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COMMONWEALTH OF KENTUCKY
MAGOFFIN CIRCUIT COURT
CIVIL ACTION NO.: 19-CI-00015
Electronically Filed

FILED ENTERED
TENDERED
THIS 30 DAY OF Jan 20 20
MAGOFFIN CIRCUIT COURT
TONYA ARNETT WARD, CLERK
BY: *B.G.C.*

GENA HOWARD

PLAINTIFF

vs.

ORDER

ALLSTATE VEHICLE AND PROPERTY
INSURANCE COMPANY and
GEORGE VINCE SALYER

DEFENDANTS

This matter having come before the Court on Plaintiff's Motion for Summary Judgment on Plaintiff's Complaint for Declaration of Rights (the "Motion"), and the Court being otherwise sufficiently advised, IT IS HEREBY ORDERED that the Motion is SUSTAINED.

1. In granting summary judgment the Court notes that the "where you reside clause" as interpreted by Allstate is in direct conflict with another provision that allows Howard to vacate and leave the premise for an unlimited time period. The *sine qua non* of Allstate's position is that the policyholder personally must be on the premises for coverage to apply, and yet the Policy specifically provides coverage even if it is vacant. Necessarily, if the Property were vacant, the insured would not be "residing" there in the sense advanced by Allstate as the foundation for its argument. Jonata v. Allstate Ins. Co., at 7.¹

2. The vacancy clause allows Plaintiff to leave the premises vacant or unoccupied—that is, to not reside at the insured dwelling. If Plaintiff avails himself of the permission to not reside at the insured dwelling, she would violate any residency requirement. Because these terms would conflict, the policy, as Allstate interprets it, is ambiguous and must be resolved in Plaintiff's favor.

¹No. 15-6561, 2016 U.S. Dist. LEXIS 116776 (E.D. Pa. Aug. 30, 2016)

Pellicano v. Allstate Indem. Co., at 11.² In Gulati v. Allstate Ins. Co., 2017 NYLJ LEXIS 2524,

the court stated simply:

A separate provision contained within Plaintiff's policy, however, allows Plaintiff to leave the house "vacant or unoccupied for any length in time." This provision is in direct conflict with the above-referenced provision that Defendant claims required Plaintiff to "reside" at the Ferndale Property. In other words, the policy purports to require Plaintiff to reside at the property, but also specifically grants him permission to not reside there at all. Gulati v. Allstate Ins. Co., at 6.³

3. In addition, there is no proof that Howard made any misrepresentation of fact. There's no proof she signed an application. And the document that Allstate calls an application does not contain any warranty or promise that Howard would be residing in the house or conversely that her adult son would not be residing in the house nearly 3 years later when the fire loss occurred.

The Court finds that no genuine issue of material facts exists for a jury to decide with respect to insurance coverage in this matter, and the Court finds that the subject Allstate insurance policy provides coverage for Plaintiff's subject fire loss as a matter of law. Howard's motion for partial summary judgment as to coverage is granted.

Ordered this 30th day of Jan, 2020.


JUDGE, MAGOFFIN CIRCUIT COURT

² No. 5:17-CV-824 (LEK/ATB), 2019 U.S. Dist. LEXIS 167716 (N.D.N.Y. Sep. 30, 2019).

³ 2017 NYLJ LEXIS 2524

TENDERED BY:

/s/ M. Austin Mehr

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