Citation Search Result Rank 1 of 1 Database
1/16/97 NYLJ 1, (col. 3) NYLJ
1/16/97 N.Y.L.J. 1, (col. 3)

New York Law Journal
Volume 217, Number 11


Thursday, January 16, 1997

# BROAD MEANING OF 'RENOVATION' GIVEN IN RULING

## INSURANCE POLICY EXCLUSION INTERPRETATION IN DISPUTE

By Bill Alden

DEFINING a common clause in property insurance policies that requires carriers to cover vacant buildings that are being "renovated," a Manhattan judge has held there is no requirement that a contractor be on site for the clause to apply.

The decision, which appears to be the first state ruling defining the clause, gives a broader meaning to the concept of "renovation" in such policies. State Supreme Court Justice Emily Jane Goodman held that the phrase "in the course of renovation" only requires that the insured have begun the renovation process. The decision will be published tomorrow.

While noting that none of the parties in 438 Manhattan Avenue Inc. v. Insurance Company of Pennsylvania had "revealed any objective written definition or criteria" in existing case law for determining whether a building is actually being redone, Justice Goodman said that a "high level of activity on-site" is not necessary to require coverage.

Rather, she added, an insured's taking of "any step in the renovation process" including "applying for project financing," takes the "building out of the ambit" of the vacant building exclusion from insurance coverage.

"This definition fits within the plain meaning of the phrase and makes sense in the context of the policy when read as a whole."

The dispute over the language arose from a general liability and property insurance policy issued by the defendant, Insurance Company of the State of Pennsylvania, for three apartment bulidings owned by the plaintiff, 438 Manhattan Avenue Inc., on the Upper West Side.

The coverage was obtained by 438 Manhattan's insurance broker, Kaye Insurance Associates, through a program designed to provide volume low-cost and low-risk insurance for apartment buildings.

The policy contained an exclusion exempting from coverage those buildings that were vacant for more than 60 days unless they were "in the course of renovation."

438 Manhattan intended to convert the property to state-subsidized middle-income housing. In August 1992, however, two of the three buildings were destroyed by fire. the insurance company denied coverage, arguing that the buildings were vacant and excluded under the policy.

438 Manhattan sued, seeking a declaration of coverage on the grounds that it had started renovation by virtue of obtaining financing for the project and

1/16/97 NYLJ 1, (col. 3)

lining up professionals to complete the job. It also sued Kaye Insurance, contending that it had obtained the wrong kind of insurance for the project.

Justice Goodman sided with the plaintiff, declaring that the buildings were "indeed in the 'course of renovation' at the time of the fire under any reasonable interpretation of the clause."

The undisputed record, she wrote, shows that 438 Manhattan had, among other things, retained engineers and architects who had inspected the building and had drawn up architectural plans.

In addition, "demolition and cleanup of the site had begun" and "scaffolding was in place." These events, she concluded in her grant of summary judgment, "are clear indicia of renovation."

Leonard A. Benovich of Roosevelt & Arfa represented 438 Manhattan. John S. Diaconis represented Kaye Insurance, which was let out of the case as a result of Justice Goodman's ruling. John M. Speyer of Speyer & Perlberg represented the Insurance Company of Pennsylvania.

1/16/97 NYLJ 1, (col. 3)

END OF DOCUMENT