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O.P.H. of Las Vegas, Inc. v. Oregon Mut. Ins. Co., 133 Nev. Adv. Op. 60 (Sept. 14, 2017)

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CIVIL APPEAL: INSURANCE LAW

Summary

The Court determined that (1) NRS 687B.360 requires strict compliance such that an insurance company’s cancellation notice which fails to contain a statement of a policyholder’s right to request additional information is ineffective; and (2) an insurance broker does not assume a duty to monitor a client’s premium payments or alert the client when the policy is about to be canceled for nonpayment.

Background

Dave Sandin and Sandin & Co. served as the insurance broker for O.P.H. of Las Vegas, Inc., which operated an Original Pancake House in Las Vegas. OPH, at Sandin’s recommendation, purchased a Business Owner Protector policy from Oregon Mutual Insurance Co. in December 2011.

O.P.H. defaulted on its premium in July 2012, and Oregon Mutual issued a cancellation notice stating that the policy would be canceled on August 16, 2012, if it did not receive payment by August 15. The notice did not contain a statement of a policyholder’s right to request additional information as required by NRS 687B.360. OPH never made its July premium payment.

On August 17, 2012—the day after Oregon Mutual purportedly canceled the O.P.H.’s policy—a fire destroyed the Original Pancake House. Oregon Mutual denied coverage. O.P.H. sued Oregon Mutual for breach of contract, bad faith, and negligence. O.P.H. sued Sandin and Sandin & Co. for breach of fiduciary duty.

The district court granted Oregon Mutual’s motion for summary judgment, holding that the policy had been terminated. The district court also granted Sandin’s motion for summary judgment, holding that Sandin’s duty as an insurance broker did not extend to monitoring O.P.H.’s payments.

Discussion

A.

Nevada Revised Statute §§ 687B.310–687B.420 prescribe procedural and substantive limitations on an insurer’s ability to cancel an insurance policy midterm. Oregon Mutual’s cancellation notice did not strictly comply with NRS § 687B.360 because it did not advise O.P.H. of its right to request “with reasonable precision the facts on which the insurer’s decision is based.”²

¹ By Steven Kish.

² The statute reads in full:

If a notice of cancellation or nonrenewal under NRS 687B.310 to 687B.420, inclusive, does not state with reasonable precision the facts on which the insurer's decision is based, the insurer shall supply that information within 6 days after receipt of a written request by the policyholder. No notice is effective unless it contains adequate information about the policyholder's right to make such a request. NEV. REV. STAT. § 687B.360 (2017).

Oregon Mutual argued that the NRS § 687B.360 requirement was not applicable because the cancellation already stated “with reasonable precision” the facts on which Oregon Mutual’s decision was based. Second, Oregon Mutual argued that it substantially complied with NRS § 687B.360 by indicating that O.P.H. could contact Sandin with questions and further including a customer service number. The Court disagreed with both arguments.

First, because all notices must already disclose the reasons for cancellation³, NRS § 687B.360 requires an express disclosure of a policyholder’s right to request additional information. Further, the statute “categorically invalidates a notice of cancellation that does not include this advice.” Moreover, the Court found that “statutes imposing requirements on cancellation notices ‘are to be strictly construed’”⁴ because allowing substantial compliance to satisfy NRS § 687B.360 would be directly contrary to the plain text of the statute, would create uncertainty that would invite litigation, and would undermine the statute’s protections for policyholders.

The Court referred to a case in the California court of appeals that addressed a similar challenge which was resolved in favor of the insured because “the statute imposed a mandatory requirement on the insurer, noncompliance with which invalidated the notice of cancellation.”⁵ Oregon Mutual argued that the California legislature later amended the statute to exempt premium nonpayment cancellations from the requirement. Nevada’s statute has no such exception. Accordingly, the Court found that the Legislature had made “a legislative policy judgment [the Court] should respect” and declined to create such an exception.

B.

Next, O.P.H.’s claim of breach of fiduciary duty alleged that Sandin had a duty to notify O.P.H. of its premium payment default. While an insurance broker may assume additional duties to its insured clients, O.P.H. did not cite a case holding that an insurance broker has a duty to monitor or notify a client regarding their premium payments. The Court found no such duty existed and Sandin did not assume the duty to notify O.P.H. regarding their insurance premium defaults.

Conclusion

The Court reversed and remanded the order of summary judgment for Oregon Mutual Insurance Company, holding that the notice requirements of NRS § 687B.360 are to be strictly enforced. Therefore, Oregon Mutual’s notice of cancellation, having only substantially complied, was ineffective. The Court upheld the grant of summary judgment for Dave Sandin and Sandin & Co., finding there is not ordinarily a duty to monitor and inform clients of premium payment defaults in a broker-client relationship. Absent a showing of Sandin undertaking the duty, there was no genuine issue of material fact for O.P.H. to survive summary judgment.

³ “The notice must state the effective date of the cancellation or nonrenewal and be accompanied by a written explanation of the specific reasons for the cancellation or nonrenewal.” NEV. REV. STAT. § 687B.310(6) (2017).

⁴ Citing *Appleman on Insurance 2d*, § 16.10, at 446–47 (2016) (footnote omitted).

⁵ *Lee v. Industrial Indemnity Co.*, 223 Cal. Rptr. 254, 257–58 (1986).