Third District Court of Appeal

State of Florida

Opinion filed July 3, 2019.
Not final until disposition of timely filed motion for rehearing.

No. 3D17-2021
Lower Tribunal No. 16-08414

Donato Arguelles,
Appellant/Cross-Appellee,

vs.

Citizens Property Insurance Corporation,
Appellee/Cross-Appellant.

An appeal from the Circuit Court for Miami-Dade County, Peter R. Lopez, Judge.

Mintz Truppman, P.A., and Timothy H. Crutchfield, for appellant/cross-appellee.

Cole, Scott & Kissane, P.A., and David C. Borucke (Tampa), for appellee/cross-appellant.

Before FERNANDEZ, LOGUE, and MILLER, JJ.

MILLER, J.

Appellant, Donato Arguelles, appeals from a final summary judgment entered upon his complaint seeking a declaration of coverage under his homeowner's insurance policy, issued by appellee, Citizens Property Insurance Corporation, for damages sustained in his condominium as the result of a plumbing leak. The trial court determined the terms of the policy required Arguelles to reside in the condominium at the time of loss as a condition of coverage. As Arguelles was living in New York, and his condominium was occupied by two tenants at the time the leak occurred, the trial court granted summary judgment in favor of Citizens. For the reasons set forth below, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In 2013, Citizens issued a homeowner's insurance policy to Arguelles covering his condominium located in Miami, Florida.[1] The policy automatically renewed on an annual basis and provided multiple independent coverages. It set forth the following provisions, with regard to coverage for the dwelling:

> **COVERAGE A-Dwelling**
>
> We cover:
>
> 1. The alterations, appliances, fixtures and improvements which are part of the building contained within the "residence premises";
> 2. Items of real property which pertain exclusively to the "residence premises";

[1] In conjunction with his application for insurance, Arguelles specified the condominium would be owner occupied, identified the use as "primary," and identified all months unoccupied as "none."

3. Property which is your insurance responsibility under a corporation or association of property owners agreement; or
4. Structures owned solely by your, other than the "residence premises," at the location of the "residence premises."

The policy further defined "residence premises" as the "unit where you reside shown as the 'Location of Residence Premises' in the Declarations," however, it did not define the term "reside."

Arguelles resided at the property for approximately ten months. In December 2013, he moved to New York to accept a position as a private wealth manager. He leased a succession of apartments in New York.

In January 2014, Arguelles began renting his Florida property to two tenants. In February 2016, one of the tenants contacted Arguelles to report a water leak in the kitchen. Arguelles arranged for a plumber and water mitigation company to effect repairs. He also contacted Citizens to report the loss. At that time, Citizens conducted a post-loss investigation and Arguelles submitted to a recorded examination. During the examination, he informed Citizens that he no longer resided in the condominium.

Citizens denied coverage, contending the leakage "was long-term (several weeks to months) moisture exposure," thus, was subject to an exclusion, as the policy specified "[w]e do not insure for loss caused directly or indirectly by . . . the presence or condensation of humidity, moisture or vapor, which occurs over a period of time." Arguelles filed a petition for declaratory relief in the lower tribunal.

Citizens sought summary judgment, contending that the residency requirement delineated in the policy precluded coverage. The trial court conducted a hearing and granted summary judgment. Arguelles sought rehearing, asserting, for the first time, that he was entitled to coverage under another provision of the policy. Specifically, he relied upon the following coverage clause: "**COVERAGE A-Dwelling** . . . We cover . . . Property which is your insurance responsibility under a corporation or association of property owner[']s agreement." In support of the motion, Arguelles appended certain condominium documents. The trial court convened a hearing and denied rehearing. This appeal ensued.[2]

STANDARD OF REVIEW

"Summary judgment is proper if there is no genuine issue of material fact and if the moving party is entitled to a judgment as a matter of law. Thus, our standard of review is de novo." Volusia Cty. v. Aberdeen at Ormond Beach, L.P., 760 So. 2d 126, 130 (Fla. 2000) (internal citation omitted). "Insurance policy construction is a question of law subject to de novo review." Gov't Emps. Ins. Co. v. Macedo, 228 So. 3d 1111, 1113 (Fla. 2017) (citing Wash. Nat'l Ins. Corp. v. Ruderman, 117 So. 3d 943, 948 (Fla. 2013)). In addition, "a question of insurance policy interpretation,

