DANNY ALLDAY	NO. 20-CA-358
VERSUS	FIFTH CIRCUIT
NEWPARK SQUARE I OFFICE CONDOMINIUM ASSOCIATION, INC. AND HANOVER INSURANCE COMPANY	COURT OF APPEAL STATE OF LOUISIANA

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 649-380, DIVISION "I"
HONORABLE NANCY A. MILLER, JUDGE PRESIDING

August 18, 2021

STEPHEN J. WINDHORST
JUDGE

Panel composed of Judges Susan M. Chehardy,
Marc E. Johnson, and Stephen J. Windhorst

AFFIRMED

SJW
SMC
MEJ

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WINDHORST, J.

Appellants, Danny Allday (Allday) and Allday Consulting Group, LLC, ("ACG") seek review of the trial court's (1) June 16, 2020 ruling granting summary judgment in favor of defendant/appellee, Newpark Square I Office Condominium Association, Inc. ("Newpark"), dismissing ACG's claims against Newpark with prejudice; and (2) the June 18, 2020 ruling granting summary judgment in favor of defendant/appellee, Massachusetts Bay Insurance Company ("Massachusetts Bay"), dismissing Allday and ACG's claims against Massachusetts Bay with prejudice. For the following reasons, we affirm.

FACTS and PROCEDURAL HISTORY

Allday is the owner of four condominium units within the condominium complex premises located at 2901 N. Causeway Boulevard in Metairie, Louisiana. Allday is also the sole member of ACG which leased and operated its business out of one of Allday's units in the condominium complex. Newpark is the condominium association created to manage the condominium complex, and Newpark's managing body comprises the individual unit owners, including Allday. Newpark's obligations to the condominium complex and to the individual unit owners are set forth in the condominium agreement.[1] Pursuant to the terms of the condominium agreement, Newpark obtained insurance with Massachusetts Bay, which provided property insurance coverage for Newpark's exterior and common areas. Newpark is the only named insured under the policy.

On August 29, 2005, the condominium complex sustained damage caused by Hurricane Katrina. A few weeks later, the condominium complex sustained additional damage as a result of Hurricane Rita. At the time of the loss, Newpark was insured by a policy issued by Massachusetts Bay.

[1] The condominium agreement consists of the property description, public offering statement, statement of estimated and initial operating budget, condominium declaration and schedules, the articles of incorporation of the condominium association, the condominium association's by-laws, and the condominium rules and regulations.

On August 28, 2007, Allday filed a petition for breach of contract and damages against Newpark and Massachusetts Bay,[2] alleging that Newpark failed to promptly and properly repair damages to the condominium complex located at 2901 N. Causeway Boulevard caused by Hurricanes Katrina and Rita. He alleged that Massachusetts Bay failed to timely pay Newpark's insurance claims and acted arbitrarily and capriciously in its handling of the claims. Allday also alleged that he was a third party beneficiary of the Massachusetts Bay insurance policy. Allday further contended that he owned four units within the condominium complex and that the delayed and improper repairs caused him property damage, loss of rents, loss of profits, additional expenses, inconvenience and attorney's fees.[3]

In response to the petition, Newpark filed an exception of prematurity arguing that Allday's claims against it were subject to mandatory and binding arbitration as set forth in the condominium agreement that was in effect between the parties. On November 25, 2008, the trial court sustained the exception and dismissed Allday's claims against Newpark without prejudice. The judgment further provided that the trial court would "retain jurisdiction over any such claims solely to address any issues that arise regarding the details of arbitration." Allday did not appeal this judgment.

On August 18, 2010, Allday filed an amended petition to add ACG, his solely owned limited liability corporation, as a plaintiff, and reasserted claims against Newpark and Massachusetts Bay, individually and on behalf of ACG. ACG contended that it leased one or more condominium units from Allday within the condominium complex where it conducted business activities, including tax return preparation and business consulting.[4] ACG asserted that Newpark's failure to make

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[2] Massachusetts Bay was erroneously named as Hanover Insurance Company in the original petition.

