SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1824-20

GARDEN STATE EQUITY 1 LLC and NEW TOWN INVESTMENTS, LLC,

Plaintiffs-Appellants,

v.

UNITED STATES LIABILITY INSURANCE CO.,

Defendant-Respondent.

Argued May 19, 2022 – Decided June 3, 2022

Before Judges Mawla and Alvarez.

On appeal from the Superior Court of New Jersey, Law Division, Essex County, Docket No. L-5323-19.

Eugene Killian, Jr. argued the cause for appellants (The Killian Firm, PC, attorneys; Eugene Killian, Jr., on the briefs).

Vincent J. Proto argued the cause for respondent (Saiber LLC, attorneys; Vincent J. Proto, on the brief).

PER CURIAM

Plaintiffs Garden State Equity 1 LLC (Garden State) and New Town Investments, LLC (New Town) appeal from two February 1, 2021 orders granting defendant United States Liability Insurance Co. summary judgment and denying plaintiffs' cross-motion for summary judgment to compel defendant to defend and indemnify them. We affirm.

New Town and Garden State[1] are in the business of buying and renovating vacant properties by hiring contractors to perform the renovations. An employee of one of New Town's contractors was severely injured while working on one of plaintiffs' properties. The worker filed a demand for workers' compensation benefits against New Town, which was forwarded to defendant, and subsequently denied. Defendant cited policy exclusion L-500, titled "Bodily Injury Exclusion – All Employees, Volunteer Workers, Temporary Workers, Casual Laborers, Contractors, and Subcontractors[,]" which read:

> e. Employer's Liability
>
> > (1) "Bodily Injury" to any "employee", "volunteer worker", "temporary worker" or "casual laborer" arising out of or in the course of:
> >
> > (a) Employment by any insured; or

[1] New Town is a member and the sole manager of Garden State.

> (b) Performing duties related to the conduct of any insured's business;
>
> (2) "Bodily injury" to any contractor, subcontractor or any "employee", "volunteer worker", "temporary worker" or "casual laborer" of any contractor or subcontractor arising out of or in the course of the rendering or performing services of any kind or nature whatsoever by such contractor, subcontractor or "employee", "volunteer worker", "temporary worker" or "casual laborer" of such contractor or subcontractor for which any insured may become liable in any capacity; or
>
> (3) Any obligation of any insured to indemnify or contribute with another because of damages arising out of such "bodily injury" . . . .
>
> . . . .
>
> This exclusion applies to all claims and "suits" by any person or organization for damages because of such "bodily injury", including damages for care and loss of services and any claim under which any insured may be held liable under any Workers' Compensation law.
>
> "Casual laborer" means any person providing work or materials to any insured for compensation of any type.

The worker sued plaintiffs alleging negligence and sought damages for his injuries. Defendant continued to deny coverage.

The parties filed competing summary judgment motions following discovery. Plaintiffs' central argument was the L-500 exclusion did not apply

because two other exclusions, L-278 and L-532, were more specific, restored coverage excluded under L-500, and controlled.

L-278, titled "Independent Contractors/Subcontractors Exclusion" states:

> This policy does not insure against loss or expense, including but not limited to the cost of defense, arising from or resulting, directly or indirectly, from "bodily injury", "property damage", or "personal and advertising injury liability" arising out of the operations performed for any insured by any independent contractor(s) and/or subcontractor(s) or acts or omissions of any insured in the hiring, employment, training, selection, retention, monitoring of others by an independent contractor and/or subcontractor, or supervision of any independent contractor(s) and/or subcontractor(s). This exclusion shall not apply to such loss or expense, including but not limited to the cost of defense, arising from the operations of a contractor or subcontractor directly relating to the renovation of a vacant building at an insured location that is shown on the Declarations and for which a premium has been paid.

