residence” in the insurance policy meant for coverage purposes. Specifically, it had to decide, for insurance coverage purposes, whether an individual’s rental apartment or his parents’ house served as the individual’s primary residence.

Because Texas courts have not construed the term “primary residence” in the context of an insurance policy, the task of this Federal District Court was to make a legal guess as to how the Texas Supreme Court would apply state law on this issue.

FACTS OF THE CASE

This case involves a declaratory judgment action arising out of a one vehicle automobile accident on May 5, 2009, in Victoria, Texas. Defendant, Matthew Lange (“Lange”) was the driver of a vehicle that had two passengers in his car. The passengers, Ryan Castellano and Stephen Rubio, were killed as a result of the accident.

The sole issue for determination was whether Lange was insured under his parents’ Personal Liability Umbrella Policy (“Policy”) at the time of the accident, and thus whether State Farm had a duty (1) to pay on behalf of and/or indemnify Lange for damages resulting from the accident and to (2) defend Lange against any lawsuits or claims resulting from the accident.

LANGUAGE IN THE POLICY

The Policy provided that State Farm would compensate, and defend lawsuits against, any “insured” from damages resulting from losses for which the insured was legally liable and to which the policy applied. The Policy defined the “insured” as “you and your relatives whose

primary residence is your household,” meaning the home of Lange’s parents in Meyersville, Texas.

The parties agreed that whether Lange was covered by the Policy at the time of the accident depended entirely on whether the Meyersville address was Lange’s “primary residence” at that time.

THE DISPUTE

The dispute over Lange’s “primary residence” arises from the fact that in the one year leading up to the accident, Lange spent the majority of nights at an apartment in Victoria, Texas, rather than at his parents’ house. State Farm argued that the Victoria apartment was Lange’s “primary residence” and, therefore, there was no coverage under the policy. The Intervenor (those who represent the deceased passengers) stated that, notwithstanding Lange’s use of the Victoria apartment, the Meyersville address remained Lange’s “primary residence.”

Lange moved to the Meyersville residence with his parents when he was around ten years old. He attended grade school there and graduated high school in 2004. In 2005, Lange began working in Victoria and living during the work week in a rental home there. In 2007, he began attending a vocational school in Victoria, from which he obtained a welder’s certificate in August 2008.

He had been employed as a welder for the three years before the accident. Lange testified in his deposition that he rented a Victoria apartment because it was closer to work and because he was in school taking night classes. Although he stayed in the Victoria apartment during the work week, he testified that he would spend most weekends per month in the Meyersville house. He did not spend every single weekend there, but spent two to three weekends at the Meyersville house. Lange also testified that he had his own key to the Meyersville house and that he could come and go as he pleased.

The evidence showed that at the time of the accident, Lange maintained his childhood bedroom at the Meyersville address, and kept all of his prized possessions and valuables at the Meyersville address. In contrast, Lange described the Victoria apartment as containing only the basic things just to get by daily such as a bed, different colored couches, and a plastic toolbox for a TV stand.

Both the Meyersville and Victoria address appeared on various forms and registrations that Lange filled out. The Meyersville address was listed on his driver’s license, tax returns, four-wheeler vehicle registration, and personal State Farm auto insurance policy. On the other hand, the Victoria apartment was listed on the purchase, title, and loan documents for Lange’s truck and his credit union accounts. Lange also listed his father on the loan and apartment lease applications as a person who would not be living with him.

In addition, statements and testimony by Lange's parents could be interpreted to support either location as being his "primary residence."

In summary, there was various testimony which could show that either the Victoria apartment or Meyersville house could be Lange's "primary residence."

THE COURT'S RULING AND ANALYSIS

As stated before, Texas courts have not construed the term "primary residence" in the context of an insurance policy. However, when the language used is subject to two or more reasonable interpretations, the construction which affords coverage will be adopted.

The court determined that the term "primary residence" was a matter of law. For the purposes of this policy, a person could have only one "primary residence." *Bolin v. Progressive Northwestern Ins., Co., 2009 WL 1010770.*

As a result, the court stated that various factors need to be considered when deciding what constitutes a "primary residence." Those factors include, but are not limited to, the following:

- How often the person stays at a residence;
- How transient he is;
- How long he has resided in a residence;
- Where he keeps his belongings;
- Where he lists a residence on important documents, including as his "permanent address";
- Whether he owns or rents – and if he rents, the length of the lease;
- Whether he has plans to, or will be required to, vacate a residence;
- Whether he contributes to maintenance, upkeep, property taxes, or other costs;
- Whether he shares a residence with others;
- Whether blood or legal relationships exist between him and others living at either residence;
- Whether he has sole and free access to a residence and its contents; and
- The subjective view of the person and other people living in the residences.

Applying the above factors, the evidence demonstrated Lange's "primary residence" was the Victoria apartment. The court said it was undisputed that for at least thirteen months prior to the accident, Lange stayed at the Victoria apartment a majority of the time. He did not ever spend all of the weekends at his parents' house. Moreover, his stay in Victoria spanned two different jobs and the time before, during, and after he attended welding school.

Second, the court looked at the fact that the Victoria apartment was listed as Lange's address on a number of official documents. Third, Lange had no specific plans to move out of his parents' house, and had four months remaining on the extended lease at the Victoria

WHAT DOES THIS MEAN?

It is clear that the Court made a qualitative, totality-of-the circumstances inquiry on the "primary residence" issue.

Whether you are trying to invoke coverage or challenge coverage, it is important to as much information as you can. These are various tools to develop this information such as (1) discovery, (2) depositions, and (3) other documentation evidencing what the individual listed as their primary residence. If the above documentation overwhelmingly shows one physical address over another, it will support your position in either prosecuting or defending a declaratory action regarding coverage.



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