Third District Court of Appeal

State of Florida

Opinion filed December 1, 2021.
Not final until disposition of timely filed motion for rehearing.

No. 3D21-0504
Lower Tribunal No. 18-39241

Pride Clean Restoration Inc., a/a/o Luz Alonso,
Appellant,

vs.

Certain Underwriters at Lloyd's of London,
Appellee.

An appeal from the Circuit Court for Miami-Dade County, Antonio Arzola, Judge.

Alexander Appellate Law P.A., and Samuel Alexander (DeLand), for appellant.

Law Offices of Clinton D. Flagg, P.A., and Clinton D. Flagg, and Carol A. Fenello, for appellee.

Before LOGUE, LINDSEY, and MILLER, JJ.

MILLER, J.

Appellant, Pride Clean Restoration Inc., challenges a final summary judgment rendered in favor of appellee, Certain Underwriters at Lloyd's of London, on its complaint for breach of contract. On appeal, Pride contends the trial court erred in determining its claim for benefits under a homeowners' insurance policy issued by Lloyd's was barred by a mold-related coverage exclusion. Discerning no error, we affirm.

BACKGROUND

After she obtained an all-risk homeowner's policy from Lloyd's, Luz Alonzo sustained hurricane-related structural damage to her residence. She then assigned her benefits to Pride in exchange for mold remediation services. Pride submitted an invoice for the work performed, along with the assignment of benefits, to Lloyd's. Lloyd's denied coverage, relying on the following endorsement:

> **TOTAL MOLD, MILDEW OR OTHER FUNGI EXCLUSION**
>
> Notwithstanding any provision to the contrary within the policy of which this endorsement forms a part, or within any other endorsement which forms a party of this policy, we do not insure for:
>
> a. loss caused by mold, mildew, fungus, spores or other microorganism of any type, nature, or description including but not limited to any substance whose presence poses an actual or potential threat to human health; or

b. the cost or expense of monitoring, testing, removal, encapsulation, abatement, treatment or handling of mold, mildew, fungus, spores or other microorganism as referred to in a) above.

Pride filed a breach of contract lawsuit in the circuit court. After conducting discovery, the parties filed competing summary judgment motions. Lloyd's contended the mold exclusion precluded coverage, while Pride asserted the mold was precipitated by a storm-created opening in the home. Thus, the claim was subject to coverage. The trial court granted final summary judgment in favor of Lloyd's, and the instant appeal ensued.

STANDARD OF REVIEW

We review an order granting summary judgment de novo. See Arguelles v. Citizens Prop. Ins. Corp., 278 So. 3d 108, 111 (Fla. 3d DCA 2019). Similarly, the interpretation of an insurance contract presents a pure legal issue subject to de novo review. Id.

ANALYSIS

Several guiding principles inform our analysis. It is axiomatic that "[w]here the language in an insurance contract is plain and unambiguous, a court must interpret the policy in accordance with the plain meaning so as to give effect to the policy as written." Wash. Nat. Ins. Corp. v. Ruderman, 117 So. 3d 943, 948 (Fla. 2013). "Further, in order for an exclusion or limitation in a policy to be enforceable, the insurer must clearly and unambiguously

draft a policy provision to achieve that result." Geico Gen. Ins. Co. v. Virtual Imaging Servs., Inc., 141 So. 3d 147, 157 (Fla. 2013). Finally, "when analyzing an insurance contract, it is necessary to examine the contract in its context and as a whole, and to avoid simply concentrating on certain limited provisions to the exclusion of the totality of others." Swire Pac. Holdings, Inc. v. Zurich Ins. Co., 845 So. 2d 161, 165 (Fla. 2003).

In the instant case, the policy insures against the risk of direct loss, but "only if that loss is a physical loss to property." The endorsement contains, however, two separate and distinct exclusions. First, the policy does not cover those losses "[c]aused by . . . mold, wet or dry rot." Second, the policy does not insure against "the cost or expense of monitoring, testing, removal, encapsulation, abatement, treatment or handling of mold, mildew, fungus, spores or other microorganism[s]."

Pride does not dispute that the services it rendered involved the treatment or handling of mold. Instead, it relies upon the seminal Florida Supreme Court case of Sebo v. American Home Assurance Co., Inc., 208 So. 3d 694 (Fla. 2016), for the proposition the policy militates in favor of coverage because the initial water intrusion was storm-related. In Sebo, the court considered "the appropriate theory of recovery to apply when two or more perils converge to cause a loss and at least one of the perils is excluded

from an insurance policy." 208 So. 3d at 697. The court examined two separate approaches, the efficient proximate cause doctrine and the concurrent cause doctrine. Under the efficient proximate cause doctrine, the peril that sets the other in motion "is the cause to which the loss is attributable." Id. Conversely, the concurrent cause doctrine "provides that coverage may exist where an insured risk constitutes a concurrent cause of the loss even when it is not the prime or efficient cause." Id. at 698. The court ultimately adopted the concurrent cause doctrine, concluding "that when independent perils converge and no single cause can be considered the sole or proximate cause, it is appropriate to apply the concurring cause doctrine." Id. at 697.

Although the instant policy insures against direct physical loss to property, it excludes those losses caused by mold. If the policy went no further, under Sebo, these competing provisions would arguably present a factual issue regarding whether the two perils converged so as to constitute a concurrent cause. The policy, however, provides a further blanket exclusion for "the cost or expense of monitoring, testing, removal, encapsulation, abatement, treatment or handling of mold." This particular provision is not contingent on causation. Instead, it serves to bar all costs or expenses associated with mold remediation.

"While we are keenly aware of the long standing and well known rule that where interpretation is required by ambiguity in insurance contracts the insured will be favored," in this case, the policy is clear. Griffin v. Speidel, 179 So. 2d 569, 571 (Fla. 1965). Thus, "we find no room for the operation of that rule here." Id. Accordingly, we conclude the claim is excluded from the ambit of coverage, and we affirm the well-reasoned order under review.

Affirmed.