

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2017 CA 1598

PAMELA SLOANE

VERSUS

FORESTWOODS APARTMENTS/BATON ROUGE, LTD., CLK  
MULTIFAMILY MANAGEMENT, LLC AND ASPEN AMERICAN  
INSURANCE COMPANY

***DATE OF JUDGMENT:*** JUN 01 2018

ON APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT  
NUMBER C635068, SECTION 27, PARISH OF EAST BATON ROUGE  
STATE OF LOUISIANA

HONORABLE TODD W. HERNANDEZ, JUDGE

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BEFORE: WHIPPLE, C.J., McDONALD, AND CHUTZ, JJ.

**Disposition: AFFIRMED.**

**CHUTZ, J.**

Third-party plaintiff-appellant, CLK Multifamily Management, LLC (CLK), appeals the trial court's judgment granting summary judgment in favor of third-party defendant-appellee, The Travelers Indemnity Company (Travelers), and dismissing all of CLK's claims against Travelers. We affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

Pamela Sloane instituted this lawsuit after she sustained an injury at Forestwood Apartments while working for Integrity Cleaning Services, LLC (Integrity).<sup>1</sup> According to her petition, Sloane was standing on a ladder, cleaning a ceiling fan, when she came into contact with an exposed wire, and was electrocuted and thrown off the ladder onto the ground. Among the defendants that Sloane named was CLK, whom she averred had failed to: maintain the premises; take preventive action sufficient to avoid injury; warn of the dangerous and hazardous electrical wiring on the premises; ensure the safety of those on the premises; and provide a safe environment.<sup>2</sup>

After answering the lawsuit, generally denying Sloane's allegations, CLK filed this third-party demand against Travelers. According to CLK's allegations, by the terms of a contract between CLK and Integrity, Integrity was required to have a current certificate of insurance for general liability and to add CLK and its affiliates as additional insureds. Pointing to the provisions in an additional endorsement of the policy issued by Travelers to Integrity, CLK averred that Travelers provided coverage to CLK for Sloane's injuries. CLK demanded that

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<sup>1</sup> Louisiana Construction & Industry Self Insurers Fund filed a petition of intervention seeking reimbursement for workers' compensation indemnity and medical benefits it has paid to and on behalf of Sloane.

<sup>2</sup> Sloane also named as defendants in this litigation Forestwood Apartments/Baton Rouge Ltd. (Forestwood Apartments) and Aspen American Insurance Company as the insurer of Forestwood Apartments and/or CLK.

Travelers indemnify and defend it against Sloane's allegations in the main demand and sought reimbursement for attorney fees it has incurred in this litigation.

After answering the third-party demand, Travelers filed a motion for summary judgment claiming that CLK was not qualified as an additional insured under the terms of the endorsement and sought dismissal of CLK's claims against it. A certified copy of the policy it had issued to Integrity was attached to its motion.

Thereafter, CLK filed an opposition to summary judgment. Attached to its memorandum were the contractual agreement between CLK and Integrity, requiring Integrity to have a current certificate of insurance for general liability and to add CLK and its affiliates as additional insureds, as well as excerpts from the depositions of Sloane and her coworker, Latrice Harris. CLK maintained that with this showing it established that it is an additional insured and, thus, that Travelers was not entitled to summary judgment.

After a hearing on the motion for summary judgment, the trial court issued written reasons for judgment, concluding that CLK did not qualify as an additional insured under the Travelers' policy. The trial court subsequently signed a judgment, granting summary judgment in favor of Travelers and dismissing all claims against Travelers. This appeal followed.<sup>3</sup>

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<sup>3</sup> On July 18, 2017, the trial court issued written reasons for its ruling. On August 25, 2017, the trial court granted a devolutive appeal to CLK. On August 31, 2017, the trial court signed a judgment in conformity with its written reasons for its ruling on the motion for summary judgment. A notice of appeal of the August 31, 2017 judgment was also transmitted on August 31, 2017. However, CLK's appeal was lodged as an appeal of the trial court's July 18, 2017 ruling, and this court thereafter issued a rule to show cause questioning the finality of the trial court's judgment. Although on the face of the August 31, 2017 judgment, all claims asserted against Travelers were dismissed with prejudice and, thus, final, *see* La. C.C.P. art. 1915A(1), in response to our show-cause order, the trial court issued a supplemental judgment on November 27, 2017, declaring that the appealed judgment was final. On February 20, 2018, another panel of this court maintained the appeal, reserving a final determination to us. After our review of the record, we agree that the judgment is properly before us and, therefore, the appeal is maintained.

## DISCUSSION

On appeal, appellate courts review the grant of a motion for summary judgment de novo under the same criteria governing the trial court's consideration of whether summary judgment is appropriate. *Schultz v. Guoth*, 2010-0343 (La. 1/19/11), 57 So.3d 1002, 1005-06. A motion for summary judgment shall be granted only if the pleadings, memoranda, affidavits, depositions, answers to interrogatories, certified medical records, written stipulations, and admissions, admitted for purposes of the motion for summary judgment, show there is no genuine issue of material fact, and that the mover is entitled to judgment as a matter of law. La. C.C.P. art. 966(A)(3) and (4). The burden of proof rests with the mover. La. C.C.P. art. 966(D)(1). Because it is the applicable substantive law that determines materiality, whether a particular fact in dispute is material, for purposes of summary judgment, can be seen only in light of the substantive law applicable to the case. *Gaspard v. Graves*, 2005-1042 (La. App. 1st Cir. 3/29/06), 934 So.2d 158, 160, writs denied, 2006-0882 and 2006-0958 (La. 6/16/06), 929 So.2d 1286 and 1289.

