SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5416-15T1

DEBRA ALLYN NOWAKOWSKI, EXECUTRIX OF THE ESTATE OF JESUS SANTIAGO, t/a CAR CRAFT AUDIO AND CAR CRAFT AUTO CORP.,

Plaintiffs-Appellants,

v.

SELECTIVE WAY INSURANCE COMPANY, a New Jersey Corporation,

Defendant-Respondent,

and

RICHARDS & SUMMERS, INC., a New Jersey Corporation; THE LYNOXX GROUP, LLC, a New Jersey Limited Liability Corporation; TOWN OF DOVER, a Municipal Corporation, ALLEN BELL, JR., FIRE CHIEF JON FILOSA, and TOWN OF DOVER FIRE DEPARTMENT,

Defendants.

Argued November 28, 2017 – Decided December 12, 2017

Before Judges Fasciale and Sumners.

On appeal from Superior Court of New Jersey, Law Division, Middlesex County, Docket No. L-0908-13.

Edward H. Lee argued the cause for appellants (Mindas & Morris, LLC, attorneys; Edward H. Lee, on the brief).

Eric G. Siegel argued the cause for respondent (McElroy, Deutsch, Mulvaney & Carpenter, LLP, attorneys; Michael J. Marone, of counsel and on the brief; Eric G. Siegel, on the brief).

PER CURIAM

Debra Allyn Nowakowski (a/k/a Debra Allyn Koeppel) (Koeppel), Executrix of the Estate of Jesus Santiago (Santiago), t/a Car Craft Audio and Car Craft Auto Corp. (Car Craft) (collectively plaintiffs) appeal from a December 4, 2015 order granting summary judgment to defendant Selective Way Insurance Company (Selective); and a July 8, 2016 order denying reconsideration.[1] The judge determined that Selective had properly canceled a policy of insurance for non-payment of premiums and, as a result, he dismissed the complaint in its entirety. We affirm.

When reviewing an order granting summary judgment, we apply "the same standard governing the trial court." Oyola v. Liu, 431 N.J. Super. 493, 497 (App. Div.), certif. denied, 216 N.J. 86 (2013). We owe no deference to the motion judge's conclusions on

[1] In entering these orders, the judge denied plaintiffs' motion for partial summary judgment.

issues of law. Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995). In affirming the orders under review, we look at the facts in the light most favorable to plaintiffs. Here, we are mindful that plaintiffs had moved for the same relief, at least on the cancellation issue, implying the parties believed that resolution of the motions involved a legal question. Nevertheless, we recite the facts giving plaintiffs the benefit of all reasonable inferences.

Selective issued a commercial insurance policy to Santiago for the period of February 19, 2011 through February 19, 2012. On or about February 28, 2012, Selective prepared an invoice for the renewal of the policy for one additional year. The invoice notified plaintiffs that a renewal premium was due on March 19, 2012.

Koeppel had been married to Santiago, who passed away in March 2014. Koeppel acted as Santiago's operations manager and handled Car Craft's insurance needs. She testified that she and Santiago knew payment was due on March 19, 2012. Plaintiffs, however, did not make the payment on purpose.

On March 24, 2012, Selective issued a cancellation notice to plaintiffs. The notice stated that Selective would "continue [the insurance] coverage without lapse if full payment is received prior to [April 10, 2012]." Koeppel testified that she and

Santiago received the cancellation notice and intended not to make the payment. Koeppel corroborated this intention by candidly admitting in her deposition testimony that "we were letting all policies lapse."[2]

In addition to Koeppel, plaintiffs (Santiago and Car Craft) confirmed their unwillingness to make any further premium payments. Plaintiffs state in paragraph twelve of the statement of facts of their merits brief that "upon receipt of the premium bill . . . with respect to the renewal of the policy, [p]laintiff was not intending to pay same." Selective therefore canceled the policy after plaintiffs failed to make the requisite premium payment. On April 14, 2012, a fire occurred at Car Craft. Selective declined insurance coverage on the fire loss for non-payment of premiums.

