

Soil movement exclusion catches soil expansion

Guastalegname, Nunzia v Australian Associated Motor Insurers Ltd [2017] VCS 420

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Summary

The Victorian Supreme Court recently considered whether an insurer could rely on a policy exclusion with respect to soil movement to deny indemnity for a claim for loss or damage to an insured property. In assessing whether the exclusion applied, the Court considered whether 'heave' falls within the natural and ordinary meaning of 'soil movement'. The Court held that in interpreting words used in an agreement, a common sense approach will be applied, looking at the policy as a whole, and considering the natural and ordinary meaning of the words used.

Facts

Ms Guastalegname (the Plaintiff) owned a house in Keilor, insured under a Home Building Insurance Policy ('the Policy') with AAMI. The Policy covered loss, damage and destruction to the insured property arising from insured events, including storm, subject to general and specific exclusions.

On 25 December 2011, a storm caused hailstones and rain to inundate the insured property and water pooled under and around a concrete slab of the building which led to a 'heave' of the clay soil beneath the foundation slab. This expansion of the soil raised the slab, which consequentially lifted walls, causing cracking and damage to the building.

The Plaintiff lodged a claim under the Policy for the cost of repairs to the damage to the insured property. AAMI denied liability under the Policy and relied on a general

exclusion in respect of loss or damage caused by 'soil movement or settlement', but admitted the storm caused the inundation and consequent heaving of the soil.

The Exclusions

The exclusions relied on by AAMI and considered by the Court stated:

"What we do not cover — general exclusions ...

You are not covered under any section of the policy for damage, loss, cost or liability caused by or arising from or involving:

...

erosion or washing away of soil, earth or gravel,

the washing away or movement of the surface of any path or driveway which has a surface consisting of a loose material such as gravel, stone or dirt,

soil movement or settlement,

subsidence or landslide **unless** caused by the insured event of earthquake..."

Decision

In considering the applicable principles of policy interpretation, Hargrave J applied an objective standard to the interpretation of the words of the policy, noting that the Court should proceed 'in a common sense and non-technical way and give the agreement a commercial sensible construction', having regard to the whole of the agreement. According to his Honour, in considering ambiguous terms, the Court must consider what the persons in the positions of the parties would have reasonably understood at the time the contract was made.

On this basis, his Honour firstly accepted that 'heave', 'settlement', 'subsidence' and 'landslide' fell within the meaning of 'soil movement'.

His Honour rejected the argument that the words 'soil movement' should be given a limited meaning because they are followed by the words 'or settlement', finding instead that the word 'or' would be read as 'including'.

His Honour considered there was no reasonable ground for concluding that the parties intended the soil movement exclusion to have the limited meaning. Rather, his Honour found it was clear that AAMI intended to exclude indemnity for damage caused by soil movement of whatever kind, although it was noted that the soil movement exclusion was badly drafted.

His Honour therefore concluded that in the context of the policy as a whole, the natural and ordinary meaning of the soil movement exclusion is that damage to the building caused by any kind of soil movement is excluded. Heave was accepted as falling within the natural and ordinary meaning of the soil movement exclusion. As heave was the cause of the damage to the plaintiff's building, the Plaintiff's claim was dismissed.

Implications

The decision illustrates how a court will interpret words of a contract of insurance, including the meaning of an exclusion clause, particularly if there is an ambiguity with respect to the meaning of a word or a phrase. The courts will look at the ordinary meaning of the words to a contract and consider what a reasonable person in the position of the parties would in the circumstances understand the words to mean.

It is a reminder to insurers to be careful with the words used in drafting a contract, particularly exclusion clauses, and consider whether what is intended by the cover is clear on an objective review of the words. There is also a risk that the doctrine of *contra proferentum* would apply to the disadvantage of the insurer in situations where an

ambiguity remains after a common-sense approach is applied to interpret a word or a phrase in the contract.

Finally, the decision provides authority that the words 'heave', 'settlement', 'subsidence' and 'landslide', which have technically different meanings, will be accepted by a court as constituting soil or earth movement.

Who does this decision affect?

Claims Teams, Loss Adjusters, Underwriters.

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