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Wells v. State Farm Fire & Cas. Co.

2021 IL App (5th) 190460

## *Policyholder Fails to Prove Exception to Exclusion – Appellate Court Upholds Judgment of No Coverage*

In Wells v. State Farm Fire & Cas. Co., 2021 IL App (5th) 190460, the appellate court affirmed judgment in favor of the insurance company after a bench trial. The insureds filed a property damage claim after water pipes burst and flooded their building during below freezing weather. The policy contained an exclusion for loss caused by water “that leaks or flows from plumbing caused by freezing” unless “you [the insured] do your best to maintain heat in the building or structure.” State Farm denied the claim, and the insureds sued, alleging claims for declaratory judgment, breach of contract and bad faith. State Farm asserted the exception to the exclusion as an affirmative defense.

On an issue of apparent first impression in Illinois, the appellate court held a policyholder has the burden to prove that an exception to an exclusion applies. The court held the language of the “do your best” exception to the exclusion set out a reasonableness standard -- namely, that the plaintiffs must have made an effort to maintain heat in the building that was objectively reasonable in light of the specific circumstances they faced.

After reviewing the evidence offered by both sides at trial, the appellate court found sufficient evidence to support the trial court’s factual finding that plaintiffs failed to exercise reasonable efforts to maintain heat in their building. The insureds, despite knowing of previous problems with the building’s heating system, made no effort to repair or replace the building’s heating system to restore it to a state where it could protect the building’s pipes from freezing, even after the insureds restored water service at the building in the middle of the winter.



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