NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3314-12T3

BRUCE W. VAN SAUN and KATHLEEN W. VAN SAUN, his wife, ATLEE C. VAN SAUN, EMILY C. VAN SAUN and MILES W. VAN SAUN,

Plaintiffs-Appellants/
Cross-Respondents,

v.

JEFFERSON INSURANCE COMPANY, WORLD ACCESS SERVICE CORP.,

Defendants-Respondents/
Cross-Appellants,

and

ACCESSAMERICA TRAVEL INSURANCE AND ASSISTANCE and MONDIAL ASSISTANCE USA,

Defendants.

Argued June 3, 2014 – Decided June 17, 2014

Before Judges Alvarez, Ostrer and Carroll.

On appeal from the Superior Court of New Jersey, Law Division, Essex County, Docket No. L-081-12.

Richard A. Dunne argued the cause for appellants/cross-respondents.

James M. Cutler argued the cause for respondents/cross-appellants.

PER CURIAM

These cross-appeals arise out of a claim for benefits under a travel insurance policy that plaintiffs Bruce W. Van Saun and other Van Saun family members obtained four days before their scheduled departure for a long-scheduled vacation to the Dominican Republic. The Van Saun family's December 27, 2010, flight from the New York area was cancelled because of a blizzard. They were nonetheless liable for non-refundable hotel costs of $6918. They sought reimbursement from defendant-insurer Jefferson Insurance Company (Jefferson), but its claim administrator denied the claim. The insurer relied on a policy exclusion for "any problem or event that could have reasonably been foreseen or expected when you purchased your plan." (emphasis omitted). The insurer asserted that the insureds were aware of the widely predicted storm when they purchased their policy.

The Van Sauns ultimately filed suit against Jefferson and others in January 2012.[1] Although the precise causes of action are not entirely clear, we discern in count one a claim of both

[1] Plaintiffs named Jefferson, World Access Service Corp. (WASC), AccessAmerica Travel Insurance and Assistance (Access), and Mondial Assistance USA (Mondial). Defendants stated in their answer that WASC, as plan administrator, accepted the premium for plaintiff's coverage with Jefferson. Defendants alleged that AGA Service Company was the successor to WASC. Also, Access and Mondial were simply brand names.

breach of contract and fraud in the inducement. The Van Sauns sought a declaration of coverage, reimbursement of their losses, punitive damages based on fraud, and attorney's fees. In the second count, plaintiffs alleged a violation of the Consumer Fraud Act (CFA), N.J.S.A. 56:8-1 to -20, and sought treble damages, attorney's fees, and other relief. In count three, plaintiffs alleged that they suffered "unwarranted anguish and anxiety" and sought consequential damages, punitive damages, and attorney's fees. Finally, in count four, plaintiffs alleged breach of the covenant of good faith and fair dealing, and bad faith processing of their claim under Pickett v. Lloyd's, 131 N.J. 457 (1993). They sought consequential and punitive damages, and attorney's fees.

After a period of discovery, the Van Sauns sought summary judgment solely on their CFA claim. The limited nature of the motion is reflected in the notice of motion, which cited "N.J.S.A. 56:8-19." Plaintiffs have not supplied us with their statement of undisputed material facts, and it is unclear that one was filed. See R. 4:46-2(a). The motion was apparently unsupported by any other competent evidence presented through a certification or affidavit, see R. 1:6-6, as none is included in the record before us. In particular, although plaintiffs alleged fraudulent inducement, they presented no certification

of anyone who claimed to be induced. Nonetheless, plaintiffs apparently presented to the trial court correspondence between Van Saun family members and their travel agent, and between family members and Jefferson.

Jefferson opposed the motion, but did not file a cross-motion seeking the dismissal of any of plaintiffs' claims. However, it did present a certification of a claims manager. He explained the reasons Jefferson denied the Van Saun claim. He also interpreted the relevant policy exclusion, whose meaning the Van Sauns disputed.[2] Jefferson also presented a weather report from a meteorological expert.

