

# **Third District Court of Appeal**

## **State of Florida**

Opinion filed May 13, 2020.  
Not final until disposition of timely filed motion for rehearing.

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No. 3D19-589  
Lower Tribunal No. 16-32003

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**Security First Insurance Company,**  
Appellant,

vs.

**John Czelusniak,**  
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, David C. Miller,  
Judge.

Colodny Fass, and Amy L. Koltnow (Sunrise), for appellant.

Best & Menendez and Virginia M. Best; Law Offices of Anthony Accetta,  
P.A., and Anthony Accetta; Law Office of Lazaro Vazquez, P.A., and Lazaro  
Vazquez; Eduardo Gomez, for appellee.

Before FERNANDEZ, LOGUE, and SCALES, JJ.

FERNANDEZ, J.

Security First Insurance Company appeals the trial court's order granting a directed verdict in favor of John Czelusniak, the insured. Upon review of the record, we reverse the directed verdict due to the anti-concurrent cause provision in Security First's water damage exclusion endorsement.

The underlying case concerns water that entered the insured's home causing mold growth and damage to the interior. It is undisputed that the insured's insurance policy with Security First is an all-risk policy. With an all-risk policy, the insured is only required to prove that damage occurred during the policy period. Jones v. Federated Nat. Ins. Co., 235 So. 3d 936, 941 (Fla. 4th DCA 2018). Subsequently, the burden shifts to the insurer to prove that one of the policy exclusions bars coverage. Id. If the insurer does not meet its burden, the insurer must cover the loss. Id. It is undisputed that: 1) even though damage may have occurred over a period of time, the property sustained damage in 2016 during the coverage period; 2) water came in through walls, windows, and doors resulting in damage to the interior; and 3) the policy explicitly excludes water that enters through walls and windows but does not explicitly exclude water entering in through the door. Taking all of this into consideration, the trial court granted the insured's motion for directed verdict on the basis of the concurrent cause doctrine, pursuant to Sebo v. American Home Assurance Co., Inc., 208 So. 3d 694 (Fla. 2016). The trial court reasoned that although water entering through the door is not expressly excluded, the jury would

be unable to separate the water that came in through the door (non-excluded cause) from water that came in through the walls and windows (excluded causes). However, the policy includes an anti-concurrent cause provision within the exclusion endorsement. Because “in all-risk policies . . . construction is governed by the language of the exclusionary provisions,” we find that the trial court erred in directing the verdict in favor of the insured in contravention of the anti-concurrent cause provision. Id. at 697.

Generally, “when independent perils converge and no single cause can be considered the sole or proximate cause, it is appropriate to apply the concurring cause doctrine.” Id. However, when the insurer explicitly avoids the application of the concurring-cause doctrine with an anti-concurrent cause provision<sup>1</sup>, the plain language of the policy precludes recovery. See Id. at 700; Jones v. Federated Nat. Ins. Co., 235 So. 3d 936, 941 (Fla. 4th DCA 2018) (“If the insurer fails to establish either a sole or efficient proximate cause, and there are no applicable anti-concurrent cause provisions, then the concurrent cause doctrine must be utilized.”); Liberty Mut. Fire Ins. Co. v. Martinez, 157 So. 3d 486, 487 n.1 (Fla. 5th DCA 2015)

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<sup>1</sup> “An anti-concurrent cause provision is a provision in a first-party insurance policy that provides that when a covered cause and noncovered cause combine to cause a loss, all losses directly and indirectly caused by those events are excluded from coverage.” Liberty Mut. Fire Ins. Co. v. Martinez, 157 So. 3d 486, 487 n.1 (Fla. 5th DCA 2015).

("[P]arties may contract around the concurrent cause doctrine with an anti-concurrent cause provision.").

Security First's policy, as amended by the "Water Damage Exclusion Endorsement," provides:

1. We do not insure for loss caused directly or indirectly by any of the following. *Such loss is excluded regardless of any other cause or event contributing concurrently or in any sequence to the loss: . . .*

c. *Water Damage, meaning: . . .*

(6) *Water penetration through the roof system or exterior walls or windows . . . .*

(Emphasis added). While there is no provision in the policy expressly excluding damage from water penetrating through the doors of the dwelling, the policy expressly excluded damage from water penetrating through the "roof system or exterior walls or windows . . . ." Because evidence of water entering through the exterior walls and windows was undisputed and is expressly excluded by the policy, the entire loss is excluded from coverage due to the anti-concurrent cause provision regardless of any other cause or event contributing concurrently or in any sequence to the loss. *See Martinez*, 157 So. 3d at 486 (holding that, upon a plain reading of the policy language, the anti-concurrent cause provision expressly excluded the insured's loss as it specifically excluded losses that occurred directly or indirectly from subsurface water pressure).

Accordingly, the anti-concurrent cause provision, coupled with the undisputed evidence that the loss was caused by a combination of both excluded and

covered perils, foreclosed the analysis of whether the jury could legally or factually separate the damage caused by water coming through the door from water coming through the walls and windows. Therefore, we hold that the trial court erred in directing the verdict in favor of the insured and reverse and remand for the trial court to direct the verdict in favor of Security First.

Reversed and remanded with instructions.