THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY

JOHN M. MILLING, SPECIAL REFEREE

RECEIVED
FEB 17 2017
S.C. SUPREME COURT

Case No. 2017WL105021

Appellate Case No.: 2013-001281
And 2013-001291

Harleysville Group Insurance, a Pennsylvania
Corporation, Appellant/Respondent

v.

Magnolia North Horizontal Property Regime, and
Magnolia North Property Owners Association, Inc.,
a South Carolina Corporation are Respondents/Appellants

Riverwalk at Arrowhead Country Club Horizontal
Property Regime and Tony L. Pope and Lynn Pope,
Individually and Representing as a Class all Unit
Owners at Riverwalk at Arrowhead Country Club
Horizontal Property Regime and Arrowhead Country
Club Property Owners Association, Inc. are Respondents/Appellants

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PETITION FOR REHEARING

John P. Henry
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This Petition is filled pursuant to Rule 221, SCACR, which governs Petitions for Rehearing. The Petition is timely: the Court issued an extension for filing the Petition until February 17, 2017.

I. The Court overlooked in upholding Judge Millings' Order the following:

a. The Reservation of Rights Letters did not advise the insureds, the insured's counsel or the Court that Harleysville was relying on portions of the damage occurring outside the coverage period and, therefore, not covered. As this Court pronounced: "If the insured does not know the grounds on which the insurer may contest coverage, the insured is placed at a disadvantage because it loses the opportunity to investigate and prepare a defense of its own." Citing Desert Ridge Resort, LLC v. Occidental Fire and Cas. Co., of N.C., 141 Fed Supp. 3rd 962, 967 (D. Ariz. 2015). In this case Harleysville informed the insureds that none of the exclusions in the Reservation of Rights Letters applied because there was never an "occurrence". (R. App. pp. 425, ll. 22-25; p. 426, ll. 1-4; p. 428, ll. 4-10) Also see R. p. 429, 437, exclusions don't matter if there is no occurrence. Not informing the insureds that Harleysville would rely on damages occurring outside the policy period substantially prejudiced the insured by preventing a presentation to the jury on when damages occurred and the amount awarded within the policy periods. To apply time-on-the-risk rewards Harleysville for their failure to properly advise their insureds. The Court erred in upholding Judge Milling's application of time-on-the-risk to the general verdict.

b. The jury did not award the Association or the Class the full measure of damages which were submitted. The Defendants sought a charge and the trial judge gave a charge on mitigation of damages. Who is to say that the jury did not award the full amount of damages because they believed the associations should have mitigated damages, and therefore, deducted continuing damages. That is, the application of time-on-the-risk may take away damages the jury had already deducted. (See Respondent's/Appellant's Brief, p. 24) The Court erred in upholding Judge Milling's application of time-on-the-risk to the general verdict.

CONCLUSION

The Court erred in upholding Judge Milling's decision applying time-on-the-risk to the general verdict.

February 17, 2017

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PROOF OF SERVICE

I, Stephanie Hall, an employee for Thompson & Henry, P.A., attorneys for the Respondent, Magnolia North Property Owners' Association, Inc., in the above-captioned action and/or actions, certify that I have this 17th day of February, 2017, mailed a copy and/or copies of the following:

1. **Petition for Rehearing**

to the undersigned at his/her/their address(es) of record, with sufficient postage attached thereto, as follows:

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Stephanie Hall

Stephanie Hall

SWORN AND SUBSCRIBED before me,
This 17th day of February, 2017.

Notary Public for South Carolina
My Commission Expires: 4-19-26