NO. COA14-445
NORTH CAROLINA COURT OF APPEALS

Filed: 20 January 2015

WAYNE GOODWIN, as Commissioner of Insurance of the State of North Carolina,
Petitioner-Appellee,

v.

Wake County
No. 12 CVS 1270

CAGC INSURANCE COMPANY,
Respondent-Appellee,

v.

NORTH CAROLINA INSURANCE GUARANTY ASSOCIATION,
Intervenor, Respondent, Counterclaimant, and Cross-Claimant,

v.

NORTH CAROLINA SELF-INSURANCE SECURITY ASSOCIATION,
Intervenor, Respondent, Counterclaimant, and Cross-Claimant-Appellant.

Appeal by Intervenor, Respondent, Counterclaimant, and Cross-Claimant North Carolina Self-Insurance Security Association from orders and judgment entered 6 January 2014 by Judge Shannon R. Joseph in Superior Court, Wake County. Heard in the Court of Appeals 25 September 2014.

Attorney General Roy Cooper, by Special Deputy Attorney General David W. Boone, and Assistant Attorney General M. Denise Stanford, for Wayne Goodwin, as Commissioner of Insurance of the State of North Carolina, Petitioner-Appellee.

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Nelson Mullins Riley & Scarborough, LLP, by Christopher J. Blake and Joseph W. Eason, for Intervenor, Respondent, Counterclaimant, and Cross-Claimant-Appellee North Carolina Insurance Guaranty Association, Respondent-Appellee.

Stuart Law Firm, PLLC, by Catherine R. Stuart and Susan J. Vanderweert, for Intervenor, Respondent, Counterclaimant, and Cross-Claimant-Appellant North Carolina Self-Insurance Security Association, Respondent-Appellant.

Williams Mullen, by Christopher G. Browning, Jr., Garrick A. Sevilla, and C. Elizabeth Hall; Phillip A. Ellen; J. Michael Carpenter; and T. John Policastro, for North Carolina Retail Merchants Association, North Carolina Home Builders Association, North Carolina Forestry Association, North Carolina Automobile Dealers Association, First Benefits Insurance Mutual, Inc., Builders Mutual Insurance Company, Forestry Mutual Insurance Company, Dealers Choice Mutual Insurance, Incorporated, and Carolina Mutual Insurance, Inc., amicus curiae.

McGEE, Chief Judge.

CompTrustAGC ("CompTrust") was licensed by the North Carolina Department of Insurance ("DOI") as a group self-insurer pursuant to Article 47 of Chapter 58 of the North Carolina General Statutes. At all relevant times until 1 July 2008, CompTrust was a member of the North Carolina Self-Insurance Security Association ("SISA"), which "is an unincorporated

association existing pursuant to . . . Article 4 of Chapter 97 of the North Carolina General Statutes." SISA "is a 'domestic guaranty association' within the meaning of N.C. Gen. Stat. § 58-30-10(7)[,]" which means it is an "entity . . . created by the General Assembly for the payment of claims of insolvent insurers." N.C. Gen. Stat. § 58-30-10(7) (2013). As a group self-insurer, CompTrust was in the business of issuing workers' compensation insurance policies to employer-members who "pool their workers' compensation liabilities under the [Workers' Compensation] Act and are licensed under [N.C. Gen. Stat. § 58-47-60 to 58-47-140]." N.C. Gen. Stat. § 58-47-60(8) (2013). In late 2006, CompTrust initiated a process to convert itself into a North Carolina licensed direct insurance company. DOI informed CompTrust that it could create a new domestic insurance company pursuant to Article 7, Chapter 58 of the North Carolina General Statutes, and then merge CompTrust into that newly created entity. The CompTrust board of trustees took the appropriate actions and created CAGC Insurance Company ("CAGC"), which was incorporated effective 31 December 2007. CAGC was incorporated "pursuant to Chapter 55 of the North Carolina General Statutes, following certification by the Commissioner of Insurance, pursuant to Chapter 58 of the North Carolina General Statutes." CAGC's license "to transact the business of

insurance" became effective 31 May 2008. CompTrust and CAGC "filed Articles of Conversion and Merger with the North Carolina Secretary of State to be effective 1 July 2008[.]" As a direct insurer, CAGC was required to join the North Carolina Insurance Guaranty Association ("IGA"), which is "an unincorporated association existing pursuant to . . . Article 48 of Chapter 58 of the North Carolina General Statutes." IGA, like SISA, is also a "domestic guaranty association." IGA serves the same function for direct insurers that SISA serves for self-insurers. The merger of CompTrust into CAGC was completed on 1 July 2008.