[3] On February 6, 2008, Allday dismissed Newpark without prejudice in response to Newpark's motion to dismiss for failure to serve. Allday filed an amended petition the same day re-naming Newpark as a defendant.

[4] ACG had an alleged oral contract with Allday to lease one or more units for its business.

prompt and proper repairs to the condominium complex, and Massachusetts Bay's arbitrary and capricious failure to timely pay Newpark's claims caused ACG property damage and economic losses, including a decrease in its value, lost profits, and loss of its business reputation and good will.

Newpark filed an exception of prescription as to ACG's claims and an exception of no right of action as to Allday's individual claims that reasserted previous claims against Newpark. Newpark alleged that Allday's claims were previously dismissed on November 25, 2008, based on the parties' mandatory and binding arbitration agreement. On November 5, 2010, after a hearing, the case was taken under advisement.

On August 5, 2011 appellants filed a second amended petition, and for the first time, asserted that Allday in his individual capacity was an insured under the policy issued by Massachusetts Bay to Newpark. Newpark reasserted its exceptions of prescription and no right of action against Allday. The exceptions were argued on December 16, 2011, and the parties also noted that the same exceptions were previously taken under advisement on November 5, 2010 regarding appellants' first amended petition. On January 5, 2012, the trial court issued judgment (1) sustaining Newpark's exception of prescription as to ACG; and (2) sustaining Newpark's exception of no right of action as to Allday's individual claims against Newpark. The trial court found that Allday's individual claims were previously dismissed and referred to arbitration pursuant to the trial court's November 25, 2008 judgment. Appellants appealed the judgment sustaining the exception of prescription as to ACG, but did not appeal the judgment sustaining the exception of no right of action as to Allday's individual, reasserted claims against Newpark. On September 24, 2013, this Court reversed the trial court's judgment sustaining the exception of prescription as to ACG and remanded the matter for further proceedings. Allday v.

Newpark Square I Office Condominium Ass'n, Inc., 12-577 (La. App. 5 Cir. 03/13/13), 113 So.3d 346.

On January 6, 2020, Massachusetts Bay filed a motion for summary judgment seeking dismissal of appellants' claims. In its motion, Massachusetts Bay contended that there were no genuine issues of fact that (1) Allday and ACG are neither named nor additional insureds under the policy issued by Massachusetts Bay; (2) Massachusetts Bay has fully settled all claims under the policy with the only named insured, Newpark, and all such claims have been dismissed with prejudice; (3) ACG does not have any contractual relationship with Newpark; (4) Allday and ACG are not third party beneficiaries to the policy; and (5) Allday and ACG's suit directly against Massachusetts is in violation of Louisiana's Direct Action Statute. Thus, Massachusetts Bay argued that it was entitled to summary judgment.[5]

In opposition to Massachusetts Bay's motion, appellants argued that pursuant to contractual duties Newpark owed to Allday and other unit owners, Newpark purchased an insurance policy from Massachusetts Bay, and therefore Allday was a beneficiary under the insurance policy that Newpark purchased. Appellants argued that Massachusetts Bay's failure to properly adjust and pay Newpark's claim damaged Allday because that failure interfered with Newpark's repair of the common areas of the condominium complex. Appellants contended that (1) Allday asserted a right to recover from Massachusetts Bay for the breach of its "claim paying duties as the insurer of the condominium property;" and (2) Allday also asserted a direct action against Massachusetts Bay in its capacity as Newpark's liability insurer on the grounds that Newpark mismanaged the building repairs and

[5] In support, Massachusetts Bay attached the following exhibits: (1) statement of undisputed material facts; (2) original petition; (3) Allday and ACG's responses to Interrogatories and requests for production propounded by Massachusetts Bay; (4) Newpark's condominium documents *in globo*; (5) authenticated copy of Massachusetts Bay's insurance policy insuring the condominium complex with Newpark as the named insured; (6) notice of removal; (7) motion to dismiss filed in federal court; (8) first amended petition; and (9) second amended petition.