[2] Citizens filed a cross-appeal, challenging the trial court's decision regarding the applicability of the proposal for settlement. We find no error in the trial court's decision, thus affirm without elaboration. See Diamond Aircraft Indus., Inc. v. Horowitch, 107 So. 3d 362, 375 (Fla. 2013) (finding offers of judgment inapplicable to claims in equity).

which is a question of law, [is also] subject to de novo review." Penzer v. Transp. Ins. Co., 29 So. 3d 1000, 1005 (Fla. 2010). Finally, we review a denial of a motion for rehearing under an abuse of discretion standard. Villas at Laguna Bay Condo. Ass'n, Inc. v. CitiMortgage., 190 So. 3d 200, 202 (Fla. 5th DCA 2016).

LEGAL ANALYSIS

Arguelles urges several grounds for reversal, contending: (1) the policy language did not require actual residency; (2) the doctrines of waiver and estoppel precluded a denial of coverage; and (3) rehearing was improvidently denied, as Arguelles demonstrated the availability of coverage.

"[I]n construing insurance policies, courts should read each policy as a whole, endeavoring to give every provision its full meaning and operative effect." Auto–Owners Ins. Co. v. Anderson, 756 So. 2d 29, 34 (Fla. 2000) (citations omitted) (holding that the court "must read [the pertinent] clause in conjunction with the entire policy, including the . . . coverage provision and the policy declarations"). "When the language of an insurance policy is clear and unambiguous, a court must interpret it according to its plain meaning, giving effect to the policy as it was written." E. Fla. Hauling, Inc. v. Lexington Ins. Co., 913 So. 2d 673, 676 (Fla. 3d DCA 2005). A policy term is not ambiguous "simply because it is complex or requires analysis." Garcia v. Fed. Ins. Co., 969 So. 2d 288, 291 (Fla. 2007) (citation omitted).

Here, the policy language is clear and unambiguous. It extends dwelling coverage to the "residence premises," unequivocally defined within the policy as the "**unit where you reside**." (Emphasis added). Although the term "reside" is undefined within the policy, "[w]hen a term in an insurance policy is undefined, it should be given its plain and ordinary meaning, and courts may look to . . . dictionary definitions to determine such a meaning." Botee v. S. Fid. Ins. Co., 162 So. 3d 183, 186 (Fla. 5th DCA 2015) (citations omitted); see Penzer, 29 So. 3d at 1005 ("[T]he first step towards discerning the plain meaning of [a term undefined by an insurance policy] is to 'consult references [that are] commonly relied upon to supply the accepted meaning of [the] words.'") (third and fourth alternations in original) (quoting Garcia, 969 So. 2d at 292). "Reside" has two definitions, "[t]o live in a place permanently or for an extended period of time." [3] *Reside*, The American Heritage Dictionary (5th ed. 2019); see also *Residence*, Black's Law Dictionary (11th ed. 2019) ("The act or fact of living in a given place for some time . . . The

[3] See Snyder v. McLeod, 971 So. 2d 166, 169 (Fla. 5th DCA 2007) (finding the starting point for a residency determination is "actual presence in Florida coupled with an intention at that time to make Florida the residence"); see also Gen. Motors Acceptance Corp. v. Grange Ins. Ass'n, 684 P.2d 744, 747 (Wash. Ct. Ap. 1984) ("The term 'resident' connotes a living arrangement with some degree of permanence . . . [T]he following are relevant factors in determining who is a resident of the same household: (1) the intent of the departing person, (2) the formality or informality of the relationship between the person and the members of the household, (3) the relative propinquity of the dwelling units, and (4) the existence of another place of lodging.") (citations omitted) (alternations in original).

