SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0388-21
A-0425-21

EVANSTON INSURANCE COMPANY,

Plaintiff-Respondent,

v.

WESTERN ENVIRONMENTAL SOLUTIONS, LLC,

Defendant-Appellant,

and

MICHAEL HENRY and WENDY GEORGIA MINOTT,

Defendants-Respondents.

EVANSTON INSURANCE COMPANY,

Plaintiff-Respondent,

v.

WESTERN ENVIRONMENTAL

SOLUTIONS, LLC,

Defendant-Respondent,

and

MICHAEL HENRY and
WENDY GEORGIA MINOTT,

Defendants-Appellants.

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Submitted March 1, 2023 – Decided March 20, 2023

Before Judges Haas and Fisher.

On appeal from the Superior Court of New Jersey, Law Division, Hudson County, Docket No. L-3052-20.

The Killian Firm, PC, attorneys for Western Environmental Solutions, LLC, appellant in A-0388-21 and respondent in A-0425-21 (Eugene Killian, Jr., and Dimitri Teresh, on the briefs).

Garrity, Graham, Murphy, Garofalo & Flinn, PC, attorneys for appellants Michael Henry and Wendy Georgia Minott, in A-0425-21 (Rudolph G. Morabito, of counsel; Francis X. Garrity, on the briefs).

Tressler LLP, attorneys for respondent Evanston Insurance Company (Timothy M. Jabbour and Michael A. O'Brien, of counsel and on the brief).

PER CURIAM

In this appeal, we consider whether a liability insurance policy – which excluded from coverage bodily injury claims arising from "[a]ll operations,

services, or work performed on Elevators" – relieved the insurer of an obligation to defend or indemnify when its insured was sued by a custodian who was injured as the result of events put in motion while he was vacuuming the elevator. Considering the policy's language, as well as extrinsic evidence that thoroughly illuminated the parties' intentions, we conclude that the exclusion enveloped only claims for bodily injuries resulting from work performed by subcontractors who regularly inspect and maintain the building's elevators. Finding that the insurer failed to sustain its burden of showing that the claim fell within this exclusion, we reverse the summary judgment entered in the insurer's favor.

The record reveals that Michael Henry was employed as a custodian by Health Services Group, which Western Environmental Solutions had hired to provide clean-up services at a health care facility in Orange. Western was under contract with Alaris Health at St. Mary's to provide routine maintenance on Alaris's building in Orange. On October 23, 2018, Henry was vacuuming the floor of an elevator car on the second floor when he caused the elevator car to rise to the third floor while the vacuum cord was still plugged into a hallway outlet on the second floor. This caused the cord to become entrapped in or by the second-floor elevator doors. Henry sought assistance from security

personnel, who obtained the assistance of other Western employees, one of whom utilized an elevator key to manually open the elevator doors. Once the elevator doors were open, Henry reached into the open shaft to retrieve the vacuum cord and fell, landing in the building's basement twenty feet below.

Henry filed suit against Western and others seeking damages for his personal injuries. Western demanded that its liability insurer – Evanston Insurance Company – provide a defense and indemnification. Evanston initially provided a defense subject to a reservation of rights while it investigated. Soon after, Evanston concluded that the claim fell within the policy exclusion about elevators and withdrew its involvement in Henry's suit.

Evanston then filed this action against Western for a declaratory judgment that it owed Western no duty concerning the Henry suit. The complaint also named Henry and his spouse, Wendy Georgia Minott, as interested parties. All these parties moved for summary judgment for a determination of whether Henry's claim was covered by Evanston's policy. The judge granted Evanston's motion and denied Western's and Henry's motions. Henry and Western filed these appeals, which we have consolidated.

As already mentioned, Western had contracted with Alaris to provide maintenance in Alaris's facility in Orange. Western also subcontracted with

another entity – Action Elevator – to inspect the elevators on a monthly basis and conduct any required maintenance and repairs.

In September 2018, Western renewed its policy with Evanston. During that process, and mere weeks before Henry's fall, Evanston advised Western that because it had engaged Action Elevator to perform the maintenance work on the building's elevators – a fact not disclosed to Evanston during the prior policy year – that Evanston "would not expect that [i.e., Action's work] to be included within the scope of the disclosed operation" and that "[t]hese operations are ineligible for [Evanston], and in order to stay on risk, we need to add the attached exclusion . . ." (emphasis added). This new provision, which was added for the policy year during which Henry was injured, excluded from coverage claims arising from "[a]ll operations, services, or work performed on Elevators," regardless of whether a claim against Western alleges "negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by" Western.

The parties' summary judgment motions required a determination of whether this exclusion applied to Henry's claim. Our review of the judge's disposition of those motions is de novo. Conley v. Guerrero, 228 N.J. 339, 346 (2017). After closely examining the policy language and the reasons for the

exclusion in question, we conclude that the trial judge erred and that summary judgment should have been entered against Evanston.

To ascertain the intended scope of the exclusion, we must look to the language the parties' employed as well as the circumstances that prompted the exclusion's insertion into the policy. The exclusion focuses on the "operations," "services," and "worked performed" on elevators. Even though prefaced with the word "all," these words do not suggest that any time an elevator is involved in causing a bodily injury, the ensuing claim will be encompassed by the exclusion. It is only the operations, services or work performed "on" elevators that is excluded from coverage. To be sure, the word "operation" may, depending on its context, be viewed broadly, see, e.g., State v. Thompson, 462 N.J. Super. 370, 374-75 (App. Div. 2020), and might at times suggest many types of involvements and encounters with the facility's elevators, such as an invitee entering an elevator and slipping and falling while pushing a button for an upper floor. That invitee could be said, in one sense, to be operating the elevator, but because the word "operation" has multiple meanings – and certainly is broad enough to encompass the example of an invitee slipping on the elevator's floor – its particular meaning here must be understood in light of the other verbs with which it is conjoined; in other words, in interpreting

statutes, contracts, and other writings, we recognize that "words of a feather flock together." Gil v. Clara Maass Med. Ctr., 450 N.J. Super. 368, 386 (App. Div. 2017); accord Shelton v. Restaurant.com, Inc., 214 N.J. 419, 440 (2013); Germann v. Matriss, 55 N.J. 193, 220-21 (1970).

So, in properly interpreting the scope of the word "operation" in the exclusion, we give it the connotation that is most akin to the phrases "service of" or "working on" suggested by the two other verbs in the exclusion. This understanding, coupled with the smoking gun provided by the underwriter's expression of why the exclusion was required, reveals that Evanston intended to exclude only claims of bodily injuries arising from the "operations, services, or work performed" by Action Elevator. See YA Global Investments, LP v. Cliff, 419 N.J. Super. 1, 11-12 (App. Div. 2011) (recognizing the propriety of using extrinsic evidence to interpret an insurance policy, so long as that evidence is not used to alter the words of an unambiguous contract). Because this is the only common sense interpretation suggested by the language of the exclusion and the circumstances that prompted its inclusion in the policy, we conclude that Evanston failed to sustain its burden of "bring[ing] the case within the policy exclusion," Burd v. Sussex Mut. Ins. Co., 56 N.J. 383, 399 (1970); see also

Norman Int'l, Inc. v. Admiral Ins. Co., 251 N.J. 538, 541 (2022), and that summary judgment should have been entered against Evanston.

Reversed and remanded for entry of summary judgment in favor of Western and Henry.

I hereby certify that the foregoing is a true copy of the original on file in my office.

CLERK OF THE APPELLATE DIVISION