Weekly Law Resume

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WEEKLY LAW RESUME™
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Insurance - Bad Faith - Theft Claim

Greg Barnett v. State Farm General Ins. Co.
Court of Appeal, Fourth District (October 31, 2011)

This case considered the definition of "theft" in a homeowner's policy as it relates to a search and seizure by the police pursuant to a search warrant.

Greg Barnett obtained a homeowners insurance policy from State Farm. The policy included coverage for personal property on a named perils basis. Specifically, the policy covered "direct physical loss to property" caused by enumerated hazards, including theft. The theft provision in the policy extended coverage to "Theft, including attempted theft and loss of property from a known location when it is probable that the property has been stolen." Another provision provided "we cover outdoor trees, shrubs, plants or lawns, on the residence premises, for direct loss caused by the following: Vandalism or malicious mischief or Theft."

On August 10, 2007, officers from the Costa Mesa Police Department executed a search warrant at Barnett's residence. A magistrate had issued a search warrant directing the police to search the premises for marijuana and to seize any if found. As a result of the search, the police found and seized 12 seven-foot-tall marijuana plants, a tray of loose marijuana and rolling paper, which Barnett used for medicinal purposes.

Barnett alleged that the warrant improperly referred to "prior police documentation" confirming marijuana was found on the premises when they pursued another suspect onto his property. Because he produced a statement from his physician recommending the use of marijuana for

San Francisco Office
505 Montgomery Street, 7th Floor | San Francisco, CA 94111 | Phone: 415-981-6630 | Fax: 415-982-1634

Monterey Office
2 Lower Ragsdale Drive, Suite 120 | Monterey, CA 93940 | Telephone: (831) 655-8822 | Fax: (831) 655-8881

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certain medical conditions, the police took no action at that time. Barnett alleged that this made it misleading to have the affidavit in support of the 2007 search warrant based in part on this information. He questioned the validity of the search warrant.

A month after the search, in September of 2007, Barnett filed a claim with State Farm for the items taken by the police. State Farm initially denied the claim in November of 2007, but re-opened the claim for reconsideration in February of 2008. Meanwhile, in February of 2008, Barnett filed a petition with the superior court for return of his marijuana, noting that he had not yet been charged with a crime. On March 18, 2008, the superior court denied his petition, noting that the amount of marijuana Barnett was growing exceeded the amount allowed under California's medical marijuana laws. Two days later, the police department destroyed Barnett's marijuana plants, the loose marijuana and the rolling papers

In April of 2008, the district attorney charged Barnett with unlawful cultivation and possession of marijuana. The charges were dismissed in October of 2008, based on Barnett's new petition including documentation from his physician that he required more than the allowed maximum for medical marijuana. In December of 2008, Barnett filed a new petition to have his marijuana and plants returned to him. No mention was made of the denial of the earlier petition. Ultimately, the court in June of 2009 ordered return of the plants

Meanwhile, in February of 2009; Barnett filed a lawsuit against State Farm for breach of contract and breach of the covenant of good faith and fair dealing. State Farm filed a motion for summary judgment. The trial court granted the motion, holding that even under the broadest definition of "theft," the actions of the officers here did not meet that definition. The court held that whether or not the warrant should have been issued (based on reference to the 2001 possession) was not dispositive. The court held that once the warrant existed, the officers possessed facially valid authority to search for and seize the marijuana. Plaintiff appealed.

The Court of Appeal held that although the policy did not define the words "theft" or "stolen," these words should be given their common meanings. According to the Court, this meant that

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"theft" required "the intent, without a good faith claim of right, to permanently deprive the owner of possession." There must be criminal intent.

Here, the officers' seizure of the marijuana pursuant to a search warrant could not constitute a "theft" because it was not criminal, because a claim of right under the warrant dispelled any criminal intent. Further, it was clear that by carting away the items in an evidence locker, the officers did not intend to deprive Mr. Barnett of his property permanently. Likewise, even if Barnett could prove that the officer swearing out the affidavit had malicious intent, the warrant was taken out by the magistrate, and the search was carried out by the police together. Hence, one officer's subjective mental state was irrelevant.

Finally, the Court held that there was no criminal intent at the time the police department burned the impounded marijuana, as it was acting pursuant to the superior court's initial denial of Barnett's petition for return of the marijuana. There was nothing in the property-return statutes which specifies that failure to return the petitioner's property constitutes theft or is otherwise criminal.

The Court of Appeal affirmed the granting of summary judgment in favor of State Farm.

COMMENT

Where the police seize items pursuant to a warrant (whether ultimately valid or not), it cannot be presumed that this is theft, even if the items are destroyed by the police, unless it is shown that there was a clear and specific intent to deprive plaintiff of items permanently.

For a copy of the complete decision see:

HTTP://WWW.COURTINFO.CA.GOV/OPINIONS/DOCUMENTS/G043748.PDF

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