SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2619-15T4

GEORGE M. RING and
DOROTHY A. RING,

Plaintiffs-Appellants,

v.

MEEKER SHARKEY ASSOCIATES,
LLC,

Defendant-Respondent,

and

WILLIS OF NEW JERSEY, INC.,

Defendant.

Argued September 7, 2017 – Decided September 26, 2017

Before Judges Rothstadt and Vernoia.

On appeal from the Superior Court of New Jersey, Law Division, Ocean County, Docket No. L-0760-13.

Ryan Milun argued the cause for appellants (The Killian Firm, attorneys; Mr. Milun and Eugene Killian, Jr., on the briefs).

Alyse Berger Heilpern argued the cause for respondent (L'Abbate, Balkan, Colavita & Contini, LLP, attorneys; Ms. Heilpern, of counsel and on the brief).

PER CURIAM

Plaintiffs, George M. Ring[1] and his wife Dorothy A. Ring appeal from the Law Division's February 9, 2015 order dismissing their complaint on summary judgment entered in favor of defendant Meeker Sharkey Associates, LLC (MSA), plaintiffs' homeowners insurance broker. The complaint asserted claims of professional negligence against MSA and defendant Willis, N.A.,[2] plaintiffs' flood insurance broker, based upon their alleged failure to advise plaintiffs to secure excess flood insurance.

Judge Robert A. Fall awarded MSA summary judgment in response to its motion asking the judge to reconsider his prior decision denying MSA's earlier motion for that relief. Judge Fall explained his reasons for reconsidering and granting MSA summary judgment in a thirty-six page written decision in which he concluded that Willis and not MSA owed a duty to plaintiffs to determine their excess flood insurance needs and properly advise them.

On appeal, plaintiffs argue that there was no reason for the judge to reconsider his earlier decision denying summary judgment and that neither the language of plaintiffs' homeowners policy nor

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[1] We are advised that Mr. Ring passed away during the pendency of this matter.

[2] Plaintiffs settled their claim against Willis while this appeal was pending. We therefore only address plaintiffs' claims as to MSA.

Willis' role as broker for plaintiffs' flood insurance diminished MSA's "fiduciary duty" to plaintiffs. We affirm.

The facts, when viewed in the light most favorable to plaintiffs, Angland v. Mountain Creek Resort, Inc., 213 N.J. 573, 592 (2013) (citing Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 523 (1995)), can be summarized as follows. In or about 1983 and 1993, plaintiffs purchased two beachfront properties in Mantoloking that were located in a designated flood zone. They secured homeowners and flood insurance through MSA's predecessor, which subsequently went through several mergers and reorganizations.

In 2008, plaintiffs moved their account from MSA's predecessor to Willis. Their account included the homeowners and flood policies for the Mantoloking properties. Two years later, plaintiffs transferred only their homeowners policy to a reorganized version of MSA. They did not transfer their flood insurance to MSA because MSA did not represent plaintiffs' flood insurance carrier, Selective Insurance Company.

As part of plaintiffs' transfer of their homeowners policy, MSA reviewed plaintiffs' insurance coverage. MSA did not make any recommendation to plaintiffs about their need for excess flood insurance even though the difference between the coverage provided by their homeowners and flood insurance policies combined left

plaintiffs exposed to a substantial gap in the event of a flood. That gap could have been covered by an excess flood policy.[3] Plaintiffs also never asked MSA about the availability of or need for flood insurance or excess flood insurance.

Plaintiffs experienced a catastrophic loss in 2012 as a result of damage caused by Superstorm Sandy. Afterward, plaintiffs learned that their existing coverage would not cover their entire loss.

Plaintiffs filed this action to recover their losses. During the litigation, on September 19, 2014, Judge Fall denied summary judgment motions filed by all the parties. He issued a fourteen-page written decision on that date explaining his reasons for doing so. In his decision, the judge concluded that because discovery was ongoing it would be premature to decide whether MSA owed a duty to plaintiffs to advise them about the excess flood insurance.

MSA filed a motion for reconsideration, arguing the judge erred by overlooking the Supreme Court's decision in Wang v.

[3] In a May 29, 2012 letter sent prior to Superstorm Sandy, MSA advised plaintiffs that their "homeowners policies specifically exclude damage caused by flood" and that flood insurance was available if they were interested in obtaining it through MSA. The letter advised "[a] flood insurance quote is available upon request," but no request was ever made. Notices sent with the policy also advised of the need for adequate flood insurance that was not included in the homeowners policy coverage.

Allstate Ins. Co., 125 N.J. 2 (1991), which MSA argued established it did not owe any duty to plaintiffs as to their flood insurance as a matter of law based on the undisputed facts. In his written decision, Judge Fall recognized that his earlier opinion did not expressly address Wang and he presented an extensive analysis of that case before concluding it was distinguishable from plaintiffs' action.

Before turning to the facts in this case, Judge Fall also reviewed the law applicable to a court's determination of whether a duty existed. The judge stated that determination is a question of law to be resolved by the court and that "the legal determination of the existence of a duty may differ, depending on the facts of the case." Addressing the undisputed facts, the judge acknowledged that he "failed to recognize" in his earlier decision "that there is a marked distinction between the posture or circumstances of [MSA] and Willis, vis-à-vis their relationship with plaintiffs, as reflected in the undisputed facts." After reviewing both relationships, the judge concluded that MSA had no duty to plaintiffs but that Willis did and there remained a question of fact as to whether Willis breached its duty.

We begin by acknowledging the legal principles that guide our review. We review a judge's decision to grant a motion for reconsideration filed pursuant to Rule 4:49-2 for an abuse of

discretion. See Palombi v. Palombi, 414 N.J. Super. 274, 288 (App. Div. 2010) (quoting D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990)). Our review of a judge's grant of summary judgment is de novo, applying the same standard as the motion judge, without any deference to the judge's legal conclusions, especially where, as here, there is no genuine issue of material fact and "only a question of law remains." Cypress Point Condo. Ass'n v. Adria Towers, LLC, 226 N.J. 403, 415 (2016).

Applying those standards, we conclude that Judge Fall did not abuse his discretion by reconsidering his earlier decision to deny MSA's motion, and he properly entered summary judgment in favor of MSA. We affirm substantially for the reasons stated by Judge Fall in his comprehensive and thoughtful written decision.

Affirmed.