The L-532 exclusion titled "Exclusion – Construction Operations" provides:

> This policy does not insure against loss or expense, including but not limited to the cost of defense, arising or resulting, directly or indirectly from "bodily injury", "property damage", or "personal and advertising injury" or medical expenses arising out of any construction, "construction services", demolition, renovation, structural repairs, site preparations or similar operations.

> This exclusion shall not apply to such loss or expense, including but not limited to the defense, arising solely from the operations of a contractor or sub-contractor directly involved in the renovation of a vacant building at an insured location that is shown on the Declarations and for which a separate premium has been paid to cover the operations of a contractor or sub-contractor involved in renovations.
>
> "Construction Services" includes, but is not limit[ed] to[,] . . . services relating directly or indirectly to construction, demolition, renovation, structural repair, site preparation or similar operations.

All three exclusions included the same notation:

> All other terms and conditions of this policy remain unchanged. This endorsement is a part of your policy and takes effect on the effective date of your policy . . . .

Plaintiffs asserted defendant's interpretation of the policy would eviscerate the L-278 and L-532 exclusions and the court should read the policy holistically to require defendant to defend and indemnify the worker's claims. Plaintiffs argued a lay person reading the policy would not know there was no coverage for the worker's injury. They pointed to United States Liability Insurance Co. v. Benchmark Construction Services, Inc., 797 F.3d 116, 121-22 (1st Cir. 2015) where the First Circuit found the L-500 exclusion ambiguous. They also argued defendant was estopped from denying coverage and waived

the ability to do so by accepting premium payments to insure the type of loss for which plaintiffs sought coverage.

Judge Jeffrey B. Beacham heard the motions and rejected plaintiffs' arguments. He found the L-500 exclusion "is the more specific exclusion" than the L-278 and L-532 exclusions because "[n]either exclusion[] deal[s] specifically with the coverage for bodily injury to a contractor or a subcontractor or an employee of a contractor or subcontractor while performing services on behalf of an insured." The judge found "the L[-]500 exclusion evinces a clear intention to exclude coverage for workplace accidents suffered by individuals who are performing work on behalf of an insured, whether an employee of an insured or an employee of a contractor or subcontractor retained to perform work on behalf of the insured." He concluded the L-278 and L-532 exclusions did not "obviate" L-500, which was separate and specific to injuries sustained by contractors and subcontractors and their employees, and there was no ambiguity that would confuse a lay person reading the policy.

Citing Cypress Point Condominium Association v. Adria Towers, LLC, 226 N.J. 403 (2016), which relied on Weedo v. Stone-E-Brick, Inc., 81 N.J. 233 (1979), the judge noted he had to read the exclusions "seriatim not commutatively and if any one exclusion applies there should be no coverage

regardless of inferences that might be argued on the basis of exception[s] or qualifications contained in other exclusions." Further, "a limitation to one exclusion of an insurance policy cannot restrict the scope of an entirely different exclusion and that's what we have in this case, a totally entirely different exclusion and it's this [c]ourt's decision that Weedo is still good law." The judge distinguished Benchmark, noting the ambiguity there was whether L-500 applied where there was "privity between an insured and the contractor or subcontractor that employed the injured party." Privity was not in dispute here.

The judge dismissed plaintiffs' waiver and estoppel arguments. He concluded "there is no triable issue of fact as [to the] premium charge for the policy because there is nothing in the policy itself that there was a premium paid for bodily injury claims of the employees of the contractors."

Plaintiffs re-assert their summary judgment arguments on appeal as follows:

> I. A PROPER, HOLISTIC INTERPRETATION OF THE POLICY REQUIRES [DEFENDANT] TO DEFEND THE POLICYHOLDERS IN THE [WORKER'S] ACTION.
>
> > A. The L-500 Endorsement States That It Must Be Read In Conjunction With The Other Provisions Of The Policy, Which Restore Coverage For Bodily Injury Suffered By

Contractors Or Subcontractors Working On The Renovation Of Vacant Buildings.

