

Mosley v. Pacific Specialty Ins. Co.
(May 26, 2020, No. E071287) Cal.App.5th [2020 Cal. App. LEXIS 451, at *1-2.]

**In order to grant summary judgement, the moving party must meet their burden of proof
and address all causes of action in their separate statement**

FACTS

Plaintiffs, James and Maria Mosley, rented out a home which was insured under a homeowners' policy by Pacific Specialty Insurance Company (PSIC). The Mosley's' tenant started growing marijuana in the house. To support his marijuana-growing operation, the tenant re-routed the house's electrical system to steal power from a main utility line. The tenant's re-routed electrical system caused a fuse to blow, which started a fire that damaged the property. PSIC denied coverage, citing a provision in the Mosley's' policy that excluded any loss associated with "[t]he growing of plants" or the "manufacture, production, operation or processing of ... plant materials."

The Mosley's sued PSIC for denying coverage. They sued on two causes of action: (1) breach of contract; and (2) breach of implied covenant of good faith. Both parties filed MSJs. The trial court granted summary judgment in PSIC's favor, finding that PSIC properly denied coverage because the Mosley's had control over their tenant's conduct.

FOURTH APPELLATE DISTRICT'S RULING

The Appellate court reversed the grant of summary judgement for PSIC. On the breach of contract claim, plaintiffs argued PSIC's refusal to cover the fire loss violated Insurance Code section 2070 because the policy provides less coverage than required by section 2071. However, under section 2071, PSIC argued there is an exclusion for when the hazard was increased by a means within the control and knowledge of the insured. As no California precedent exists on this issue, the court looked to other states interpreting similar statutes. The court found these authorities stood for the proposition an insured increases a hazard only if they are aware of the hazard or reasonably could have discovered it. Because there was no evidence plaintiffs were aware of their tenant's marijuana operation, and because the record was silent as to what they could or should have done to discover the operation, a jury should determine if the plaintiffs could have controlled their tenant's actions. Therefore, the court reversed the trial court's order granting PSIC summary judgment and affirmed the order denying plaintiffs' MSJ.

The court found even though plaintiffs did not oppose PSIC's argument at the trial level that the tenant's conduct was not in their control, does not mean it was waived. Defendant had the initial burden to produce sufficient evidence to shift the burden. As defendant did not provide evidence that plaintiffs knew or could have controlled the tenant's actions, the burden did not shift and denial was proper.

Furthermore, another ground for denying plaintiffs' MSJ was that plaintiffs' separate statement only addressed the first cause of action. Because it did not include facts as to the second cause of action, denial of plaintiff's MSJ was proper for this reason alone.

As to the second cause of action, breach of the implied covenant of good faith and fair dealing, the trial court properly granted defendant's MSA on this claim. Where there is a genuine coverage dispute, an insurer does not violate the implied covenant in denying coverage. Given the unique circumstances and the lack of any California precedent on the breach of coverage issue regarding control or knowledge, PSIC was reasonable in determining coverage was excluded. Therefore, only the breach of contract claim could go to a jury.