

Judd Apatow Loses Coverage Suit For Malibu Home Damage

By **Shayna Posses**

Law360, New York (December 21, 2016, 7:59 PM EST) -- A California federal judge held Wednesday that filmmaker Judd Apatow, known for popular comedies like “The 40-Year-Old Virgin” and “Knocked Up,” was too late in filing his suit challenging American Bankers Insurance Co. of Florida’s refusal to cover flood damage to his Malibu beachfront property.

U.S. District Judge Michael W. Fitzgerald held that Apatow had to file suit in federal court within a year of the insurer denying coverage under a standard flood insurance policy but failed to do so, waiting almost a year to bring his claims in state court, which American Bankers then removed to the Central District of California.

The judge explained that the filmmaker’s policy is part of the Federal Emergency Management Agency’s National Flood Insurance Program, the terms of which are set by Congress and require policyholders to bring suit over coverage disagreements in federal court within a year of receiving a denial letter. Since Apatow didn’t do so, the court lacks jurisdiction over his claims, Judge Fitzgerald held.

“It is undisputed that the action was not filed in district court within the one-year statute of limitations,” Judge Fitzgerald said. “On the alleged facts, the court can determine as a matter of law that the insurance dispute was not reopened in a manner sufficient to restart the limitations period.”

The dispute stems from damage sustained by Apatow’s Malibu property in October 2014, which, according to Los Angeles County property records, was sold in March for \$11.5 million.

Waves and high tides caused by offshore hurricanes broke through the seawall protecting the home and washed away the sand that supported the foundation under part of the property, causing that portion to collapse and damaging the so-called “tea room,” the October complaint said. The cost to repair the seawall and foundation alone surpassed \$673,000, the complaint alleged.

Apatow sought coverage under a policy issued by American Bankers — a write-your-own program carrier participating in the government’s NFIP — from March 2014 to March 2015. But after investigating the claim, the insurer denied coverage in December 2014, according to court filings.

The filmmaker eventually filed suit in December 2015 in Los Angeles County Superior Court, and the insurer removed the suit in January.

On Wednesday, Judge Fitzgerald held that Apatow’s claims came too late, citing the Ninth Circuit’s 1988

decision in *Wagner v. Dir., FEMA*, which held that failure to file suit in federal court within one year of a denial under the NFIP warrants dismissal.

Other federal courts faced with this issue have concluded that failing to file suit within the limitations period leaves the court without jurisdiction, the judge said.

Apatow argued that filing in state court should give this court jurisdiction, but Judge Fitzgerald disagreed, saying the policy language is more consistent with a requirement that the lawsuit be filed both within one year and in the appropriate district court.

The filmmaker then contended that American Bankers reopened his case in the course of responding to several letters concerning the damage and coverage, eventually sending him a check for some damages in January, the opinion said. By sending that check, American Bankers revoked the initial denial and restarted the statute of limitations, Apatow alleged, citing *Wagner*, according to the opinion.

The Ninth Circuit there held that correspondence between the parties regarding a flood insurance claim didn't restart the limitations period because there was no suggestion FEMA reopened the cases or ever intended to, unlike here, where there is evidence American Bankers reopened his case, Apatow argued, according to the opinion.

But the judge wasn't convinced, holding that *Wagner* also includes language showing that the sort of correspondence Apatow mentions isn't enough to restart the limitations period.

"The court stated that, '[h]olding that FEMA may inadvertently extend the limitations period by answering claimants' inquiries or by considering new information would contravene a strong public policy to encourage an insurance company to reconsider its original denial when confronted with potentially new facts,'" the judge said. "This is what happened here."

Judge Fitzgerald added that he doesn't see how American Bankers' decision to grant some claims could be construed as reopening the case. The initial denial put Apatow on notice that he needed to file suit in federal court, and the later decision to grant some claims didn't affect the other denials, the judge held.

Equally unavailing was Apatow's argument that filing the case in state court tolled the statute of limitations, Judge Fitzgerald concluded, saying the clear language of the statute doesn't allow for tolling in this circumstance, a conclusion reached in several out-of-circuit cases.

Apatow is represented by Kirk A. Pasich and Pamela M. Woods of Liner LLP.

American Bankers is represented by Stuart D. Rosen of Robinson & Cole LLP and Raymond J. Tittmann of Edison McDowell & Hetherington LLP.

The suit is *Judd Apatow v. American Bankers Insurance Co. of Florida*, suit number 2:16-cv-00198, in the U.S. District Court for the Central District of California.

--Editing by Kelly Duncan.