
Eastern District Interprets Entrustment Exclusion Robustly, Upholds Claim Denial

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The Eastern District of North Carolina recently upheld an insurer's decision to deny a claim for theft based upon the policy's Entrustment Exclusion in [2900 Rock Quarry, LLC v. Westfield Insurance Company](#), 2017 WL 2616961, No. 5:16-CV-100 (E.D.N.C. 2017).

In the case, a property owner leased real property and restaurant equipment to Balm Christian Restaurant and Lounge, LLC. Harold Harris was the sole member of Balm Christian Restaurant and signed the lease on its behalf. Balm Christian Restaurant defaulted on its lease and ceased operating on the property. Months later, the property owner learned that some of the restaurant equipment had been stolen. The property owner filed a claim with its insurer for the theft of the property, claiming that Mr. Harris stole over \$146,000 in equipment. The insurer denied the claim under the policy's Entrustment Exclusion.

The Entrustment Exclusion in the policy provided that the policy did not cover "loss or damage caused directly or indirectly" from a "[d]ishonest or criminal act by ... anyone to whom you entrust the property for any purpose." The property owner filed a civil complaint against the insurer for breach of contract, unfair and deceptive trade practices, and bad faith. The insurer counterclaimed for a declaratory judgment that the Entrustment Exclusion barred coverage for the property owner's claim.

In upholding the insurer's denial, the court rejected the property owner's efforts to avoid the exclusion. First, the court rejected the owner's argument that the Entrustment Exclusion did not apply because the restaurant equipment was entrusted to Balm Christian Restaurant rather than Mr. Harris. The idea behind this argument was that if Mr. Harris stole the equipment, but it was not entrusted to him, the Entrustment Exclusion would not apply. The court rejected this argument, explaining that there was no meaningful difference in the case between Mr. Harris and the Balm Christian Restaurant.

Second, the owner argued that the equipment was no longer entrusted to Mr. Harris or the Balm Christian Restaurant at the time it was stolen because of Balm Christian Restaurant's default under the lease. The court also rejected this argument, explaining that the Entrustment Exclusion applies "even when the dishonest or criminal acts occur after the period of entrustment has terminated, provided that there is some sort of nexus or causal connection between the entrustment and the later theft."

At bottom, the court explained that "an insurer can only be responsible for that which it has agreed to insure ... the agreed upon purpose of entrustment exclusions is to exclude coverage for 'misplaced confidence' by an insured."

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