trespassed on and damaged his units and his business. Appellants argued that Allday was a "beneficiary" under the insurance policy because the insurance policy contained the requisite intent to benefit third parties such as Allday.[6] Appellants claimed that the insurance policy covers persons other than the named insured who may own property in the condominium complex. Appellants also contended that the insurance policy reserves to Massachusetts Bay the right to adjust losses with the owners of the lost or damaged property, and the right to assert that payment to those owners discharges its duty to pay the named insured. Appellants' opposition did not specifically list any genuine disputed material facts nor did appellants attach any exhibits. Moreover, appellants' opposition failed to address any of Massachusetts Bay's legal arguments for granting summary judgment as to ACG's alleged contract and/or tort claims against Massachusetts Bay.

On January 23, 2020, Newpark filed a motion for summary judgment seeking dismissal of ACG's claims against Newpark. In its motion, Newpark argued that it had, and still has, no contractual relationship with ACG. Newpark further contended that it likewise owed no duty in tort to ACG in relation to its contractual obligation to the condominium owners to repair property damage to common areas under its management. Newpark argued that because ACG cannot show that it has any contractual relationship with it, ACG's breach of contract claim fails as a matter of law. Additionally, Newpark claimed that because it owed no duty in tort, in the absence of a contractual obligation otherwise, to prevent damage to property belonging to a tenant of a condominium owner, ACG's tort claim also fails as a matter of law. Alternatively, Newpark argued that Allday should not be permitted to circumvent the trial court's prior ruling on the issue of arbitration by asserting a

[6] At the hearing, counsel for appellants conceded that the policy does not name appellants as a named insured; however, under the Louisiana condominium laws, the individual owners are specifically required to be named insureds.

claim on behalf of his alleged alter ego, ACG, which claims it is a third party beneficiary to the condominium agreement between Newpark and Allday. Thus, Newpark contended it was entitled to summary judgment as a matter of law.[7]

In opposition to Newpark's motion, appellants argued that pursuant to contractual duties Newpark owed to Allday and other individual unit owners, Newpark purchased an insurance policy from Massachusetts Bay and as such, Allday, as an owner/member of the condominium complex, was a "beneficiary" under the policy. Appellants argued that there was "ample evidence" to show that Newpark had "knowledge of the defective work performed by the unqualified contractor and the damages occasioned by it, including ACG's loss of use of the unit, damage to the interior of the unit, and loss of business." They further argued that Newpark was given notice of these damages through "numerous letters from ACG to Newpark."[8] Appellants also contended that there was "ample evidence" to find that "Newpark failed to exercise reasonable care to prevent further damage or injury to ACG, and that damages continued to result from Newpark's negligent efforts to repair the windows and other common elements of the property." Appellants' opposition did not specifically list any genuinely disputed material facts nor did it address any of Newpark's legal arguments for granting summary judgment as to ACG's breach of contract and/or tort claims.

On June 4, 2020, after a contradictory hearing, the trial court granted Newpark's and Massachusetts Bay's motions for summary judgment. On June 16, 2020 and June 18, 2020, respectively, the trial court subsequently signed a judgment

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[7] In support of its motion, Newpark attached the following documents: (1) a statement of uncontested material facts; (2) an affidavit by Allday, individually, and in his capacity as the managing member and on behalf of ACG; (3) the original and first amended petitions; (4) ACG's opposition to Massachusetts Bay's exception of vagueness; (5) the notice of signing of judgment and November 25, 2008 judgment.

[8] Appellants attached three letters from Allday, on ACG's letterhead, to Newpark and the unit owners. The letters do not clearly show that ACG was advising Newpark of its alleged damages and although the letters were signed by Allday, it is not clear as to whether he signed in his individual capacity or on behalf of ACG. Moreover, we find that the letters are not competent, admissible summary judgment evidence under La. C.C.P. art. 966 A(4). The letters were not authenticated by affidavit and do not otherwise fall under the exclusive list of documents and evidence admissible in a summary judgment proceeding under La. C.C.P. art. 966 A(4); Dorsey v. Purvis Contracting Group, LLC, 17-369 (La. App. 5 Cir. 12/27/17), 236 So.3d 737, 740-741.

granting Newpark's and Massachusetts Bay's motions for summary judgment. This appeal followed.

