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Misrepresentation in Application for Homeowner's Insurance Regarding Occupancy

On March 22, 2010, the Appellate Division, Third Department, decided *Jeune vs. Peerless Insurance Company and Nelson-Patterson Insurance Agency, Inc.* The plaintiffs contacted the Patterson Agency to procure a homeowner's insurance policy covering property they recently purchased in the fall of 2007. The agent prepared an application which was signed by William Jeune and submitted to Peerless which issued a homeowner's policy for a one-year period commencing October 5, 2007. Approximately two weeks later, a fire occurred. Peerless denied the claim upon the grounds that the plaintiffs had made material misrepresentations in the application for insurance.

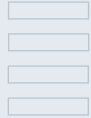
Plaintiffs sued Peerless and the Patterson Agency. Plaintiffs moved for summary judgment against the agency, and Peerless cross-moved for summary judgment dismissing the plaintiffs' complaint. Supreme Court granted plaintiffs' motion on the issue of liability against the agency, and denied the Peerless motion. Both the agent and Peerless appealed.

On appeal, Peerless argued that the plaintiffs represented on the application that the premises would be occupied, but never moved into the premises after purchasing it, and did not intend to occupy the property until well after they had purchased it, pointing to the fact that the plaintiffs were residing in New Jersey at the time of the fire, and acknowledged that they were not going to move into the subject property until it had been renovated. Plaintiffs countered that they intended to reside in the premises upon their retirement, and that before the fire, their relatives lived in a trailer on the property and regularly used some of the facilities in the dwelling.

The Appellate Court found that "there is no doubt that Peerless considered the status of the insured property - and whether it was vacant and unoccupied - material to its decision to issue this policy ***." The Court then reviewed Peerless' underwriting guidelines which defined "an unoccupied premise as '[a]ny residence unoccupied for extended periods of time (e.g. 30 or more consecutive days, four or more times a year***."

The Court noted that the plaintiffs testified that they intended to move into the premises within 120 days of acquiring title to the property, that they had electric and telephone service activated prior to the fire and that a relative residing in a trailer on the property had used the facilities located in the home. "This evidence, at the very

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minimum, served to create questions of fact as to whether material misrepresentations were made by plaintiffs in their application for insurance, and, as a result, Supreme Court properly denied Peerless' cross-motion for summary judgment***.”

The Appellate Court also found that the lower court erred in granting summary judgment against the agency since the plaintiffs admitted not reading the application prior to signing it, and, “therefore, share in the responsibility for any misstatements made in the application.”

This case is an example of the Court's reliance on the insurer's underwriting guidelines in determining the issue of material misrepresentation with respect to an application for insurance and rescission of the policy. ■

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