B. Weedo Did Not Discuss The Payment Of A Premium For A Specific Risk That The Insurance Company Sought To Deny.

C. At A Minimum, The Endorsements Are Ambiguous And Should Be Construed Against The [Defendant].

II. THERE IS, AT MINIMUM, A FACTUAL ISSUE AS TO WHETHER [DEFENDANT], HAVING CHARGED AND ACCEPTED A PREMIUM FOR THE EXACT TYPE OF CLAIM INVOLVED IN THIS CASE, IS BARRED BY THE DOCTRINES OF WAIVER AND ESTOPPEL FROM DENYING COVERAGE AND A DEFENSE.

A court must grant summary judgment "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits," show no genuine issue of material fact and "that the moving party is entitled to a judgment . . . as a matter of law." Templo Fuente De Vida Corp. v. Nat'l Union Fire Ins. Co. of Pittsburgh, 224 N.J. 189, 199 (2016) (quoting R. 4:46-2(c)). On appeal, we apply the same standard as the trial court. Goldhagen v. Pasmowitz, 247 N.J. 580, 593 (2021).

The interpretation of an insurance policy is "a purely legal question" and reviewed de novo. Pickett ex rel. Est. of Pickett v. Moore's Lounge, 464 N.J. Super. 549, 554-55 (App. Div. 2020). "In attempting to discern the meaning of

a provision in an insurance contract, the plain language is ordinarily the most direct route." Chubb Custom Ins. Co. v. Prudential Ins. Co. of Am., 195 N.J. 231, 238 (2008). "If the language is clear, that is the end of the inquiry." Ibid.; see also Zacarias v. Allstate Ins. Co., 168 N.J. 590, 595 (2001) (quoting Gibson v. Callaghan, 158 N.J. 662, 670 (1999)) ("In the absence of any ambiguity, courts should not write for the insured a better policy of insurance than the one purchased.").

Pursuant to Cypress Point, courts employ a three-part analysis in determining the bounds of coverage an insurance policy provides. 226 N.J. at 424-25. The court examines the policy to determine whether it "provide[s] an initial grant of coverage"; if it does, the court "considers whether any of the polic[y's] exclusions preclude coverage"; and if an exclusion applies, the court determines "whether an exception to a pertinent exclusion applies to restore coverage." Ibid.

"[C]ourts will enforce exclusionary clauses if [they are] 'specific, plain, clear, prominent, and not contrary to public policy,' notwithstanding that exclusions generally 'must be narrowly construed,' and the insurer bears the burden to demonstrate they apply." Abboud v. Nat'l Union Fire Ins. Co., 450 N.J. Super. 400, 407 (App. Div. 2017) (quoting Flomerfelt v. Cardiello, 202 N.J.

432, 441-42 (2010)); see also Cypress Point, 226 N.J. at 429 (quoting Arrow Indus. Carriers, Inc. v. Cont'l Ins. Co. of N.J., 232 N.J. Super. 324, 334-35 (Law Div. 1989)) (noting that while it is a court's responsibility "to give effect to the whole policy, not just one part of it[,]" it must also strictly interpret an exclusion where one applies). Also, courts should "not read one policy provision in isolation when doing so would render another provision meaningless." Homesite Ins. Co. v. Hindman, 413 N.J. Super. 41, 47 (App. Div. 2010).

An insurance policy will not be deemed ambiguous merely because the parties offer conflicting interpretations. Fed. Ins. Co. v. Campbell Soup Co., 381 N.J. Super. 190, 195 (App. Div. 2005). Rather, ambiguity exists "where the phrasing of the policy is so confusing that the average policyholder cannot make out the boundaries of coverage." Pickett, 464 N.J. Super. at 555 (quoting Templo Fuente, 224 N.J. at 200).

Having conducted a thorough review of the record pursuant to these principles, we affirm for the reasons expressed in Judge Beacham's thorough and well-reasoned decision. The L-500 exclusion clearly applied to the claims asserted by the worker and the policy was not ambiguous. Summary judgment was properly granted in defendant's favor.

Affirmed.