The court was unpersuaded that plaintiffs had established fraudulent conduct essential to their CFA claim. Although the court's order did not expressly state that it denied the motion for judgment on that claim, that was implicit in light of the court's statement of reasons. The court's order "granted

[2] Plaintiffs relied on the policy's coverage provision, section two, which expressly included losses caused by cancelled airline services because of severe weather. Jefferson relied on the exclusion provision, section three, which denied coverage for events "that could have reasonably been foreseen or expected" when purchasing the insurance. However, the exclusion section was ambiguously worded. The "reasonably foreseen" exclusions, as well as other exclusions, were preceded by the statement: "You aren't covered for any loss that results directly or indirectly from any of the following general exclusions, unless they're included in Section 2, What this certificate includes." Jefferson argued that if interpreted as plaintiffs urged, the "unless clause" would render the exclusions a nullity.

summary judgment" and directed Jefferson to pay plaintiffs $6918, the contract damages sought under the policy. The court separately denied plaintiffs' motion for fees under Rule 4:42-9(a)(6), finding that the travel insurance policy was not a "liability or indemnity policy of insurance."

This appeal followed. Plaintiffs seek review of the court's orders denying relief under the CFA, and denying attorney's fees under Rule 4:42-9(a)(6). In its cross-appeal, Jefferson seeks review of the order entering judgment in the amount of $6918.

Both parties asserted in their notices of appeal that all issues as to all parties were disposed of before the trial court. However, it is apparent that is not so. The court's denial of plaintiffs' motion for summary judgment on the CFA cause of action did not finally dispose of that claim, or the fraudulent inducement claim. Moreover, plaintiffs' summary judgment motion, and the court's order, did not address plaintiffs' claims of emotional distress, breach of the covenant of good faith and fair dealing, and bad faith claim processing.

As the court's orders did not dispose of all issues as to all parties, they are interlocutory. See R. 2:2-3 (stating that an appeal as of right may be taken from final judgments); S.N. Golden Estates, Inc. v. Cont'l Cas. Co., 317 N.J. Super. 82, 87

(App. Div. 1998) (stating that for a judgment to be final, it "must dispose of all claims against all parties"). Neither party sought leave to appeal. See R. 2:2-4. Under the circumstances, we deem it appropriate to dismiss the appeal.

We recognize that we may, in appropriate cases, grant leave to appeal nunc pro tunc. See, e.g., Yuhas v. Mudge, 129 N.J. Super. 207, 209 (App. Div. 1974). However, we have declared that such relief is not automatic, and should not be presumed. In dismissing an appeal as interlocutory after it was fully briefed, we stated:

> [I]f we treat every interlocutory appeal on the merits just because it is fully briefed, there will be no adherence to the Rules, and parties will not feel there is a need to seek leave to appeal from interlocutory orders. At a time when this court struggles to decide over 7,000 appeals a year in a timely manner, it should not be presented with piecemeal litigation and should be reviewing interlocutory determinations only when they genuinely warrant pretrial review.
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> [Parker v. City of Trenton, 382 N.J. Super. 454, 458 (App. Div. 2006).]

See also Vitanza v. James, 397 N.J. Super. 516, 519 (App. Div. 2008).

We discern no compelling reason to consider the issues in this case on a piecemeal basis. On an appeal from an order granting summary judgment, we exercise de novo review, applying the same standard as the trial court. Henry v. N.J. Dep't of

Human Servs. 204 N.J. 320, 330 (2010). However, in this case, our review is hampered by the state of the record, including the absence of a statement of undisputed material facts and a response thereto. See R. 4:46-2(a) ("A motion for summary judgment may be denied without prejudice for failure to file the required statement of material facts.") Also absent is a certification from any plaintiff authenticating the various documents included in their appendix, or supporting the factual claims presented in their brief. See R. 1:6-6.

Although the court granted judgment on plaintiffs' contract claim, the subject of plaintiffs' motion pertained only to the CFA claim. In addition, while the trial court was not satisfied that there was sufficient record evidence of misrepresentation or omissions to warrant granting summary judgment to plaintiffs on the CFA claim, it is unclear whether plaintiffs may marshal additional proofs at time of trial.

In short, there is no compelling reason to address, on an interlocutory basis, the issues presented on the appeal and cross-appeal.

Dismissed.