Plaintiffs filed this complaint alleging four causes of action against Selective: improper cancellation of the policy; interference with Santiago's ability to secure insurance on the date of loss; breach of the covenant of good faith and fair dealing; and violation of the Consumer Fraud Act (CFA), N.J.S.A.

[2] In March 2012, Selective also canceled plaintiffs' homeowners' insurance policy for non-payment of premiums.

56:8-1 to -20.[3] Selective cross-moved for summary judgment contending that the undisputed facts demonstrated that it was entitled to judgment as a matter of law. The judge agreed and entered the orders under review.

On appeal, plaintiffs argue that Selective failed to strictly comply with the applicable statutory and regulatory provisions as to the cancellation of the policy. In the event we disagree, plaintiffs assert that the judge mistakenly dismissed the remaining causes of action. Plaintiffs contend therefore the judge erred by concluding that there could be no bad faith or CFA violations once he determined that Selective properly canceled the policy.

Ordinarily, the cancellation of an insurance policy must strictly comply with the statutory requirements of N.J.S.A. 17:29C-10. "An insured need not actually receive a cancellation notice in order for it to be effective, provided that the statutory proof of mailing has been satisfied." Hodges v. Pa. Nat'l Ins. Co., 260 N.J. Super. 217, 222-23 (App. Div. 1992) (citing Weathers v. Hartford Ins. Grp., 77 N.J. 228, 233-34 (1978)). The determinative factor is the mailing of the notice, not its receipt. Needham v. N.J. Ins. Underwriting Ass'n, 230 N.J. Super. 358, 369

[3] Plaintiffs had named other defendants in their pleadings, but have since settled or dismissed the complaint against them.

(App. Div. 1989). Here, plaintiffs maintain that Selective did not procure a certified mail return receipt card. We accept that contention for the purpose of this opinion. However, there are exceptions to the general rule that there be strict statutory compliance.

In general, courts have not required such compliance where the insured admits receipt of the cancellation notice. Pawlick v. N.J. Auto. Full Ins. Underwriting Ass'n, 284 N.J. Super. 629, 634 (App. Div. 1995). Here, plaintiffs admitted they purposefully declined to pay the premiums. According to Koeppel, the failure to pay the premiums meant Santiago and Car Craft were "out of insurance." She further testified that "I understand that th[e] policy . . . was no longer paid. Policy No. S1757545 was no longer my policy. [Selective was] not going to help me if anything had happened."

Koeppel, who testified as Santiago's operations manager and the individual responsible for handling Car Craft's insurance needs and whose testimony constitutes statements by a party opponent pursuant to N.J.R.E. 803(b), candidly admitted that plaintiffs deliberately decided not to pay the premium and let the policy lapse. As to the March 24, 2012 cancellation notice, Koeppel testified:

> Q. . . . And you said you and [Santiago] both read this document together?
>
> A. Yes. We were aware.
>
> Q. . . . And so you understood that this document was saying that . . . failure to pay will result in the cancellation of your policy?
>
> A. Correct.
>
> . . . .
>
> Q. . . . And it also indicated that [Selective had] not received your payment of $1,372.00 due [March 19, 2012]. [The notice stated] [w]e will continue your coverage without lapse if full payment is received prior to [April 10, 2012]. You read and understood that?
>
> A. Yes.
>
> Q. . . . And you did not pay that premium at any time before April 10, 2012, did you?
>
> A. Correct. No, we did not.

The record reflects, and we emphasize that plaintiffs concede on appeal, that plaintiffs chose not to pay the premium knowing that Selective would cancel the policy.

We conclude that plaintiffs' remaining arguments are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). We add the following brief comments.

Plaintiffs were uninsured on the date of loss because they decided to let the policy lapse, and because they declined payment for insurance from another insurance company. Likewise, there is

no credible evidence on this record that Selective engaged in bad faith, and plaintiffs have failed to make out a prima facie case of a violation under the CFA, assuming it even applies to the facts of this case.

Affirmed.