Under Louisiana law, an insurance policy is a contract between the parties and should be construed using the general rules of interpretation of contracts set forth in the Louisiana Civil Code. The judiciary's role in interpreting insurance policies is to determine the common intent of the parties to the contract. See La. C.C. art. 2045. Courts look first to the insurance policy itself in order to determine the parties' intent. See 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. See La. C.C. art. 2047. When a contract can be construed from the four corners of the policy without extrinsic evidence, the question of contractual interpretation is answered as a matter of law. However, if the contract cannot be construed based on language

contained therein due to an ambiguity, the court may look to extrinsic evidence to determine the parties' intent. *Maldonado v. Kiewit Louisiana Co.*, 2013-0756 (La. App. 1st Cir. 3/24/14), 146 So.3d 210, 218.

Interpretation of an insurance contract is a matter of law. To recover on an insurance policy, an insured must prove that its loss is covered by the policy. If the insured meets his burden, the insurer then has the burden of proving the applicability of policy exclusions. *Id.*

As the party claiming coverage under the policy, CLK has the burden of proving coverage. The named insured in the policy is Integrity, not CLK. Thus, CLK must show that it falls under the additional insured endorsement to prove entitlement to coverage. See *Maldonado*, 146 So.3d at 218.

According to the salient terms of the Additional Endorsement (Form GC D2 48 08 05), entitled "BLANKET ADDITIONAL INSURED/(CONTRACTORS OPERATIONS)," which modified the insurance provided to Integrity under the commercial general liability coverage part:

WHO IS AN INSURED -- ... is amended to include any person or organization that you agree in a "written contract requiring insurance" to include as an additional insured on this Coverage Part, but:

- a) Only with respect to liability for "bodily injury", "property damage" or "personal injury"; and
- b) If, and only to the extent that, the injury or damage is caused by acts or omissions of you or your subcontractor in the performance of "your work" to which the "written contract requiring insurance" applies. The person or organization does not qualify as an additional insured with respect to the independent acts or omissions of such person or organization.

The parties do not dispute that Integrity agreed in a written contract requiring insurance to include CLK as an additional insured. They disagree, however, as to the scope of coverage provided by the additional insured endorsement and whether CLK qualifies.

On appeal, CLK maintains that, under the terms of the endorsement, it qualifies as an additional insured because it can show evidence to support a finding by the trier of fact that Sloane's injury or damages were caused by the acts or omissions of Integrity. CLK suggests that the sole reason that Sloane failed to allege that Integrity's acts or omissions caused her injury or damages is because, as an Integrity employee, her remedy was statutorily limited to workers' compensation relief for which an employer is liable without regard to its fault. See *Boudreaux v. Falco*, 215 So.2d 538, 540 (La. App. 1st Cir. 1968).

CLK points to the deposition testimony of Sloane and Harris as providing evidentiary support sufficient for a trier of fact to find that evidence exists for the trier of fact to find that Sloane performed her job in the manner that Integrity had trained her. Specifically, CLK emphasizes that the deposition testimony of Sloane and Harris establishes that Sloane was trained to clean the ceiling fan in a dangerous manner, i.e., on a ladder with a wet rag while the fan was under power. This manner of cleaning, CLK avers, was a cause, in whole or part, of Sloane's injuries. As such, CLK urges because it pled Integrity's fault in its third-party demand and put forth evidence which would support a factual finding that Integrity was a cause of Sloane's damages, it qualifies as an additional insured under the Travelers endorsement.

In premising its assertion, CLK relies solely on Subsection b) of the endorsement. However, under Subsection a), any person that Integrity agreed to include as an additional insured in a written contract was qualified "but[] ... [o]nly with respect to liability for 'bodily injury', 'property damage' or personal injury." Subsections a) and b) are phrased using the conjunctive "and," meaning that both subsections must be met to properly interpret the endorsement's meaning.

Reading the provisions as a whole, the plain wording of the Travelers endorsement shows that the policy applies when liability is sought to be imposed

upon the additional insured (CLK) because of something the named insured (Integrity) is alleged to have done or failed to do. It is clear from the policy language that the parties only intended CLK to be covered if it could be cast in liability, vicariously, for the fault of Integrity. See *Maldonado*, 146 So.3d at 219. Moreover, under the plain wording of the endorsement, CLK unambiguously cannot qualify as an additional insured with respect to its independent acts or omissions.

CLK suggests that the trial court erred in looking only to Sloane's petition to determine the scope of coverage and by failing to consider CLK's allegations of Integrity's fault and the possibility that the trier of fact could apportion some or all fault to Integrity. Even considering CLK's allegations or possible factual findings by the trier of fact that Integrity was a cause in whole or part of Sloane's injury or damages for having trained her to clean the ceiling fan in a dangerous manner, any liability imposed against CLK could not be on account of the independent cause of Integrity having failed to properly train Sloane. The liability imposed against CLK would necessarily be as a result of CLK's independent acts and omissions, not for Integrity's acts and omissions as required to allow CLK to qualify as an additional insured under the Travelers' endorsement.

If a petition does not allege facts within the scope of coverage, an insurer is not legally required to defend a suit against its insured. *Maldonado*, 146 So.3d at 219. Accordingly, we find no error in the trial court's conclusion that Travelers is entitled to summary judgment and the dismissal of CLK's claims since CLK failed to establish that it qualified as an additional insured under the plain wording of the Travelers endorsement.

## **DECREE**

For these reasons, the trial court's judgment is affirmed. Appeal costs are assessed against third-party plaintiff-appellant, CLK Multifamily Management, LLC.

**AFFIRMED.**