SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1488-22

ROUTE 52 CONSTRUCTORS,

Plaintiff-Respondent/
Cross-Appellant,

v.

NEW JERSEY TURNPIKE AUTHORITY,

Defendant-Appellant/
Cross-Respondent.

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Argued May 21, 2024 – Decided June 12, 2024

Before Judges Paganelli and Whipple.

On appeal from the Superior Court of New Jersey, Law Division, Middlesex County, Docket No. L-8536-20.

Dennis T. Smith argued the cause for appellant/cross-respondent (Pashman Stein Walder Hayden, PC, attorneys; Dennis T. Smith, of counsel and on the briefs).

Brian Russell Tipton argued the cause for respondent/cross-appellant (Florio Perrucci Steinhardt

Cappelli Tipton & Taylor, LLC, attorneys; Katharine Ann Fina, on the briefs).

PER CURIAM

Defendant New Jersey Turnpike Authority (the Authority) appeals from a December 16, 2022 order granting plaintiff Route 52 Constructors (Route 52) summary judgment and requiring the Authority to pay a Builder's Risk Insurance (BRI) policy deductible. Route 52 cross-appeals from an order of the same date granting the Authority summary judgment and a dismissal, without prejudice, of Route 52's Prompt Payment Act (PPA), N.J.S.A. 2A:30A-1 to -2, claim. We affirm both orders.

We glean the facts and procedural history from the motion records. In December 2012, the Authority issued a public bid seeking proposals "for the renovation and construction of a new bridge on a segment of the Garden State Parkway" (the Project). The initial bid documents included the Authority's 2004 Standard Specifications,[1] Supplementary Specifications,[2] and the Owner Controlled Insurance Program (OCIP) Manual.

[1] The Standard Specifications are issued by the Authority and govern the construction of the Authority's projects. The Standard Specifications are "made a part" of the Authority's Contracts.

In relevant part, the Standard and Supplementary Specifications provided:

> SECTION 101 – GENERAL INFORMATION
>
> . . . .
>
> | | |
> |---|---|
> | OCIP or Wrap-up | Shall mean Owner provided and paid insurance program with the insurance coverages and limits described in Subsection 106.20. |
>
> . . . .
>
> | | |
> |---|---|
> | OCIP Manual | Is the document which details all of the parameters of the OCIP. The OCIP Manual is a Contract Document and is hereby incorporated by reference in the contract. . . . |
>
> . . . .
>
> SECTION 102 – BIDDING REQUIREMENTS AND CONDITIONS
>
> . . . .
>
> The Contractor is advised that this Contract is entered solely on the basis that insurance will be provided through an [OCIP] with only some insurance such as,

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[2] The Supplementary Specifications "represent[ed] modifications to the corresponding subsections of the Standard Specifications." "Any applicable provision in the Standard Specifications not amended by and not in conflict with the Supplementary Specifications" remain "in full effect."

but not limited to, Automobile Liability, to be provided by the Contractor. . . .

. . . .

(A) INSURANCE TO BE PROVIDED BY OWNER

The Owner, prior to the commencement of the Work, will provide and maintain at its own expense the following insurance coverages for the benefit of the Contractor . . . performing Work at the work site. . . .

. . . .

(4) All Risk Builders Risk/Installation Floater Insurance Policy. The Authority will not provide [BRI].

. . . .

(B) NOTES AND ADDITIONAL COMMENTS

. . . .

(2) All premiums for the insurance set forth in Section A above, will be paid by the Owner, and any and all adjustments, including return premiums and dividends for Worker's Compensation Insurance, General Liability Insurance and [BRI] shall be paid to and belong to the Owner. . . .

(3) Loss, if any, covered by the [BRI] is to be adjusted by and payable to the Owner. . . .

. . . .

> (14) Owner shall have no obligation to provide insurance other than that referred to in this Contract and in the OCIP Manual. . . .

Subsection 102.03(C) required the Contractor to procure, at its sole cost and expense certain policies of insurance. The Contractor was not required to procure BRI. Therefore, when the bid was issued, BRI was not to be provided by the Authority nor the Contractor.

