

Illinois Condominium Property Act Does Not Impose a Duty on an Insurance Producer to Procure Sufficient Insurance Coverage Compliant With That Act

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Royal Glen Condominium Assn. v. S.T. Neswold and Associates, Inc., Case No. 2-13-1311 (Appellate Court of Illinois, Second District Sept. 2, 2014).

Defendant insurance producer began serving the insurance needs of plaintiff Royal Glen Condominium Association in 1999. The condominium property, built around 1978, consisted of two buildings that did not have sprinkler systems, which the Village Code began requiring 2004. In 2009, plaintiff purchased through defendant a “Condominium Pac Plus” policy, which included coverage for complete replacement cost of the insured buildings. Plaintiff also purchased through defendant an “Ordinance or Law Coverage” endorsement with a \$1 million limit.

When fire destroyed substantial portions of one of the buildings, the village determined that the restoration must include a sprinkler system as required by the 2004 code. The total cost of the restoration was estimated to be \$1.3 million, but the carrier accepted coverage for only a total of \$1 million, citing the \$1 million limit in the endorsement as the basis for denying full coverage.

Section 12(a)(1) of the Illinois Condominium Property Act (Act) provided that

“[N]o policy of insurance shall be issued or delivered to a condominium association and no policy of insurance issued to a condominium association shall be renewed unless insurance coverage under the policy includes * * * a total amount of not less than the full insurable replacement cost of the insured property, less deductibles, but including coverage for the increased cost of the construction due to building code requirements, at the time the insurance is purchased and at each renewable date.”

Plaintiff filed an action against defendant, alleging that Section 12(a)(1) created the duty on the part of the insurance producer that gave rise to a statutory cause of action for failure to procure a policy that included the

increased cost of construction due to building code requirements existing when the policy was purchased. When defendant's motions to dismiss were denied, it took an interlocutory appeal on the certified question as to whether Section 12(a)(1) gave rise to a statutory cause of action. The appellate court answered the question in the negative and remanded the case.

Question Before the Court and How the Court Ruled

Whether Section 12 of the Illinois Condominium Property Act created a duty of care on the part of the insurance producer to procure sufficient insurance coverage for the full replacement costs, including increased cost of construction due to building code requirements?

No. The appellate court found that the purpose of the Condominium Property Act was to govern the affairs of a condominium association including its board of managers. Section 12 specifically regulates the types of insurance coverage that the board of managers have a duty to obtain. Nowhere in the Act is there an explicit statement requiring an insurance producer issue or deliver an insurance policy that strictly complies with this section. The court held that it would be unjust to subject an insurance producer to a vague provision in the Act that did not refer at all to the Illinois Insurance Code. The court concluded that Section 12 was not intended to regulate the business of insurance, which was already heavily regulated, but just to impose certain insurance related obligations on the association's board, not on insurance producers. The court further stated that interpreting the statute as plaintiff had urged would place on the insurance industry a burden not contemplated by the legislature. The court also pointed out that subjecting an insurance producer to a duty based on Section 12 would directly conflict with Section 754.30 of the Illinois Administrative Code, which provided that an insurer is not required to extend coverage for risks that cannot be assessed without inspecting the improvements to insured property.

What the Court's Decision Means for Practitioners

This decision rejects an attempt by a creative attorney to create a private right of action based on the Illinois Condominium Act's insurance provisions against an insurance producer for failure to procure all of the required insurance coverage. The court refused to read the Illinois Insurance Code into the Condominium Act such as had been explicitly done with respect to the Illinois Vehicle Code, which imposes on insurance producers minimum coverages for automobile insurance policies.

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