LAW and ANALYSIS

A motion for summary judgment must be granted if the motion, memorandum, and supporting documents show that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law. La. C.C.P. art. 966 A(3). Appellate courts review a judgment granting a motion for summary judgment *de novo*, using the same criteria that govern the trial court's determination of whether summary judgment is appropriate: whether there is any genuine issue of material fact, and whether the mover is entitled to judgment as a matter of law. Phipps v. Schupp, 09-2037 (La. 07/06/10), 45 So.3d 593, 597.

The initial burden is on the mover to show that no genuine issue of material fact exists. La. C.C.P. art. 966 D(1). If the moving party will not bear the burden of proof at trial, the moving party must only point out that there is an absence of factual support for one or more elements essential to the adverse party's claim, action, or defense. Id. The nonmoving party must then produce factual support to establish that he will be able to satisfy his evidentiary burden of proof at trial. Id. If the nonmoving party fails to do so, there is no genuine issue of material fact, and summary judgment should be granted. Holmes v. Paul, 19-130 (La. App. 5 Cir. 10/02/19), 279 So.3d 1068, 1072.

The interpretation of an insurance policy is usually a legal question that can be properly resolved on a motion for summary judgment. Bonin v. Westport Ins. Corp., 05-886 (La. 05/17/06), 930 So.2d 906, 910. A summary judgment declaring lack of coverage under an insurance policy may not be rendered unless there is no reasonable interpretation of the policy, when applied to the undisputed material facts shown by the evidence, under which coverage could be afforded. Reynolds v. Select Properties, Ltd., 93-1480 (La. 04/11/94), 634 So.2d 1180, 1183.

In their first assignment of error, appellants contend that the trial court committed legal error in dismissing Allday and ACG's claims with prejudice when the record contains no oral or written reasons for the dismissal as required pursuant to La. C.C.P. art. 966 C(4). Accordingly, appellants argue that this Court should reverse the trial court's judgments and remand the matter for further proceedings.

La. C.C.P. art. 966 C(4) provides:

> (4) In all cases, the court shall state on the record or in writing the reasons for granting or denying the motion. If an appealable judgment is rendered, a party may request written reasons for judgment as provided in Article 1917.

The 2015 Comments to La. C.C.P. art. 996 provide:

> (i) Subparagraph C(4) is new. The court *shall* state either on the record or in writing the reasons for granting or denying the motion. Nevertheless, the court does not have to address every reason or argument. (Emphasis added)

Although the word "shall" is mandatory under La. C.C.P. art. 5053, La. C.C.P. art. 966 C(4) does not contain a remedy for non-compliance with this provision. Moreover, La. C.C.P. art. 966 C(4) does not provide for reversal of a validly granted motion for summary judgment when a trial court does not state its reasons for granting the motion.

Additionally, appellate courts review the granting of a motion for summary judgment *de novo*. An appellate court's *de novo* review of the trial court's ruling on summary judgment is generally from the same viewpoint as that of the trial court, but with a fresh consideration of the exhibits and application of the law. A *de novo* review "involves examining the facts and evidence in the record, without regard or deference to the judgment of the trial court or its reasons for judgment." Hooper v. Hero Lands Co., 15-929 (La. App. 4 Cir. 03/30/16), 216 So.3d 965, 973-974. While reasons for judgment may be informative, they are not determinative of the legal issues to be resolved on appeal. Id. Appellate courts review judgments, not reasons for judgments, and "Judgments are often upheld on appeal for reasons different than

those assigned by the district judges." See Wooley v. Lucksinger, 09-571, 09-584, 09-585, 09-586 (La. 04/01/11), 61 So.3d 507, 572. Reasons for judgment are merely an explanation of the trial court's determinations and as such do not alter, amend, or affect the final judgment appealed. Id. Thus, while La. R.S. 966 C(4) mandates reasons for judgment, upon *de novo* review, we find that even in the absence of a remedy for failure to provide reasons, reversing the granting of summary judgment based on these grounds is not warranted.

