ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY

INDUSTRIAL PARK CENTER LLC v. GREAT NORTHERN INSURANCE COMPANY

CV-25-0330-CQ

PARTIES:

Plaintiff-Appellant: Industrial Park Center, LLC, d/b/a Mainspring Capital Group ("Mainspring")

Defendant-Appellee: Great Northern Insurance Company ("Great Northern")

FACTS:

Mainspring owns a commercial building in Tempe, Arizona. At the relevant time, the building was insured under an all-risk property insurance policy issued by Great Northern. While that policy was in effect, Mainspring discovered that the building's structural integrity had been compromised by the routine business practices of one of its tenants. Mainspring submitted a claim of loss to Great Northern for the damage. Great Northern denied the claim.

Mainspring sued Great Northern in Maricopa County Superior Court. The case was removed to federal district court based on diversity of citizenship. Relying on an Arizona Court of Appeals opinion, the district court found that under an all-risk policy, recovery is only allowed for "fortuitous" losses. The court then relied upon Ninth Circuit case law in determining what constitutes a "fortuitous" loss. The court concluded that Mainspring's loss was not fortuitous because it was reasonably foreseeable and almost certain to occur. Thus, the court granted summary judgment in favor of Great Northern.

Mainspring appealed to the Ninth Circuit Court of Appeals. The Ninth Circuit panel identified the primary issue on appeal as whether Mainspring's loss was "fortuitous." The panel noted that it found no controlling Arizona precedent addressing this issue. The panel further noted that the fortuity of Mainspring's loss is potentially dispositive of its breach of contract claim. Therefore, the panel asked the Arizona Supreme Court to exercise its discretion to answer a certified question regarding the meaning of "fortuitous" under Arizona law. The Court accepted the certified question.

CERTIFIED QUESTION:

Is damage to property a "fortuitous" loss when, based on the insured's knowledge at the time the insurance policy issued, it was reasonably foreseeable that such damage was almost certain to occur if certain preventative measures were not taken?