

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-002636-MR

RICHARD C. LANIER, ADMINISTRATOR
OF THE ESTATE OF ROBERT C. LANIER

APPELLANT

v. APPEAL FROM CLARK CIRCUIT COURT
HONORABLE JULIA H. ADAMS, JUDGE
ACTION NO. 99-CI-00072

MONROE GUARANTY INSURANCE COMPANY AND
FARMERS BANK & TRUST COMPANY

APPELLEES

OPINION
AFFIRMING

** ** * * * **

BEFORE: DYCHE, EMBERTON, AND MILLER, JUDGES.

MILLER, JUDGE: Richard C. Lanier, administrator of the estate of Robert C. Lanier, brings this appeal from an Order of Summary Judgment entered by the Clark Circuit Court on October 25, 1999. We affirm.

This case can best be depicted by setting forth a scenario of events. On April 1, 1993, appellee, Farmers Bank & Trust Company, bought a piece of property located on Ford-Boonesboro Road near the City of Winchester. The property was given to the use of a restaurant, bar, and grill under the name of Mira Mar. Upon purchase, Farmers Bank immediately leased the

property to one Herbert A. Ryles, d/b/a Mira Mar, for the purpose of containing the Mira Mar bar and grill. It appears that Ryles did not immediately obtain liability insurance covering the operation of his business.

On May 1, 1993, appellant's intestate, Robert C. Lanier, was killed on a street after exiting the parking lot of the premises. It appears that the intestate was riding a motorcycle when an intoxicated patron of the bar walked in his pathway. Lanier attempted to avoid the patron and thereby losing control of his motorcycle and consequently his own life.¹

On July 27, 1994, appellant filed a tort action against Herbert A. Ryles, d/b/a Mira Mar. The action alleged that it was the negligence of Ryles, d/b/a Mira Mar, that brought about the death of appellant's intestate. On August 14, 1998, an Agreed Judgment was entered awarding appellant \$600,000.00 against Ryles. Since Ryles had no insurance, nor apparently other means to satisfy the judgment, the instant declaratory action was filed on February 17, 1999, against Farmers Bank and its insurance carrier, Monroe Guaranty Insurance Company (Monroe Guaranty). The object of this suit was to have it declared that the bank's insurance policy provided coverage for the Mira Mar restaurant and bar business operated by Ryles at the time of Robert C. Lanier's death. On October 25, 1999, the circuit court entered summary judgment dismissing the complaint, thus precipitating this appeal.

¹It appears that on May 10, 1993, Ryles obtained liability insurance covering his establishment.

Appellant contends that the bank's general commercial liability policy issued by Monroe Guaranty and in effect on May 1, 1993, the date of Robert C. Lanier's death, is available to satisfy the judgment. On this appeal, he solely argues that the bank's policy covered losses arising from the Mira Mar business. He makes this argument notwithstanding Ryles, d/b/a Mira Mar, was not a named insured.

Section II of the policy provided as follows:

4. Any organization you newly acquire or form, other than a partnership or joint venture, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier.

b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and

c. Coverage B does not apply to "personal injury" or "advertising injury" arising out of an offense committed before you acquired or formed the organization.

No person or organization is an insured with respect to the conduct of any current or past partnership or joint venture that is not shown as a Named Insured in the Declarations.

Our review of summary judgments is under the precepts of Ky. R. Civ. P. 56 and Steelvest, Inc. v. Scansteel Service Center, Inc., Ky., 807 S.W.2d 476 (1991). Summary judgment is proper only when there is no question of fact for resolution and the movant is entitled to judgment as a matter of law. Indeed,

in this case the facts are not in dispute; therefore, we proceed to a question of law in interpreting the insuring provision of Monroe Guaranty's policy. The construction, meaning, and legal effect of written documents is one of law for the court. See Morganfield National Bank v. Damien Elder & Sons, Ky., 836 S.W.2d 893 (1992).

Appellant contends that the purchase of the Ford-Boonesboro Road property by the bank constituted a newly acquired organization within the meaning of the policy. We reject this argument outright. The bank was not engaged in the restaurant business nor did it become engaged in the restaurant business by the acquisition of the property. Moreover, even if it were the acquisition of a new organization within the purview of the policy, the policy would not inure to the benefit of the tortfeasor, Ryles, d/b/a Mira Mar. The policy was designed to protect the interest of the bank. The landlord is not ordinarily responsible for the negligent act of a tenant. See McDonald v. Talbott, Ky., 447 S.W.2d 84 (1969).

Appellant makes some argument that the provision of the policy somehow made Ryles, d/b/a Mira Mar, an insured. We cannot perceive the validity of this argument by the greatest stretch of the imagination. Insurance contracts are no different from any other contracts. They are generally governed by the same rules of construction that ordinarily apply to contracts. See Fogg v. London & Provincial Marine & General Ins. Co., Limited, of London, 237 Ky. 636, 36 S.W.2d 44 (1931). In construing contracts, courts are not permitted to add or strike provisions.

See Haselden v. Home Ins. Co. of New York, 247 Ky. 530, 57 S.W.2d 459 (1933). Nor may a court read into a policy of insurance terms which are not incorporated therein. See Old Reliable Insurance Company v. Brown, Ky. App., 558 S.W.2d 190 (1977).

We perceive no error in the entry of the summary judgment.

For the foregoing reasons, the Order of Summary Judgment of the Clark Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Thomas K. Herren
Lexington, Kentucky

BRIEF FOR APPELLEES:

Stephen G. Amato
Mary E. Cutter
Lexington, Kentucky