The work-related injuries giving rise to the workers' compensation claims relevant to this appeal all occurred when CompTrust was still in business and responsible for the relevant insurance policies. "All of the compensable injuries giving rise to the workers' compensation claims incurred against CompTrust[] before its 1 July 2008 merger with CAGC occurred before 1 July 2008 when: (a) CompTrust[] was licensed by []DOI as a group self-insurer; and (b) CompTrust[] was a member of []SISA."

Following the merger, CAGC was the "surviving corporation," and CompTrust ceased operating in any manner as a going concern. "The members of CompTrust [were] converted into policyholders of CAGC[] and [were] at the effective date the only policyholders

of CAGC[], and [had] identical rights and benefits in CAGC[] as in CompTrust." CAGC assumed liability for all claims previously held by CompTrust, and CAGC immediately began paying those obligations pursuant to the same terms previously applicable to CompTrust. There is no dispute that CAGC was responsible for paying all ongoing workers' compensation claims, including all those incurred by CompTrust prior to the 1 July 2008 merger.

Had CAGC survived, it would have continued to pay these pre 1 July 2008 claims. However, on 26 January 2012, the trial court

> entered an Order of Rehabilitation and Order of Injunction against CAGC with the written consent of CAGC. The Order of Rehabilitation found that CAGC was in an impaired financial condition within the meaning of N.C. Gen. Stat. § 58-30-12(a)(2) and that CAGC was in such condition as to render the continuance of its business hazardous to its policyholders, creditors, or the public.

CAGC was liquidated by order entered 6 January 2014, which was effective 17 January 2014. At the time of liquidation, there was no dispute that IGA was responsible for covering all claims on CAGC policies issued on or after 1 July 2008 that remained unsettled at the time of liquidation.

IGA moved to intervene in this matter, and an order was entered on 18 December 2012 allowing IGA's motion. IGA

petitioned for declaratory relief on or after 10 December 2012, requesting the trial court, *inter alia*, to declare that

> the resulting liabilities of CAGC for claims made against members of CompTrust[] have arisen pursuant to the commercial agreements between CAGC and CompTrust[], and did not and do not arise under policies of direct insurance as issued by CAGC, and thus are outside of the scope of the Insurance Guaranty Association Act established by N.C. Gen. Stat. § 58-48-10; . . . or, alternately, that the claims against the self-insured members of CompTrust[] did not and do not arise out of "an insurance policy to which [Article 48 of Chapter 58] applies *as issued by an insurer*", but instead arose out of undertakings by the self-insured members of CompTrust[], contracts issued by CompTrust[], and the commercial agreements between CompTrust[] and CAGC, and thus are not "covered claims" under the North Carolina Insurance Guaranty Association Act; [and]
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> . . . Adjudging and declaring that [IGA] has no obligation to accept custody of or administer claim files for workers' compensation claims which have arisen against the self-insured members of CompTrust[] for accidents or illnesses occurring before July 1, 2008, or to make payments to satisfy the liabilities for such claims under the Insurance Guaranty Association Act[.]

IGA further requested a ruling that it had no obligation for administering or paying claims arising from accidents or injuries occurring before 1 July 2008.

SISA moved to intervene and was allowed to do so by order entered 1 March 2013. SISA filed a cross-petition for

declaratory relief, requesting that the trial court deny IGA's prayers for relief set forth in IGA's petition and, *inter alia*, declare that, as a result of the merger between CompTrust and CAGC, that CAGC, as the surviving entity, was responsible for all of CompTrust's obligations, and declare "that the direct insurance obligations of the former CompTrust . . . became, by operation of law, direct insurance obligations of CAGC[], effective July 1, 2008, as the result of merger and consolidation[.]"

SISA filed a motion for summary judgment on 8 November 2013, arguing, *inter alia*, that it was "entitled to a summary judgment declaring that the workers' compensation claims incurred against the former CompTrust[] prior to its July 1, 2008 merger with CAGC . . . are not 'covered claims[.]'" SISA's motion for summary judgment was denied by order entered 6 January 2014, and the trial court concluded "that it [was] appropriate to render summary judgment against []SISA" and declare that the disputed claims were "'covered claims' within the meaning [of] N.C. Gen. Stat. § 97-130(4) in the event a determination of the insolvency of CAGC is made by [the trial court]." The trial court also entered a: "Judgment Pursuant to Rule 52" on 6 January 2014, ruling, *inter alia*, that IGA had no obligation "for any of the pre-merger workers' compensation

claims made or incurred against CompTrust[] . . . arising from events and occurrences before 1 July 2008[.]" Finally, the trial court entered an order of liquidation on 6 January 2014, ordering the liquidation of CAGC. SISA appeals.