The OCIP Manual provided "the Authority w[ould] pay insurance premiums including deductibles or self-insured retention unless otherwise stated in the Contract Documents for the OCIP coverage described in th[e] Manual."

On February 19, 2013, the Authority issued Addendum No. 5 (Addendum) to the original plans and specifications. The Addendum became part of the contract documents. In relevant part, the Addendum was to replace Supplemental Specification 106.20(A)(4) and stated, "[t]he Authority w[ould] provide [BRI] covering the interests of each Insured, including Contractors."

In March 2013, Route 52 submitted its bid for the Project. In May 2013, the Authority awarded the bid to Route 52 and provided it with an executed contract. The Authority's cover letter stated the "OCIP Insurance in this matter appear[ed] to be in order" and provided Route 52 with "formal Notice to Proceed."

In July 2013, the Authority advised Route 52 that "[BRI wa]s going to be required for th[e P]roject." The Authority "asked" Route 52 to "furnish a price quote for coverage." The Authority further advised that "[s]pecifics regarding levels of coverage w[ould] be provided."

Route 52 responded to the Authority and stated it would "take the lead in securing a quote for" the BRI. Route 52 requested the policy "limits, deductible and any other coverage requirements." Route 52 indicated its "insurance brokers [would] start working on this right away."

The Authority "instructed [Route 52] to purchase the coverage, pay the premium, and request a change order from [the Authority] for the reimbursement of the premium." Route 52 procured the insurance and paid the premium. The parties executed a change order for the premium amount, and the Authority reimbursed Route 52.

The BRI policy designated the Authority as the "Named Insured" and, as relevant here, "all contractors and subcontractors of every tier" as "Additional Insureds." Thus, under the policy, Route 52 was considered an "Additional Insured."

The Policy provided "from the amount of each adjusted loss the amount stated [in the deductible table] shall be deducted and shall be the retained

liability of the insured." Moreover, the policy provided that "'[i]nsured' . . . shall include both the Named Insured[—the Authority—]and Additional Insured(s)[—Route 52]." The chart of deductibles included a $500,000 deductible.

Route 52 alleged that in August 2015, it was transporting a "175-foot[-]long precast concrete girder on the Project site" "when the trailer moving the girder unexpectedly tipped over, dropping the girder, rendering it unusable, and effectively destroying it."

In July 2016, a claim was made for the loss involving the destroyed girder under the BRI policy. In June 2017, the insurance adjuster advised Route 52 and the Authority, the final proposed adjustment for the destroyed girder was $521,051. Therefore, after application of the deductible, the net claim was $21,051. Route 52 accepted the insurance company's proposed adjustment.

In November 2017, Route 52 advised the Authority that "[o]n several occasions [during] th[e] year [it] ha[d] asked . . . for instructions on how [it] should invoice for the $500,000 deductible that [the Authority] owe[d] to Route 52 . . . for th[e] incident." Moreover, Route 52 stated "[i]n addition, [the insurance company] ha[d] twice asked . . . for payment instructions with respect to the $21,051." Route 52 provided an invoice for $21,051.

In December 2017, Route 52 advised the Authority that as of November 7, 2017, it had completed the project work and sought release of the final retainage.

In September 2018, after further inquiries regarding the BRI claim, the Authority responded to Route 52, stating Section 106.20 "clearly support[ed] that proceeds and adjustments to any BR[I] claim belong to the Authority." In response Route 52 provided the Authority with a notice of intent to file a claim in accord with the contract documents.

In October 2018, the Authority denied Route 52's claim. The Authority explained:

> Route 52 should have been aware that if it made a claim for damaged property under the policy, that claim would be subject to a $500,000 deductible. Route 52 could have sought to obtain gap insurance coverage for the deductible and should not look to [the Authority] for payment especially since responsibility for the accident, a concrete beam falling off a truck, appears to rest with Route 52 or its subcontractors.