Furthermore, we find that this provision of La. C.C.P. art. 966 is subject to the contemporaneous objection rule. Thus, a party who is aggrieved by a trial court's failure to provide reasons for its ruling on a motion for summary judgment must bring the lack of stated reasons to the trial court's attention, allowing the trial court to cure the defect by providing reasons for its ruling on the motion for summary judgment, and object if necessary. In cases in which a final appealable summary judgment is rendered, the aggrieved party may request written reasons, in accordance with La. C.C.P. art. 1917. Here, appellants did not object to the trial court's failure to render reasons for judgment, nor did appellants request written reasons as provided in La. C.C.P. art. 966 C(4) and La. C.C.P. art. 1917. Accordingly, we find this assignment of error is without merit.

In their second assignment of error, appellants contend that the trial court erred in granting Newpark and Massachusetts Bay's motions for summary judgment. Below, we address appellants' claims against Newpark, the named insured, and Massachusetts Bay, the insurer, separately.

In order to succeed on a breach of contract claim, the plaintiff must prove the existence of the contract, a breach of the obligations therein, and damages. New Orleans Craft Temple, Inc. v. Grand Lodge of Free Masons of the State of Louisiana, 13-525 (La. App. 5 Cir. 12/19/13), 131 So.3d 957, 964; Favrot v. Favrot, 10-986 (La. App. 4 Cir. 02/09/11), 68 So.3d 1099, writ denied, 11-636 (La. 05/06/11), 62

So.3d 127. No action for breach of contract may lie in the absence of privity of contract between the parties. Rivnor Properties v. Hebert O'Donnell, Inc., 92-1103 (La. App. 5 Cir. 01/12/94), 633 So.2d 735, 742.

Newpark's motion for summary judgment

Newpark argued that ACG cannot have a breach of contract claim against it without privity of contract, and that it does not have a contract with ACG. ACG did not dispute this fact nor did it argue this issue in its opposition or at the hearing. It is undisputed and the record shows that the contract at issue, *i.e.*, the condominium agreement, was between Newpark and the individual unit owners, including Allday, not with Allday's tenant/lessee, ACG. Accordingly, upon *de novo* review, we find that there is no privity of contract between Newpark and ACG. Because ACG failed to establish an essential element of its claim against Newpark for breach of contract, *i.e.*, privity of contract, the trial court did not err in granting summary judgment on this issue.

Because ACG was not a party to the contract, it can only avail itself of the benefit of the condominium agreement between Newpark and the individual unit owners, if it is a third party beneficiary.[9] La. C.C. art. 1978 provides:

> A contracting party may stipulate a benefit for the third person called a third party beneficiary. Once the third party has manifested his intention to avail himself of the benefit, the parties may not dissolve the contract by mutual consent without the beneficiary's agreement.

Under Louisiana law, such a contract is commonly referred to as a "stipulation *pour autrui*." Paul v. Louisiana State Employees' Group Benefit Program, 99-897 (La. App. 1 Cir. 05/12/00), 762 So.2d 136, 140. In Joseph v. Hospital Service Dist. No. 2 of Parish of St. Mary, 05-2364 (La. 10/15/06), 939 So.2d 1206, 1212, the Louisiana Supreme Court held that there are three criteria for determining whether contracting

[9] Despite Allday's argument to the contrary, Allday's individual claims were dismissed by the November 25, 2008 judgment.

parties have provided a benefit for a third party: (1) the stipulation for a third party is manifestly clear; (2) there is certainty as to the benefit provided the third party; and (3) the benefit is not a mere incident of the contract between the promisor and the promisee.

