

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 94-60381  
Summary Calendar

---

GAL-TEX HOTEL CORPORATION,

Plaintiff-Appellant,

versus

THE HOME INSURANCE COMPANY,

Defendant-Appellee.

---

Appeal from the United States District Court for the  
Southern District of Texas  
(CA-G-93-149)

---

(January 13, 1995)

Before KING, JOLLY, and DeMOSS, Circuit Judges.

PER CURIAM:\*

Home Insurance Company ("Home"), the defendant, issued an all-risk insurance policy to Gal-Tex Hotel Corporation ("Gal-Tex"), the plaintiff, for various of its hotels throughout the United States. This policy included the Hotel Washington (the "Hotel") and covered the period of October 1, 1991 through October 1, 1992. In March 1992, a piece of concrete ceiling fell while an employee of the Hotel was scraping the basement ceiling beneath the kitchen. Upon further investigation, the Hotel management discovered extensive damage to the cement and metal support structures located in this ceiling, requiring drastic repair work totaling nearly four million

---

\*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

dollars. Both Home and Gal-Tex agreed that the deterioration was caused by moisture passing through the grout of the tiles in the kitchen floor and seeping into the concrete supporting the floor, which caused the concrete to soften and ultimately to fall. The Hotel Washington was constructed in 1917 and its kitchen floors were installed in 1968.

Gal-Tex filed with Home a timely insurance claim for the repair work under its all-risk insurance policy. This policy contained two pertinent exclusions. The policy deleted from coverage first any loss or damage resulting from deterioration and second the cost of making good faulty workmanship, but with the exception of physical damage resulting from such faulty workmanship. Home denied coverage to Gal-Tex for this claim, arguing that Gal-Tex's losses resulted from the deterioration of the ceiling, and the policy excluded from coverage any losses occurring as a result of deterioration.

Gal-Tex filed suit in state court against Home for its failure to pay under the terms of the policy. Home removed the case to the United States District Court for the Southern District of Texas. The district court granted Home's motion for summary judgment and held that the deterioration exclusion was a "simple blanket exclusion" clause. Thus, the court held that regardless of the cause of the deterioration, the plain language of the deterioration exclusion contained in the policy barred recovery of Gal-Tex's losses. Gal-Tex filed a timely notice of appeal.

Gal-Tex concedes that the losses resulted from deterioration, but argues that the deterioration was caused by faulty workmanship.

Because the policy excepts from exclusion physical damage caused by faulty workmanship, Gal-Tex argues that the policy expressly covers losses, such as this loss, due to deterioration caused by faulty workmanship. Alternatively, Gal-Tex argues that if the deterioration exclusion preempts coverage for losses caused by faulty workmanship, then the policy is ambiguous because it grants coverage in one provision and denies the same losses in a later provision. Home argues that the deterioration "blanket exclusion" bars coverage for Gal-Tex's losses, regardless of the alleged cause of the deterioration--faulty workmanship.

After a careful study of the briefs and review of relevant parts of the record, we find it unnecessary to write further on this case because we would simply repeat much of what the district court has already said, and we would not say it any better or any clearer. In short, we agree with the district court that the deterioration exclusion bars Gal-Tex's recovery, regardless of the cause of this deterioration.<sup>1</sup> The district court is therefore

A F F I R M E D.

---

<sup>1</sup>We cannot agree with Gal-Tex's argument that the policy is ambiguous. Solely because one provision excepts from exclusion certain types of losses, does not necessarily lead to the conclusion that these losses are covered automatically under the policy. These "excepted losses" are nevertheless subject to the remaining provisions of the policy, including other exclusions. See State Farm Fire and Casualty Co. v. Volding, 426 S.W.2d 907, 909 (Tex. Civ. App. 1968)(finding that exclusion cannot create coverage where none existed before). Consequently, we hold that this policy is not ambiguous merely because two provisions contained in the policy--the "faulty workmanship exclusion" and the "deterioration exclusion"--had some relevancy to the nature of Gal-Tex's claimed losses.