SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2833-14T4

ROB K. CONSTRUCTION
& COMPANY,

Plaintiff-Appellant,

v.

RUTGERS CASUALTY INSURANCE
COMPANY, and AMERICAN
EUROPEAN INSURANCE GROUP, INC.,

Defendants-Respondents,

and

MERCHANTS INSURANCE GROUP,
RUTGERS ENHANCED INSURANCE
COMPANY, and UNITED INTERNATIONAL
INSURANCE COMPANY,

Defendants.

Argued January 10, 2017 – Decided June 27, 2017

Before Judges Reisner and Rothstadt.

On appeal from the Superior Court of New Jersey, Law Division, Hudson County, Docket No. L-5506-12.

Louis J. Santore argued the cause for appellant.

Robert M. Brigantic argued the cause for respondents (Lebowitz, Oleske, Connahan & Kassar, LLC, attorneys; Mr. Brigantic, on the brief).

PER CURIAM

Plaintiff Rob K. Construction & Co., a general contractor, appeals from a trial judge's involuntary dismissal of its complaint at the end of plaintiff's case, R. 4:37-2(b). Plaintiff's complaint alleged that defendant American European Insurance Group (AEIG), through its related entity defendant Rutgers Casualty Insurance Company (Rutgers), wrongfully denied coverage for a claim made by an employee of one of plaintiff's subcontractors.

The claim arose when the employee was injured at a job site that was under plaintiff's supervision. Plaintiff alleged the claim was covered by the commercial general liability policy defendants issued to plaintiff. The trial judge, relying upon the policy's express language and representations made by plaintiff in its application for insurance, determined that defendants properly denied coverage. On appeal, plaintiff argues that the judge ignored plaintiff's reasonable expectation of coverage, as established by the evidence presented to the jury, and failed to strictly construe the policy's exclusion of coverage for injuries to contractors and employees of contractors. We disagree and affirm.

The facts adduced at trial by plaintiff are summarized as follows. Plaintiff was formed in 2004 by its principal, Robert Krakowiak,[1] an assistant portfolio manager at a financial institution, to perform maintenance on portfolio properties held by a coworker. During the ensuing years, the nature of plaintiff's business expanded to include home renovations and, ultimately, new construction. Beginning in 2008, plaintiff started to build homes in New York "worth more than $500,000." Plaintiff served as the general contractor for these new construction projects, working with clients to develop the architectural plan and hiring subcontractors to perform the work.

Plaintiff applied for general liability insurance in early 2006 and represented to its agent and defendants that plaintiff had one employee, did not hire subcontractors, and only performed remodeling work as compared to structural work. Krakowiak understood that this information impacted the type of coverage plaintiff required. Based on that information, Rutgers issued a general liability policy to plaintiff. The premium for the policy at the time of the subject claim was $1,352.00. According to a representative from AEIG, had plaintiff purchased insurance

[1] Krakowiak holds a bachelor's degree in biochemistry from Syracuse University, but was exposed to the construction trade by his father who was builder.

coverage for general contractors the premium would be "at least tenfold" more expensive.

Plaintiff renewed the policy from year to year without ever informing defendants of any change in plaintiff's operations. For example, on March 4, 2009, plaintiff submitted a policy holder report to defendants that stated plaintiff was engaged in interior remodeling, with annual sales of $30,000, which Krakowiak acknowledged was "a grossly under-estimated statement of . . . net sales."

The policy that defendants issued each year contained an exclusion entitled "Exclusion of Injury to Employees, Contractors and Employees of Contractors." The exclusion provided:

> This insurance does not apply to:
>
> . . . .
>
> II. "bodily injury" to any contractor or any "employee" of any contractor arising out of or in the course of the rendering or performing services of any kind or nature whatsoever by such contractor or "employee" of such contractor for which any insured may become liable in any capacity[.]

Krakowiak testified at trial that he understood a claim made by an injured employee of a subcontractor would be excluded from coverage, although he admitted that he did not read the policy "carefully enough."

The underlying claim occurred in June 2011, when an employee of plaintiff's plumbing sub-contractor was allegedly injured at one of plaintiff's job sites. The injured worker sued plaintiff in New York. Plaintiff gave notice of the claim to defendants, who denied coverage, citing, among other bases, the exclusion for employees of contractors cited above. Defendants' denial of coverage resulted in plaintiff filing the complaint in this matter.

Plaintiff's complaint was tried before a jury and presided over by Judge Francis B. Schultz. At the end of the plaintiff's case, defendants moved for dismissal. Plaintiff opposed the motion, arguing that the evidence established that it had a reasonable expectation of coverage.

