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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0962-21

STATE-COMM, LLC,

Plaintiff-Appellant,

v.

AXIS INSURANCE COMPANY,

Defendant-Respondent.

Argued December 5, 2022 – Decided July 12, 2023

Before Judges Whipple, Smith and Marczyk.

On appeal from the Superior Court of New Jersey, Law Division, Middlesex County, Docket No. L-4427-20.

Jordan Rickards argued the cause for appellant (Rudikh & Associates, LLC, attorneys; Zlata Rudikh, on the briefs).

Kristin V. Gallagher argued the cause for respondent (Kennedys CMK LLP, attorneys; Kristin V. Gallagher, Frank M. Falcone, and Tyler J. Pierson, of counsel and on the brief).

PER CURIAM

Plaintiff State-Comm, LLC (State-Comm) appeals from the November 5, 2021 order granting defendant Axis Insurance Company's (Axis) motion for summary judgment. This is an insurance coverage action stemming from an underlying suit against State-Comm arising from a deadly apartment fire. Based on our review of the record and applicable legal principles, we affirm.

I.

State-Comm is owned by Angela Tadross (Tadross) and her husband. In 1999, State-Comm purchased two adjacent properties in Perth Amboy: 109 Commerce Street (Commerce Street property) and 374-380 State Street (State Street property). The Commerce Street property has two residential apartments. The State Street property is comprised of four residential units and three commercial units.¹

In 2017, State-Comm purchased a premises liability insurance policy from Certain Underwriters at Lloyd's London (Lloyd's) that insured the Commerce Street property. State-Comm also purchased, through a different agent, an Axis policy, which insured the State Street property. The Axis policy provided for

¹ The commercial units consist of a check cashing business, a pharmacy (owned by Tadross and her husband), and a grocery store.

both premises liability and commercial general liability (CGL) coverage. The only property listed anywhere on the Axis policy is the State Street property.

The Axis policy's "Designated Premises Limitation" endorsement "limits insurance to the designated premises and business/operations associated with the designated premises." The endorsement further states the policy insures for "bodily injury, property damage, personal injury[,], or advertising injury arising out of only . . . [t]he ownership, maintenance, or use of the designated premises or any property located on the premises." The Designated Premises Limitation endorsement further provides that Axis insures for bodily injury on the designated premises arising out the "[o]perations on such premises (or elsewhere) which are necessary/related to the ownership, maintenance, or use of such premises" The endorsement also contains language identifying the "Description/Location of Subject Premises" as follows: "As Per Location Of Premises Supplemental Declarations[.]" As discussed more fully below, the supplemental declarations section of the policy identifies the State Street property, but not the Commerce Street property.

Tadross completed a risk questionnaire when she applied for the Axis policy. In response to "number of buildings," Tadross listed "[one]." In response to "number of units," she noted "[three] business/[four] apts." These

responses aligned with the description of the State Street property building and corresponding units. She did not identify or reference the Commerce Street property in any manner. In the "Commercial Insurance Application," Tadross only listed the State Street property under the "Premises Information" section, and for the "Nature of Business" she described a mixed commercial and residential use building, and identified four residential units and three commercial units.² Tadross made no reference to the commercial and residential landlord business she claimed to operate out of a room in the pharmacy and further did not disclose State-Comm's ownership of the Commerce Street property or the residential units.³ When asked why the real estate management business was omitted from the Axis policy application, Tadross stated she did not believe the application to be an "official document" and the information "didn't come to . . . mind"

On February 2, 2018, a fire occurred at the Commerce Street property. Tragically, two tenants died in the fire, and several other tenants were injured.

² Tadross signed the application and certified her answers were true, correct, and to the best of her knowledge.

³ State-Comm's official address, as registered with the New Jersey Division of Revenue and Enterprise Services, is the 21 Lighthouse Drive address. The lease agreements also directed tenants to forward their rental payments to the Lighthouse Drive address.

Various claims were asserted against State-Comm, alleging it negligently maintained the Commerce Street property. State-Comm ultimately settled with the plaintiffs for \$1.5 million, the full amount available under the Lloyd's policy. As part of the settlement, State-Comm assigned its rights under the Axis policy to the plaintiffs in the personal injury action. Thereafter, State-Comm filed a declaratory judgment action seeking excess coverage under State-Comm's CGL policy with Axis.

