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CASE SUMMARY: MOTION BY A CONTRACTOR FOR COVERAGE UNDER A BUILDER'S RISK POLICY WAS DISMISSED BECAUSE THE LOSS WAS NOT AN EVENT THAT OCCURRED DURING THE COVERAGE PERIOD AS THE CAUSE OF THE LOSS WAS DISTINCT FROM THE EVENT OF THE LOSS

Insurance law – Homeowner's insurance – Builder's risk policy – Coverage – Water damage – Interpretation of policy – Subrogation – Practice – Summary judgments

Maio v. Mer Mechanical Inc., [2018] O.J. No. 3800, 2018 ONSC 4426, Ontario Superior Court of Justice, July 18, 2018, P.A. Schreck J.

The plaintiffs were homeowners who acted as the general contractor in the construction of the their dream home. The defendant was the plumbing contractor involved in the construction of the home. The plaintiffs had a builder's risk policy in place during construction. Construction was completed in September 2009. The plaintiffs moved into the home on November 1, 2009. Nine days later, a faucet became detached, resulting in a flood that caused $3,000,000 in damage. The plaintiffs made a claim on their homeowner's policy and the insurer subsequently brought a subrogated action against the defendant, among others.

An engineer retained by the defendant plumbing contractor opined that the faucet was stressed too soon after it was installed, affecting the water seal's resistance to water pressure and ultimately leading to the failure. The defendant sought coverage under the builder's risk policy and brought a motion for summary judgment on the basis that the faucet stress was an occurrence that occurred during the coverage period. The defendant further argued that because the policy included a waiver of subrogation, the plaintiffs' claims against it were barred. The plaintiff argued that the occurrence was the separation of the faucet connection, which took place after the expiry of the builder's risk policy.

The builder's risk policy defined "occurrence" as:

> …any one loss, casualty or disaster or series of losses, casualties or disasters, arising out of one event. If the inception of the event causing the loss occurs prior to the estimated completion date of the project, then the Insurer shall be liable for any loss incurred after the estimated completion date of the project, as a result of the event.

The Court found that the defendant confused "inception" with "cause". The dictionary defined "inception" as "a beginning". As the Court explained, the beginning of an event is part of the event, whereas the cause of an event is not part of the event, but, rather, distinct from it. An event cannot be the cause of itself and, thus the "inception of the event" was not the installation of the faucet and did not occur during the coverage period. The Court further held that builder's risk policies were not meant to apply to situations of this nature. Their primary purpose is to provide coverage during construction in order to ensure the project is not interrupted by disputes and litigation between various contractors. The Court stated that the definition of "occurrence" as being tied to a single event as opposed to an "accident" or "continuous and repeated exposure" to harmful conditions is consistent with the purpose of builder's risk policies. The defendant's motion was dismissed.

This case was digested by Michael J. Robinson, and first published in the LexisNexis® Harper Grey Insurance Law Netletter and the Harper Grey Insurance Law Newsletter. If you would like to discuss this case further, please contact Michael J. Robinson at mrobinson@harpergrey.com.