The most basic requirement of a stipulation *pour autrui* is that the contract manifest a clear intention to benefit the third party; absent such a clear manifestation, a party claiming to be a third party beneficiary cannot meet his burden of proof. Id. A stipulation *pour autrui* is never presumed. Id. The party claiming the benefit bears the burden of proof. Id.; La. C.C. art. 1831. The second factor, certainty as to the benefit provided, is a corollary of the requirement of a manifestly clear stipulation. Id. "To create a legal obligation enforceable by the beneficiary there must be certainty as to the benefit to accrue to the beneficiary." Id., citing Berry v. Berry, 371 So.2d 1346, 1347 (La. App. 1 Cir. 1979), writ denied, 373 So.2d 511 (La. 1979). The third requirement is that the benefit cannot be a mere incident of the contract. Id.

Upon *de novo* review, we further find that ACG is not a third party beneficiary under the condominium agreement. ACG did not allege in its opposition or argue at the hearing, nor did it provided any evidence, that ACG was a third party beneficiary under the condominium agreement between Allday and Newpark. A review of the record shows that appellants did not provide any evidence that (1) Newpark and the individual unit owners clearly intended to benefit ACG, an unknown tenant/lessee of Allday, as a third party beneficiary at the time the parties entered into the condominium agreement; (2) the parties clearly intended to benefit ACG as a third party beneficiary; and (3) the alleged benefit, if any, is not a mere incident of the contract. Accordingly, the trial court did not err in granting Newpark's motion for summary judgment as to ACG's alleged third party beneficiary contract claim.

To the extent ACG asserted a tort claim against Newpark, upon *de novo* review, we find ACG failed to meet its burden under Louisiana's duty-risk analysis in showing that a genuine issue of material fact existed or that Newpark was not entitled to judgment as a matter of law. ACG did not allege in its opposition nor did it provide any legal argument or evidence at the hearing on Newpark's motion for summary judgment that Newpark owed a duty to ACG. In the absence of a contractual relationship, Newpark did not owe a duty to ACG. Any duty owed by Newpark under the condominium agreement was only to the individual owners, and said claims are subject to mandatory and binding arbitration. Thus, we find the trial court did not err in granting summary judgment as to ACG's tort claim.

Massachusetts Bay's motion for summary judgment

A party seeking recovery under an insurance contract must be a named insured, additional insured, or a third party beneficiary of the contract. Ledet v. Fabian Martins Construction LLC, 18-133 (La. App. 5 Cir. 10/17/18), 258 So.3d 1058, 1066.

On appeal, Allday argues that he is a named insured under the insurance policy. At the hearing, counsel for Allday and ACG conceded that Allday and/or ACG were not named insureds or additional insureds under the policy, but argued that under the Louisiana Condominium Act, La. R.S. 9:1121.101, *et seq.*, "individual condominium owners," like Allday, are required to be named insureds under the policy. Additionally, at the hearing, counsel for appellants only addressed Massachusetts Bay's motion for summary judgment as to Allday, individually, as a named insured. Counsel did not address any legal arguments as to ACG as a third party beneficiary.[10]

[10] The record shows and appellants did not provide evidence to dispute that ACG (1) is a tenant/lessee of Allday; (2) holds no ownership interest in any unit; (3) is not an individual unit owner of Newpark; (4) is not a party to the condominium agreement governing the relationship between Newpark and the individual unit owners; and (5) ACG is not a third party beneficiary under the policy. Although appellants did not argue any legal issues addressed by Massachusetts Bay before the trial court as to ACG, we address those arguments on *de novo* review.