On October 4, 2021, Axis filed a motion for summary judgment. On October 25, 2021, State-Comm filed opposition to Axis' motion for summary judgment, as well as a cross-motion for summary judgment concerning the reasonableness of the settlement.⁴

On November 5, 2021, the trial court held oral argument on the summary judgment motions. The court granted Axis' motion for summary judgment and dismissed State-Comm's complaint with prejudice. The court also denied State-Comm's cross-motion for summary judgment. The court found summary judgment was appropriate because the Designated Premises Limitation endorsement limited coverage to the State Street property and did not extend to the adjacent property located on Commerce Street. The court reasoned "the

⁴ The issues regarding the reasonableness of the settlement are not before us.

insurance company has . . . to know what it is insuring." It continued that it was unreasonable to "expect an insurer to be collecting a certain amount of premium based on thinking it covers one building and then finding out . . . [it] actually covered another." Additionally, the trial court explained there was no nexus between the State Street property and the injuries that arose from the fire at the Commerce Street property.

The court further held Axis established its equitable fraud claim and rescission of the policy was warranted based on State-Comm's material misrepresentations during the insurance application process. The court stated, "if you're asked, '[w]hat buildings are in your operation,' and you say one and you leave out the others, that's a material misrepresentation." The court noted there was no need to show the insured intended to deceive the insurance company to prevail on equitable fraud, and an innocent misrepresentation can satisfy the requirements of the doctrine to justify rescission. Ledley v. William Penn Life Ins. Co., 138 N.J. 627, 636 (1995). This appeal followed.

II.

State-Comm contends provisions in the Axis policy are ambiguous, unclear, and misleading. Therefore, it asserts the policy should be construed against Axis and in favor of State-Comm's reasonable expectation the

Commerce Street property is covered under the policy. State-Comm further argues rescission is not warranted under the equitable fraud doctrine, as it was not directly asked about its ownership of other buildings.⁵

We review a ruling on a summary judgment motion under the same standard that governed the trial judge. Templo Fuente De Vida Corp. v. Nat'l Union Fire Ins. Co. of Pittsburgh, 224 N.J. 189, 199 (2016). Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2(c); Brill v.

⁵ State-Comm also indicates discovery was incomplete. This argument was not raised in a point heading. Moreover, State-Comm did not raise this issue in opposition to Axis' summary judgment motion or in its own cross-motion for summary judgment. As a result, this issue was not addressed by the trial court. Although Axis filed a motion to extend discovery shortly after filing its motion for summary judgment, it was limited to the issue of the reasonableness of the settlement in the underlying case. State-Comm consented to the motion to extend. Axis and this court have "a right to know precisely what legal arguments are being made and . . . need not respond to . . . assertions" that are made untethered to the point headings required by Rule 2:6-2(a)(6) properly identifying the arguments relied on to support the appeal. Almog v. Isr. Travel Advisory Serv. Inc., 298 N.J. Super. 145, 155 (App. Div. 1997); see also Mid-Atl. Solar Energy Indus. Ass'n v. Christie, 418 N.J. Super. 499, 508 (App. Div. 2011) (refusing to address an issue raised in a two-sentence paragraph in a brief "without a separate point heading, in violation of Rule 2:6-2(a)[(6)]"). Here, we limit our consideration to "the issues . . . properly made under appropriate point headings." Almog, 298 N.J. Super. at 155.

Guardian Life Ins. Co. of Am., 142 N.J. 520, 528-29 (1995). We "must accept as true all the evidence which supports the position of the party defending against the motion and must accord [them] the benefit of all legitimate inferences which can be deduced therefrom" Brill, 142 N.J. at 535 (quoting Lanzet v. Greenberg, 126 N.J. 168, 174 (1991)).

The trial court's interpretation of an insurance contract is a question of law, which this court reviews de novo. Polarome Int'l, Inc. v. Greenwich Ins. Co., 404 N.J. Super. 241, 260 (App. Div. 2008). The "trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Id. at 259-60 (quoting Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)).

State-Comm contends the provisions of the CGL policy it purchased from Axis are unclear and ambiguous insofar as the policy's declaration page does not expressly state coverage is limited to only one building—the State Street property. It further argues the Designated Premises endorsement refers to property designated in the "Premises Supplemental Declarations," but that no such supplemental declarations appear in the policy. Because of these purported ambiguities, State-Comm contends the policy should be construed in favor of its

reasonable expectations, and coverage should be extended to the Commerce Street property.

When "interpreting insurance contracts, we first examine the plain language of the policy and, if the terms are clear, they 'are to be given their plain, ordinary meaning.'" Pizzullo v. N.J. Mfrs. Ins. Co., 196 N.J. 251, 270 (2008) (quoting Zacarias v. Allstate Ins. Co., 168 N.J. 590, 595 (2001)). The policy must "be enforced as written when its terms are clear" so the "expectations of the parties will be fulfilled." Flomerfelt v. Cardiello, 202 N.J. 432, 441 (2010) (citing Kampf v. Franklin Life Ins. Co., 33 N.J. 36, 43 (1960), and Scarfi v. Aetna Cas. & Sur. Co., 233 N.J. Super. 509, 514 (App. Div. 1989)).