place where one actually lives . . .”). Because the uncontroverted facts adduced at the summary judgment hearing confirmed that at the time of the loss, Arguelles was living in his established abode in New York, and his Miami condominium was solely occupied by his two tenants, he was not entitled to coverage under either definition. Accordingly, we conclude that the lower tribunal properly granted final summary judgment. See Harrington v. Citizens Prop. Ins. Co., 54 So. 3d 999, 1002-03 (Fla. 4th DCA 2010) (finding the insureds’ property did not fall under their homeowners insurance policy’s definition of “residence premises,” as insureds were required to reside in the building described in the declarations); Centre Ins. Co. v. Blake, 370 F. Supp. 2d 951 (D.N.D. 2005) (holding that a homeowners insurance policy’s definition of covered “residence premises” defined as “where you reside” did not extend coverage to a duplex after the insured had moved out and rented the duplex to a third party); Heniser v. Frankenmuth Mut. Ins. Co., 534 N.W.2d 502 (Mich. 1995) (holding the policy’s definition of “residence premises” was an unambiguous statement of coverage requiring that the insured “reside” in the premises at the time of loss); 4A John Alan Appleman & Jean Appleman, Insurance Law and Practice § 2832 (Supp. 2005) (“Actual residence by the insured is required . . . by the . . . definition of ‘residence premises,’ as ‘the one or two family dwelling, other structures, and grounds or that part of any other building where you reside and which is shown as the residence premises' in the Declarations.’”).

Arguelles maintains such an interpretation renders the policy "illusory." We reject Arguelles's contention, as the residency limitation does not affect other coverages, including for personal liability. See Warwick Corp. v. Turetsky, 227 So. 3d 621, 625 (Fla. 4th DCA 2017) ("[W]here a limitation on coverage does not 'completely swallow[ ] the insuring provision,' the policy is not illusory.") (alteration in original) (quoting Auto–Owners Ins. Co. v. Christopher, 749 So. 2d 581, 582 (Fla. 5th DCA 2000)). Moreover, as coverage would be afforded for losses occurring while Arguelles occupied the residence, a repatriation to Miami and ensuing loss could implicate coverage.

Arguelles further asserts that Citizens has waived or is estopped from relying upon the "residence premises" language in denying coverage. We disagree, and conclude that neither legal doctrine serves as a bar, as it was clearly established that Citizens was unaware Arguelles had relocated until it conducted its post-loss investigation. Thus, it did not accept premiums with knowledge regarding Arguelles's failure to comply with the residency requirement. See Raymond James Fin. Servs., Inc. v. Saldukas, 896 So. 2d 707, 711 (Fla. 2005) (defining waiver "as the voluntary and intentional relinquishment of a known right or conduct which implies the voluntary and intentional relinquishment of a known right"); Winans v. Weber, 979 So. 2d 269, 274 (Fla. 2d DCA 2007) ("The elements that must be established to prove waiver are the existence at the time of the waiver of a right,

privilege, or advantage; the actual or constructive knowledge thereof; and an intention to relinquish that right, privilege, or advantage.") (citing Arbogast v. Bryan, 393 So. 2d 606, 608 (Fla. 4th DCA 1981)); see also Aetna Cas. & Sur. Co. of Am. v. Deluxe Sys., Inc., 711 So. 2d 1293 (Fla. 4th DCA 1998) (noting insurer was not estopped from raising policy exclusions not cited in initial correspondence disclaiming coverage on basis of other exclusions as estoppel had no application to create coverage); Lennar Homes, Inc. v. Gabb Constr. Servs., Inc., 654 So. 2d 649, 651 (Fla. 3d DCA 1995) (noting that "the doctrine of estoppel 'is an equitable doctrine which is applied only where to refuse its application would be virtually to sanction the perpetration of a fraud'") (citation omitted).

Finally, we find no abuse of discretion in the denial of rehearing.[4] See Les Chateaux at Int'l Gardens Condo. Ass'n, Inc. v. Cuevas & Assocs., P.A., 219 So. 3d 106, 107 (Fla. 3d DCA 2017) ("Finally, appellant's motion for rehearing, which was accompanied by a new affidavit, was denied by the trial court, and we find no abuse of discretion in that ruling.") (citing Lufthansa German Airlines Corp. v. Mellon, 444 So. 2d 1066 (Fla. 3d DCA 1984); Coffman Realty, Inc. v. Tosohatchee Game Pres., Inc., 413 So. 2d 1 (Fla. 1982) (adopting Coffman Realty, Inc. v. Tosohatchee Game Pres., Inc., 381 So. 2d 1164 (Fla. 5th DCA 1980))).

[4] A close reading of the condominium documents reveals Arguelles was only required to carry "personal" liability insurance for "accidents" occurring in his residence.

Accordingly, we find no error and affirm the final judgment under review.

Affirmed.