An insurance policy is a contract between the parties and should be construed using the general rules of interpretation of contracts. Sims v. Mulhearn Funeral Home, Inc., 07-54 (La. 05/22/07), 956 So.2d 583, 589. The responsibility of the judiciary in interpreting insurance contracts is to determine the parties' common intent. Id.; La. C.C. art. 2045. When the words of a contract are clear and explicit and lead to no absurd consequences, no further interpretation may be made in search of the parties' intent. La. C.C. art. 2046. Words and phrases in an insurance policy are to be construed using their plain, ordinary, and generally prevailing meaning, unless the words have acquired a technical meaning. Geovera Specialty Insurance Company v. Hernandez, 18-330 (La. App. 5 Cir. 12/19/18), 262 So.3d 463, 467; La. C.C. art. 2047. Therefore, if the policy wording at issue is clear and expresses the intent of the parties, the agreement must be enforced as written. LeBlanc v. Aysenne, 05-297 (La 01/19/06), 921 So.2d 85, 89. If an insurance contract cannot be construed simply, based on its language because of an ambiguity, the court may look to extrinsic evidence to determine the parties' intent. Pecoraro v. Louisiana Citizens Insurance Corporation, 18-161 (La. App. 5 Cir. 10/17/19), 258 So.3d 212, 215; Blackburn v. National Union Fire Ins. Co. of Pittsburgh, 00-2668 (La. 04/03/01), 784 So.2d 637, 641.

Upon *de novo* review, based on the clear and unambiguous language of the insurance policy, we find, and appellants conceded at the hearing, that Allday and ACG are not named insureds or additional insureds under the insurance policy as written. The only named insured on the policy is Newpark and under the policy, the individual owners consented to Newpark's designation as trustee for each of the unit owners for the purpose of adjusting losses with Massachusetts Bay on this policy. Thus, under the clear terms of the insurance policy, Massachusetts Bay only has an obligation to Newpark, the named insured.

Because Allday and ACG are neither a named insured nor an additional insured, they can only avail themselves of the benefits of the insurance policy if they can establish that they are third party beneficiaries. Based on our *de novo* review, we find the insurance policy does not manifest a clear stipulation of coverage intended by the parties to benefit individual unit owners and/or tenants/lessees of individual unit owners. Therefore, Allday and ACG have no direct right of enforcement of the policy provision against Massachusetts Bay as third party beneficiaries. See Ledet, *supra*.

The clear, unambiguous language of the insurance policy expressly obligated Massachusetts Bay to pay all contractual obligations due under the policy only to the named insured, Newpark, the designated trustee for the individual unit owners. The policy does not entitle the individual unit owners, including Allday, to receive a direct payment from Massachusetts Bay. The insurance policy also clearly and unambiguously provided that the individual unit owners were responsible for obtaining insurance for their own property and expressly excluded coverage for personal or business property of individual unit owners. This express language negates the existence of a stipulation *pour autrui* in favor of the individual unit owners, including Allday, and/or tenants/lessees of individual unit owners, such as ACG, as third party beneficiaries. The benefit, if any, to appellants under the insurance policy is unclear, as it is Newpark's prerogative to decide how to distribute and use funds received under the insurance policy. Thus, any benefit to appellants is merely incidental. Accordingly, we find the trial court did not err in granting summary judgment in favor of Massachusetts Bay as to Allday and ACG's contract claims.

To the extent Allday and ACG alleged a tort claim against Massachusetts Bay, upon *de novo* review, we find this claim is moot because the claims against its insured Newpark were dismissed with prejudice, and as such, Massachusetts Bay

cannot be liable to appellants for Newpark's alleged tortious actions. Accordingly, the trial court did not err in granting summary judgment in favor of Massachusetts Bay as to Allday and ACG's tort claim.

DECREE

For the reasons stated herein, we affirm the trial court's (1) June 16, 2020 judgment granting summary judgment in favor of Newpark, dismissing ACG's claims against Newpark with prejudice; and (2) June 18, 2020 judgment granting summary judgment in favor of Massachusetts Bay, dismissing Allday and ACG's claims against Massachusetts Bay, with prejudice.

AFFIRMED

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NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **AUGUST 18, 2021** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

Curtis B. Pursell

CURTIS B. PURSELL
CLERK OF COURT

20-CA-358

E-NOTIFIED

24TH JUDICIAL DISTRICT COURT (CLERK)
HONORABLE NANCY A. MILLER (DISTRICT JUDGE)
GALEN M. HAIR (APPELLANT)
MICHAEL A. FOLEY (APPELLEE)
LILLIAN M. GRAPPE (APPELLEE)
KRISTIN M. LAUSTEN (APPELLANT)
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