If an insurance policy is ambiguous, courts will construe the terms in favor of the insured. Mac Prop. Grp. LLC & The Cake Boutique LLC v. Selective Fire & Cas. Ins. Co., 473 N.J. Super. 1, 18 (App. Div. 2022) (quoting Oxford Realty Grp. Cedar v. Travelers Excess & Surplus Lines Co., 229 N.J. 196, 208 (2017)). This doctrine only applies if there is a genuine ambiguity in the contract, and "the phrasing of the policy is so confusing that the average policyholder cannot make out the boundaries of coverage" Templo Fuente De Vida Corp., 224 N.J. at 200 (quoting Progressive Cas. Ins. Co. v. Hurley, 166 N.J. 260, 274 (2001)).

Regarding the issue of whether the Axis CGL policy is ambiguous and should be construed against Axis and in favor of State-Comm's reasonable expectations, we agree with the trial court there was no such ambiguity. State-Comm's policy with Axis is neither unclear nor ambiguous. The Designated Premises Limitation endorsement identifies the "Description/Location of Subject Premises" by reference to the Premises Supplemental Declarations. State-Comm asserts there is no such supplemental declarations page, and one has to go on a "scavenger hunt" to find the supplemental declarations relied upon by Axis. It also contends the supplemental declarations relied on by Axis applies to the commercial property portion of the policy as opposed to the CGL. We are unpersuaded.

The supplemental declarations page cited by Axis is not buried in some obscure section of the policy. Rather, it is located two pages after the Designated Premises Limitation specifically referencing the supplemental declarations. Moreover, that it may be contained in the commercial property portion of the policy is not significant as it is a single policy. Furthermore, the supplemental declarations section at issue is specifically referenced by the Designated Premises portion of the policy as the location where the designated properties are identified. Lastly, the supplemental declarations page only

identifies the State Street property, consistent with the earlier portions of the policy.

"[A] court should not 'engage in a strained construction to support the imposition of liability' or write a better policy for the insured than the one [they] purchased." Chubb Custom Ins. Co. v. Prudential Ins. Co. of Am., 195 N.J. 231, 238 (2008) (quoting Progressive, 166 N.J. at 272-73). Thus, if there is no ambiguity in a policy's terms, those terms should be enforced "as written." Zacarias, 168 N.J. at 597. The sole property listed anywhere in the Axis policy is the State Street property. Aside from the supplemental declarations page noted above, Axis' CGL declaration page also only identifies the State Street property in the section entitled, "Location, Construction And Occupancy Of Premises You Own, Rent Or Occupy." It would not be reasonable for an insured to expect there to be coverage for an undisclosed property under the facts of this case. Not only does the policy fail to reference the Commerce Street property, but when Tadross met with her insurance agent, she only disclosed ownership of the State Street property. Similarly, in the risk questionnaire, she made no mention of the Commerce Street property, but instead listed one building—the State Street property. State-Comm would have no reasonable expectation for coverage under these circumstances. In short, the provisions of the policy do

not create a genuine ambiguity and are not so confusing that the average policyholder cannot make out the boundaries of coverage. Templo Fuente De Vida Corp., 224 N.J. at 200.

Given there was no disclosure of the Commerce Street property, there was no way for Axis to have known there was another property for which it could potentially be responsible. What if State-Comm owned twenty other undisclosed properties? State-Comm is not entitled to coverage for an unidentified operation at an undisclosed building. Axis should not be left to speculate about the properties a party may own or businesses it runs. This would require Axis to be responsible for properties for which it did not have an opportunity to assess the associated risks or adjust the corresponding premiums.

We next turn to the section of the Designated Premises Limitation endorsement, which confines coverage to injuries "arising out of only the . . . ownership, maintenance, or use of the designated premises . . . [and] [o]perations on such premises (or elsewhere) which are necessary/related to the ownership, maintenance, or use of such premises" We agree the trial court correctly determined there was no nexus between the operations of the State Street property and the injuries the plaintiffs sustained in the underlying case. The trial judge properly found the tenuous connection between the Commerce Street

and State Street properties—namely that State-Comm would collect Commerce Street rent from the State Street office and speak with contractors about the Commerce Street property from the State Street office—is not the nexus required for coverage. There is no record evidence to support the proposition the injuries sustained at the Commerce Street property were related to the ownership, maintenance, or use of the State Street property. Notably, Tadross acknowledged the management operations at the State Street property were not related to injuries at the Commerce Street property.

Lastly, because State-Comm was not entitled to coverage under the Axis policy, we need not address whether the trial court misapplied the law regarding equitable fraud and rescission of the insurance contract. To the extent we have not specifically addressed any remaining arguments raised by State-Comm, we conclude they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

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



CLERK OF THE APPELLATE DIVISION