In November 2018, Route 52 contacted the Authority and noted the Authority was "withholding $1.4 million in retention." Further, Route 52 stated it recognized the Authority "require[d] a 'full release of the Authority' in connection with 'Final Payment.'" Therefore, Route 52 suggested it "would either need an exception to the full release to reserve [its] rights to pursue the

[BRI c]laim, or the Authority could withhold some small amount . . . to keep the Contract open and to avoid the full release required by Section 108.05."

In early 2019, the Authority and Route 52 agreed to "reduce the Release of Retainage to $1,000,000[] from the current" approximate value of $1,400,000. Route 52 made it "clear and mutually understood that Route 52 retain[ed] and reserve[d] all rights with respect to the [BRI c]laim" and "reserve[d] the right to recover the remaining retainage and interest thereon." In March 2019, the Authority paid Route 52 $1,000,000 from the retainage.

In December 2020, Route 52 filed a complaint against the Authority. The complaint was amended in February 2021. The complaint sought a declaration that Route 52 was entitled to all proceeds of the BRI claim including the Authority's payment of the $500,000 deductible. In addition, Route 52 alleged counts for breach of contract and unjust enrichment—asserting its rights to the BRI proceeds and the Authority's obligation to pay the deductible—and misrepresentation asserting it would not have accepted the BRI adjustment of the loss but for the misrepresentation or omission by the Authority that it would not pay the deductible and attempt to retain the BRI payout. Moreover, Route 52 alleged the Authority violated the PPA by not paying the retainage within thirty days and sought payment of the retainage plus "interest at a rate equal to

the prime rate plus one percent, attorneys' fees and costs." The Authority filed an answer to the complaint.

In February 2022, following unsuccessful mediation, the Authority paid the remainder of the retainage except $500. After the completion of discovery, Route 52 filed a motion for summary judgment. The Authority filed a cross-motion for summary judgment.

In an oral opinion, as to the issue of which party would be responsible for the payment of the deductible, the court found:

> The OCIP provided in section 106.20(A) that the contract . . . [wa]s entered solely on the basis insurance would be provided through [the OCIP].
>
> On February 19[], 2013, there was an [A]ddendum . . . issued, which [replaced] section . . . 106.20(A)(4)[.] . . . [The Addendum] provided that the Authority would provide [BRI] covering the risk of each insured. . . . [T]his was documentation that was submitted before any final bids were accepted. And Section 106.20(8) specifically instruct[ed] the contractors not to include insurance coverage in their bid, which [wa]s why once the contract was entered into . . . [the] insurance policy was subsequently obtained, [and] the premium was paid by [the Authority].
>
> Under th[e]se facts and under Section 4 of the OCIP Manual, it provide[d] that the deductible [wa]s to be paid by [the Authority].

In addition, the judge considered:

> the . . . actual insurance policy had the general language that only [the] insured[s] . . . had to pay, and clearly both [Route] 52 and [the Authority] were named as insured[s] under the policy[] . . . . Reading the language . . . and giving it every portion of plain interpretation, the [c]ourt f[ound] that [the Authority] . . . [wa]s required to pay . . . the deductible.

Moreover, in considering Route 52's claim under the PPA, the judge found:

> the statutory requirements [are] that all the elements [of the contract] be done and completed. And that clearly did not occur . . . . The final forms were not completed. There was not a renunciation of any claims, waivers of any sort, therefore, the clock did not start running on the PPA in light of the incomplete submission. So, on that point [the Authority wa]s entitled to summary judgment.

I.

We begin our discussion with a review of the principles governing our analysis. We review the grant of summary judgment de novo, applying the same legal standards as the trial court. Green v. Monmouth Univ., 237 N.J. 516, 529 (2019). Thus, we consider "whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995); see R. 4:6-2. "If there is no genuine issue of material fact, we must then 'decide

whether the trial court correctly interpreted the law.'" DepoLink Court Reporting & Litig. Support Servs. v. Rochman, 430 N.J. Super. 325, 333 (App. Div. 2013) (quoting Massachi v. AHL Servs., Inc., 396 N.J. Super. 486, 494 (App. Div. 2007)). "A trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995) (citing State v. Brown, 118 N.J. 595, 604 (1990); Dolson v. Anastasia, 55 N.J. 2, 7 (1969); Pearl Assurance Co. v. Watts, 69 N.J. Super. 198, 205 (App. Div. 1961)).