Analysis

SISA argues that "the trial court erred by failing to rule that the pre-merger claims are 'covered claims' for IGA." We agree.

This Court's opinion in *Bowles v. BCJ Trucking Servs., Inc.*, 172 N.C. App. 149, 615 S.E.2d 724 (2005), informs our decision in this matter. The relevant facts from *Bowles* follow:

> Plaintiff was injured on 3 March 1998 in the course of his employment with BCJ Trucking Services ("BCJ"). On 11 April 2001, plaintiff was awarded ongoing temporary total disability benefits beginning 6 December 1999 from BCJ's workers' compensation insurance company, North Carolina Selective ("Selective"). Selective was comprised of various employers who pool their workers' compensation liabilities to create a licensed self-insured group.[1]
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> Selective began experiencing financial trouble in early 1997. On 29 April 1997, the North Carolina Department of Insurance ("NCDOI") informed Selective of its financial concerns and by letter dated 21 January 1998 informed Selective of its need

[1] Selective, as a group insurer, was a member of The North Carolina Self-Insurance Guaranty Association, now The North Carolina Self-Insurance Security Association, or SISA. For clarity, we will refer to both the former and present entities as "SISA."

> to obtain additional capital or a commitment from a commercial insurance company to reinsure them. Shortly thereafter, NCDOI informed Selective it would be in the "best interest" of the public and Selective's members to transfer its obligations and liabilities to a commercial insurer.
>
> Selective entered into a NCDOI approved assumption reinsurance agreement with Reliance National Insurance Company ("Reliance") effective 31 December 1998. Selective transferred and Reliance assumed 100 percent of Selective's workers' compensation liability claims and obligations. Reliance began and continued to pay plaintiff's benefits per the assumption agreement.
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> Reliance was an active member of IGA, which is a statutorily created reinsurance association which covers claims of insolvent insurance companies pursuant to N.C. Gen. Stat. § 58-48-1 *et seq*. On 3 October 2001, Reliance became insolvent and was ordered into liquidation by the Pennsylvania Commonwealth Court. After Reliance was liquidated, IGA assumed payments of plaintiff's benefits.
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> IGA commenced this action by filing a Form 33 request with the Commission to determine its responsibility for paying plaintiff's claim. The Commission issued an opinion and award holding IGA responsible for paying plaintiff's workers' compensation claim. The Commission held: (1) the claim arose when Selective was the insurance carrier for BCJ; and (2) Reliance had assumed the insurance contract through novation and IGA was liable for the claim due to Reliance's insolvency.

Bowles, 172 N.C. App. at 151-52, 615 S.E.2d at 726. IGA argued the Industrial Commission erred in finding BCJ's claim, which

came into existence when Selective was BCJ's insurer and SISA was Selective's security association, was a "covered claim" pursuant to N.C. Gen. Stat. § 58-48-20(4). *Bowles*, 172 N.C. App. at 153, 615 S.E.2d at 727. This Court explained:

> N.C. Gen. Stat. § 58-48-20(4) (2003) defines a "covered claim" as
>
> > an unpaid claim, including one of unearned premiums, which is in excess of fifty dollars ($50.00) and arises out of and is within the coverage and not in excess of the applicable limits of an insurance policy to which this Article applies as issued by an insurer, if such insurer becomes an insolvent insurer....
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> An insolvent insurer is:
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> > (i) an insurer licensed and authorized to transact insurance in this State either at the time the policy was issued or when the insured event occurred and (ii) against whom an order of liquidation with a finding of insolvency has been entered after the effective date of this Article by a court of competent jurisdiction in the insurer's state of domicile or of this State under the provisions of Article 30 of this Chapter, and which order of liquidation has not been stayed or been the subject of a writ of supersedeas or other comparable order.
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> N.C. Gen. Stat. § 58-48-20(5) (2003).
>
> The Commission concluded IGA's liability for plaintiff's claim arose when Reliance assumed Selective's obligations and rested its conclusion on applying the law of novation.

