Rooftop Restoration, Inc. v. American Family Mut. Ins. Co.

Year: 2017
Court: Colorado Supreme Court
Case Number: 2017SA3

Under Colorado law, a policyholder may bring action under the "prompt payment statute" when an insurance company unreasonably delays or denies payment on a valid insurance claim. On certified question from the Colorado Federal District Court, the Colorado Supreme Court was confronted with the issue of whether a suit under the prompt payment statute is subject to a one-year statute of limitations, which applies to "penal" statutes or the two-year statute of limitations applicable to bad faith and breach of contract cases. UP argued in its brief that Colorado's prompt payment statute is not "penal" within the meaning of the governing statute. In fact, certain portions of the governing statute are, but not specifically the prompt payment statute. In other words, the Insurance Commissioner and/or the Attorney General does have the authority to prosecute violations of the "penal" portions of the statute, while other portions of the statute – the prompt payment statute – are private causes of action. Thus, the prompt payment statute is not penal within the Legislature's intent. Further, imposing a one-year statute of limitations would unfairly eclipse relief for many disaster victims, where the adjustment of their claim – from the time of the first act causing delay or denial, from which the statute runs – often takes more than a year. The Court rendered it's decision in this case in June, 2018. CO policyholder attorney/UPVolunteer Timms Fowler summarizes the holding as follows: Facts: Insureds sustained hail damage to their roof. Rooftop filed suit more than one year later, bringing claims for breach of contract and violation of sections C.R.S. §§ 10-3-1115, -1116. American Family moved for summary judgment arguing that the statutory claim was a penalty subject to a one-year statute of limitations United States District court certified issue to the Colorado Supreme Court Holdings: Claims under §§ 10-3-1115, -1116 are not penalties subject to a one-year statute of limitations The three-part test for determining whether a claim is a penalty under Kruse v. McKenna "is not applicable when the intent of the legislature is clear that a particular cause of action is or is not governed by a certain statute of limitations." The one-year statute

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of limitations for penalties has a companion accrual provision which states that penalties do not accrue until “the determination of overpayment or delinquency for which such penalties are assessed is no longer subject to appeal.” Thus, “it appears the legislature considered a defining feature of a cause of action for penalties to be a determination of overpayment or delinquency.” (This would not happen for a statutory bad faith claim.) Pointers: Because claims under §§ 10-3-1115, -1116 are not penalties, they are assignable. (Rooftop had the claim on assignment). Because claims under §§ 10-3-1115, -1116 are not penalties, they may be recovered in addition to punitive damages Because claims under §§ 10-3-1115, -1116 are not penalties, they are not subject to a one-year statute of limitations. This means they have at least a two-year statute of limitation. [The opinion does not set forth the actual statute of limitations.]

UP's brief was authored pro bono by Timms R. Fowler, Esq. of The Fowler Law Firm and Scott D. Smith, Esq., of Taussig, Taussig, and Smith P.C. Of Counsel: UP Exec. Dir. Amy Bach, Esq. and Staff Attorney Dan Wade, Esq.

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