A.

The dispute regarding which party is responsible for the payment of the BRI deductible requires the interpretation of the parties' contract.[3] "Contract interpretation is a question of law." Hess Corp. v. ENI Petroleum US, LLC, 435 N.J. Super. 39, 46 (App. Div. 2014) (citing Selective Ins. Co. of Am. v. Hudson E. Pain Mgmt. Osteopathic Med. & Physical Therapy, 210 N.J. 597, 605 (2012)). "Accordingly, we . . . look at the contract with fresh eyes." Kieffer v. Best Buy, 205 N.J. 213, 223 (2011) (citing Manalapan Realty, 140 N.J. at 378).

[3] The Authority does not dispute Route 52's entitlement to the payment of $21,051 (the loss minus the deductible). It only challenges who should pay the deductible.

"[O]ur inquiry is governed by 'familiar rules of contract interpretation.'" Barila v. Bd. of Educ., 241 N.J. 595, 615 (2020) (quoting Serico v. Rothberg, 234 N.J. 168, 178 (2018)). "The judicial task is simply interpretative; it is not to rewrite a contract for the parties better than or different from the one they wrote for themselves." Kieffer, 205 N.J. at 223 (citing Zacarias v. Allstate Ins. Co., 168 N.J. 590, 595 (2001)). "Thus, we . . . give contractual terms 'their plain and ordinary meaning. . . .'" Ibid. (quoting M.J. Paquet, Inc. v. N.J. Dep't of Transp., 171 N.J. 378, 396 (2002)).

"It is well-settled that '[c]ourts enforce contracts based on the intent of the parties, the express terms of the contract, surrounding circumstances and the underlying purpose of the contract.'" In re Cty. of Atl., 230 N.J. 237, 254 (2017) (alteration in original) (internal quotation marks omitted) (quoting Manahawkin Convalescent v. O'Neill, 217 N.J. 99, 118 (2014)). "A writing is interpreted as a whole and all writings forming part of the same transaction are interpreted together." Nester v. O'Donnell, 301 N.J. Super. 198, 210 (App. Div. 1997) (quoting Barco Urban Renewal Corp. v. Hous. Auth. of Atl. City, 674 F.2d 1001, 1009 (3d Cir. 1982)). "[W]here several writings are made as part of one transaction, relating to the same subject matter, they may be read together as one instrument, and the recitals in one may be explained, amplified or limited by reference to the other -- the one

draws contractual sustenance from the other." Schlossman's, Inc. v. Radcliffe, 3 N.J. 430, 435 (1950) (citing Schlein v. Gairoard, 127 N.J.L. 358, 360-61 (E. & A. 1941)).

The Authority posits two arguments to avoid responsibility for paying the deductible. First, the Authority argues the BRI policy was not part of the OCIP. The Authority explains that the OCIP procurement steps were not followed regarding the BRI policy, and therefore, we need only construe the wording of the BRI policy to determine who is responsible for the deductible. We disagree.

We conclude the OCIP and, therefore, the OCIP Manual were implicated in the procurement of the BRI. The Addendum was issued to replace language in the contract documents in the OCIP section and the Authority "would provide BRI." A plain and ordinary reading of the Addendum leads to the conclusion that the Authority was providing BRI under the OCIP. We reach this conclusion despite the parties' alleged failure to strictly comply with the OCIP's procurement procedures for the BRI policy.

Once the BRI policy is considered within the OCIP, the Authority's OCIP Manual becomes instrumental. In the manual, the Authority assumed responsibility for the payment of "deductibles." The Authority asserts "importantly[] the addendum [wa]s silent on who would pay the deductible for a claim brought by an Insured under the policy." While this assertion is true,

the assertion fails to reconcile the Addendum's silence, as to payment of the deductible, with the pre-existing language in the Authority's OCIP Manual, wherein the Authority stated it would pay deductibles.

