

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2006-013121

12/19/2007

HONORABLE GLENN M. DAVIS

CLERK OF THE COURT
L. Muhammad
Deputy

CENTURY-NATIONAL INSURANCE
COMPANY

CHRISTOPHER ROBBINS

v.

RUSSELL YOUNG

JOHN ROLLIE WIGHTMAN

UNDER ADVISEMENT RULING

The Court has reviewed and considered the *Defendant / Counterclaimant Russell Young's Motion for Partial Summary Judgment (on Material Breaches of Contract)* and *Century-National's Motion for Summary Judgment on Its Declaratory Judgment Relief Complaint*, the Responses, and the Replies thereto. The Court has further reviewed the file, the pleadings, and the materials filed by the parties in support of their positions.

Based upon consideration of the foregoing and the arguments presented by counsel, the Court makes the following findings and enters the following Orders in this case.

There is no definition of the term vandalism in the policy. As evidenced by the sheer volume of authorities dealing with the meaning of vandalism in the context of property damage policies, there is no plain, ordinary universally accepted definition of vandalism. Therefore, the meaning of the term "vandalism" within the policy is unclear and involves interpretation by the Court.

Generally an ambiguity in a policy is to be construed against the insurer and, in resolving ambiguities, the Court will most favorably construe the policy to protect the insured. *Eureka-Security Fire & Marine Ins. Co. v. Simon*. 1 Ariz.App. 274, 401 P.2d 759 (1965). Applying these principles to construction of provisions in insurance policies, the Court finds that most if not all

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of the damage to these premises would be considered vandalism within the meaning of the policy.

Applying a definition cited by the Plaintiff, vandalism may be characterized by property damage done with a “conscious disregard of the rights” of the owner. Accordingly, in the cases cited by both parties in briefing, a marijuana growing operation that did property damage was considered to be vandalism since it was done in conscious disregard of the owners’ property rights and a methamphetamine lab’s damage by fumes to property was found to be vandalism since the operation of the lab was in conscious disregard of the property owners’ interest and was almost certain to cause damage.

In the instant case the property damage inflicted on the premises was substantial and extraordinary. It was done in a period of only a few months. There can be no question that the bulk of the damage to the property was the result of packing and imprisoning a large number of people in the house and was done by conduct such as urination on the floor and other similar conduct. This damage simply cannot be considered to be the result of ordinary wear-and-tear, simple “marring” by tenant use or abuse, or to be caused by faulty maintenance.

Whether considering the acts of the individuals or the act of locking that number of people in the house, the conduct and the nature of the damage clearly indicates a conscious disregard of the property owners’ rights, with a near certainty that property damage would occur. Therefore, the damage to the house in this case would be considered to be caused by vandalism and would be covered under the policy. If the Plaintiff can show that any particular damage was not caused by or related to the imprisonment of this large group of people in this house, that damage would not necessarily be considered to be caused by vandalism.

To the extent that loss of rents were caused by vandalism damage, which appears from the facts presented to be the cause of at least the majority of that loss, the Court finds that coverage under the policy would also extend to that loss of rents, since vandalism is a “peril insured against” by the policy.

Further, in construing the meaning of “actual cash value” according to the applicable principles of construction, the Court finds that sales tax and contractor overhead and profit should be included in calculating that value.

There appears to be factual issues remaining as to whether particular damages claimed, such as the fungi, rot, or bacterial damage, are in fact related to the vandalism.

On the issue of appraisal, the Court finds that, even though the primary dispute was over coverage of the loss in total and not the amount of the loss, an appraisal should have been done when

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demanded under the policy, to determine the amount of the loss, with the issue of whether the loss was in fact covered reserved for further negotiation or litigation.

Therefore,

IT IS ORDERED granting the *Defendant / Counterclaimant Russell Young's Motion for Partial Summary Judgment (on Material Breaches of Contract)* consistent with the findings above.

IT IS FURTHER ORDERED denying *Century-National's Motion for Summary Judgment on its Declaratory Judgment Relief Complaint*.

**HONORABLE GLENN M. DAVIS
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