Bowles, 172 N.C. App. at 153, 615 S.E.2d at 727. This Court held that Reliance had assumed all of Selective's workers' compensation claims obligations through the statutory novation effected by the execution of the assumption reinsurance agreement on 31 December 1998. *Id.* at 154, 615 S.E.2d at 728. When a novation occurs through the execution of an assumption reinsurance agreement, "the result [is] that the transferring insurer is thereby relieved of all insurance obligations or risks transferred under the assumption reinsurance agreement and the assuming insurer is directly and solely liable to the policyholder for those insurance obligations or risks." N.C. Gen. Stat. § 58-10-40 (2013). This Court held: "The [assumption reinsurance] agreement did not create a new contract for insurance coverage but solely substituted a new party, Reliance for Selective, to the contract." *Bowles*, 172 N.C. App. at 154, 615 S.E.2d at 728. "Reliance [was] deemed to have replaced Selective as if Reliance had issued the original contract of insurance to BCJ." *Id.* This Court therefore affirmed the ruling of the Commission that IGA was the obligated organization upon the insolvency of Reliance, even though the workers' compensation obligations originated when Selective was the responsible self-insurer, and SISA was the organization

responsible for paying Selective's covered claims in the event of Selective's insolvency:

> The original insurance policy between BCJ and Selective became a direct insurance obligation when Reliance expressly assumed Selective's book of business. Through novation, Reliance is deemed to have issued the insurance policy. Reliance is a "direct insurer" placing it within the obligations of IGA by N.C. Gen. Stat. § 58-48-35. Reliance became insolvent triggering the application of N.C. Gen. Stat. § 58-48-1 *et seq*. to IGA. Plaintiff's claim is a "covered claim" issued by an "insolvent insurer" and became IGA's obligation. The Commission properly concluded plaintiff's claim is within the statutory obligations of IGA.

Id. at 156, 615 S.E.2d at 728-29.

In the present case, IGA argues that *Bowles* does not control on the current facts because there was no statutory novation in the present case. However, the result of a statutory novation is "that the transferring insurer is thereby relieved of all insurance obligations or risks transferred under the assumption reinsurance agreement and the assuming insurer is directly and solely liable to the policyholder for those insurance obligations or risks." N.C. Gen. Stat. § 58-10-40. The merger agreement between CompTrust and CAGC achieved precisely this result. The merger agreement states:

> On the Effective Date [of the merger] the

> separate existence of CompTrust shall cease, and CompTrust shall be transferred into CAGC[] which, as the Surviving Corporation, shall possess all the right, privileges, powers, and franchises, of a public as well as of a private nature, and be subject to all the restrictions, disabilities, and duties of CompTrust; and, all the rights, privileges, powers, and franchises of CompTrust and all property, real, personal, and mixed, and all debts due to CompTrust on whatever account, shall be vested in [CAGC.] [And] all debts, liabilities, and duties of CompTrust shall thenceforth attach to [CAGC] and may be enforced against it *to the same extent as if said debts, liabilities, and duties had been incurred or contracted by it*. (Emphasis added).

As in *Bowles*, 172 N.C. App. at 156, 615 S.E.2d at 728-29, in the present case all of the self-insurer's (CompTrust's) debts and obligations were transferred to the direct insurer (CAGC) "to the same extent as if said debts, liabilities, and duties had been incurred or contracted by [CAGC,]" the direct insurer. We do not believe it is relevant on these facts whether this result was achieved through the execution of an assumption reinsurance agreement, or through the execution of a merger agreement. The responsibility for paying the relevant workers' compensation claims was removed from CompTrust and assumed by CAGC. According to the merger agreement, CAGC was "deemed to have issued the insurance polic[ies]." *Id.* at 156, 615 S.E.2d at 728. Further:

> [CAGC] is a "direct insurer" placing it

> within the obligations of IGA by N.C. Gen. Stat. § 58-48-35. [CAGC] became insolvent triggering the application of N.C. Gen. Stat. § 58-48-1 *et seq*. to IGA. [The relevant claims are] "covered claim[s]" issued by an "insolvent insurer" and became IGA's obligation.

Id. at 156, 615 S.E.2d at 728-29. In *Bowles*, neither SISA nor IGA were parties to the assumption reinsurance agreement, and neither had any ability to shape that agreement. In the present case, neither SISA nor IGA were parties to the merger agreement, and neither had any ability to shape that agreement. We can see no equitable nor policy differences between the outcome in *Bowles* and our holding in the present case.

We reverse and remand to the trial court to enter judgment ruling that IGA is estopped from denying that it is obligated under the North Carolina Insurance Guaranty Association Act for any of the pre-merger workers' compensation claims made or incurred against CompTrust before 1 July 2008.

Reversed and remanded.

Judges GEER and STROUD concur.

Report per Rule 30(e).