Moreover, were we to adopt the Authority's theory, which we do not, that the BRI stood alone and had no relation to the OCIP, we would nonetheless conclude the Authority was responsible for the payment of the BRI deductible. The language of the BRI provided "from the amount of each adjusted loss the amount stated [in the deductible table] shall be deducted and shall be the retained liability of the [i]nsured." The policy defined "insured" to "include both the Named Insured[—the Authority—]and Additional Insured(s)"—Route 52. Therefore, the Authority had responsibility for the deductible.

Thus, we conclude the Authority was responsible for the payment of the deductible. In issuing the Addendum, the Authority undertook the obligation to "provide" BRI. In addition, in its OCIP Manual, the Authority provided it would pay deductibles. Finally, even considering the BRI policy separately from the OCIP, the policy provided the deductible would be the "retained liability of the [i]nsured." The Authority was the Named Insured.

B.

Route 52 argues the judge erred in finding the Authority did not violate the PPA. "Appellate review of [an] issue involving statutory construction is de novo." All the Way Towing, LLC v. Bucks Cty. Int'l, Inc., 236 N.J. 431, 440-41 (2019) (citing Cashin v. Bello, 223 N.J. 328, 335 (2015)).

Under the PPA, when

> a prime contractor has performed in accordance with the provisions of a contract with the owner and the billing for the work has been approved and certified . . . , the owner shall pay the amount due to the prime contractor for each periodic payment, final payment or retainage monies not more than [thirty] calendar days after the billing date[] . . . .
>
> [N.J.S.A. 2A:30A-2(a) (emphasis added).]

"If a payment due . . . is not made in a timely manner, the delinquent party shall be liable for the amount of money owed under the contract, plus interest at a rate equal to the prime rate plus [one percent]." N.J.S.A. 2A:30A-2(c). In addition, if "any civil action [is] brought to collect payments . . . the prevailing party shall be awarded reasonable costs and attorney fees." N.J.S.A. 2A:30A-2(f).

"When we interpret a statute, our paramount goal is to 'ascertain and effectuate the Legislature's intent.'" Goldhagen v. Pasmowitz, 247 N.J. 580, 599 (2021)

(quoting Cashin, 223 N.J. at 335). We have previously held "the entire thrust of the [PPA] is to ensure that contractors . . . receive full payment for their work promptly on completion." JHC Indus. Servs., LLC v. Centurion Cos., Inc., 469 N.J. Super. 306, 314 (App. Div. 2021).

We "ascribe to the statutory words their ordinary meaning and significance and read them in context with related provisions so as to give sense to the legislation as a whole." W.S. v. Hildreth, 252 N.J. 506, 519 (2023) (quoting DiProspero v. Penn, 183 N.J. 477, 492 (2005)). If the statute's meaning is clear, "we need look no further." Mason v. City of Hoboken, 196 N.J. 51, 68 (1999) (citing DiProspero, 183 at 492).

Route 52 argues the Authority violated the PPA when with "absolutely no justification" it retained approximately $400,000 in accord with the parties' March 2019 agreement. Route 52 acknowledges the existence of the agreement but, contends it "had no choice but to accept the[] terms" of the agreement otherwise "it would forfeit its claim against [the Authority] for the [BRI] deductible and insurance proceeds." Route 52 further acknowledges section 108.5 of the Contract Documents required a "full release" to the Authority "in connection with the final payment" and refused to provide the release not wanting to forfeit its claims.

Here, the parties reached an agreement on retainage and Route 52 acknowledges it did not provide the release required by the Contract Documents. Under these circumstances, we conclude the PPA was not violated because Route 52 had not "performed in accordance with the provisions of [the] contract," N.J.S.A. 2A:30A-2(a), a predicate for recovery under the PPA.

To the extent we have not specifically addressed any of the parties' remaining contentions, we conclude they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.