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NJ Court Reaffirms Rule Against Coverage for Faulty Workmanship Claims and Finds Fraud Claims Inherently Intentional

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Awarding summary judgment to an insurer under both liability and directors & officers (D&O) coverage parts, a New Jersey trial court reaffirmed the principle that claims of defective workmanship without resulting "property damage" are not covered under a general liability policy, and further dismissed claims for fraud and breach of fiduciary duty, finding that such claims were inherently intentional and do not state a covered "occurrence."

In *Velez v. AR Management Company, et al.,* 2021 N.J. Super. Unpub. LEXIS 1675 (Law Div. Bergen Co. Aug. 10, 2021), owners of a condominium unit rebuilt after a fire sued the condominium association, several association board members, the association's property management company and the general contractor for the reconstruction work. The owners' suit alleged faulty workmanship and incomplete repairs. In addition, the owners asserted fraud and breach of fiduciary duty claims against the management company, alleging conflicts of interest and self-dealing between the management company and the general contractor, which had common ownership.

In a third-party complaint, the management company sought coverage from the condo association's liability and D&O insurer. The court dismissed the D&O coverage claim, noting that the management company was not a director or officer or otherwise entitled to insured status for the D&O coverage part.

Turning to the general liability coverage, the court ruled that all of the owners' alleged damages were "comprised of the costs of repairing faulty or incomplete workmanship and/or economic losses," and therefore are "precisely the type of 'business risk' that is not covered by general liability insurance." Citing *Weedo v. Stone-E-Brick*, 81 N.J. 233 (1979), the court held that "[i]t is only when the faulty workmanship proximately causes a separate (and otherwise covered) occurrence that damages something other than the faulty work product itself that coverage is triggered."[1]

Similarly, the court held that neither the breach of fiduciary duty nor the common-law fraud claims gave rise to a covered "occurrence." As to the fraud claim, the court held that claims of intentional fraud "are necessarily excluded as the intent to induce reliance constitutes a subjective intent to injure."[2] Lastly, the court turned back the management company's attempt to pursue a policy reformation claim, finding that there was no mutual mistake and that the management company's "lack of understanding of basic policy terms and basic insurance coverage concepts" did not support reformation.[3]

The *Velez* decision shows that the principle first enunciated in *Weedo*, that claims of faulty workmanship without more do not trigger general liability coverage, continues to have force and can support summary judgment for insurers in appropriate cases. The decision also indicates that fraud and breach of fiduciary duty claims that often accompany defective construction allegations against condo association boards and property managers will not serve to create coverage under occurrence-based liability policies.

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[1] 2021 N.J. Super. Unpub. LEXIS 1675 at *6-7.

[2] Id. at *7

[3] Id. at *9