Judge Schultz granted the motion and placed his reasons on the record. The judge began by setting forth the standard for determining a motion to dismiss pursuant to Rule 4:37-2(b), including the requirement that all favorable inferences be afforded to the nonmoving party. The judge rejected plaintiff's contention that it had a reasonable expectation of coverage, as Krakowiak did not read the policy, nor offer any proof that "anything in the policy caused him to believe he had coverage for bodily injury claims made by [a subcontractor's] employees at the work site," or that defendants had led him to believe as much. The judge also pointed out that plaintiff never advised defendants

that it was operating a business that included the participation of subcontractors and their employees. Rather, the application supported the conclusion that Krakowiak "was [running] a one man operation." The judge stated:

> Had the plaintiff submitted an application, indicating that [it] had some contractors that[, it] was doing structural work, that [it] had gross sales of between 500,000 and a million, if each house sold for half a million[,] and [it] did one or two a year[;] had [plaintiff] put in there that [it] had gross sales of half a million to a million that [it] was using subcontractors, then the plaintiff could maintain an argument to the effect of well, I told the insurance company. I told the [broker], . . . who forwarded it on to the insurance company, that I was building houses for half a million dollars. That I had other people on the job site.
>
> And[,] therefore, I was entitled to reasonably expect that the policy would cover me for that. But [it] doesn't. Plaintiff does not contend that any applications were given other than the ones I just read. [Plaintiff] doesn't say that[,] wait a minute, I sent something to the insurance company telling them what kind of work I was actually doing. No.
>
> So based on the applications that the plaintiff sent in where [it] denied having any subcontractors[and stated its] gross sales were $30,000[, t]here's nothing inconsistent. There's nothing even in the application that would entitle the plaintiff to say [its] reasonable expectations were not fulfilled by the exclusion. The exclusion was consistent with [its] own application. I should also point out that the independent producer . . . knew that Rutgers would not cover the

> plaintiff if he had workers on the job site[,] and they wouldn't have placed it with Rutgers.

Judge Schultz also noted that the premium plaintiff paid was for a "bare bones" policy that was consistent with plaintiff's application, so that it too could not have given rise to any "reasonable expectation" of coverage for the claim.

The judge concluded by stating:

> Looking at that exclusion, I can say that every single word in the exclusion is and can be understood by anyone picking up this document and being able to read it. Simply put, there was no coverage for injuries sustained by a worker on the job site.
>
> . . . .
>
> [Therefore], there is nothing to go to a jury. So the plaintiff's case is dismissed in its entirety.

On appeal, plaintiff contends that the judge misapplied the standard for consideration of a motion filed pursuant to Rule 4:37-2(b) and that he failed to strictly construe the disputed exclusion against defendants.[2]

In our review of a trial judge's grant of a motion for an involuntary dismissal at the end of plaintiff's case, R. 4:37-2(b), we apply the same standard as the trial court. ADS Assocs.

[2] Plaintiff also argues it was entitled to a jury trial to resolve its dispute. We are somewhat bewildered by this argument since the matter was indeed brought before a jury for trial. For this reason, we do not consider plaintiff's argument.

Grp. v. Oritani Sav. Bank, 219 N.J. 496, 511 (2014). A motion for involuntary dismissal is premised "on the ground that upon the facts and upon the law the [non-moving party] has shown no right to relief." R. 4:37-2(b). The motion shall be denied if "'the evidence, together with the legitimate inferences therefrom, could sustain a judgment in favor' of the party opposing the motion." Dolson v. Anastasia, 55 N.J. 2, 5 (1969) (quoting R. 4:37-2(b)). If a court, "'accepting as true all the evidence which supports the position of the party defending against the motion and according him the benefit of all inferences which can reasonably and legitimately be deduced therefrom,' finds that 'reasonable minds could differ,' then 'the motion must be denied.'" ADS Assocs. Grp., supra, 219 N.J. at 510-11 (quoting Verdicchio v. Ricca, 179 N.J. 1, 30 (2004)). Under this standard, we "must examine the evidence, together with legitimate inferences which can be drawn therefrom, and determine whether the evidence could have sustained a judgment in favor of the party who opposed the motion." Craggan v. IKEA USA, 332 N.J. Super. 53, 61 (App. Div. 2000) (quoting Tannock v. N.J. Bell Tel., 223 N.J. Super. 1, 6 (App. Div. 1988)).

Applying this standard, we find plaintiff's arguments to be without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). We affirm substantially for the

reasons expressed by Judge Schultz in his oral decision, as we agree that even applying the liberal principles favoring the insured that guide our review of coverage interpretation disputes, see Selective Ins. Co. of Am. v. Hudson E. Pain Mgmt., 210 N.J. 597, 605 (2012) (providing "coverage provisions are to be read broadly, exclusions are to be read narrowly, potential ambiguities must be resolved in favor of the insured, and the policy is to be read in a manner that fulfills the insured's reasonable expectations"), plaintiff offered no evidence that the policy's exclusion was contrary to its reasonable expectations. In any event, there was no need to interpret the clear language of the exclusion. See Flomerfelt v. Cardiello, 202 N.J. 432, 441 (2010) (quoting Princeton Ins. Co. v. Chunmuang, 151 N.J. 80, 95 (1997)) (stating "[e]xclusionary clauses are presumptively valid and are enforced if they are 'specific, plain, clear, prominent, and not contrary to public policy'").

Affirmed.