SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2744-15T3

GRACIOSO BALACUIT,

Plaintiff-Appellant,

v.

TOWER NATIONAL INSURANCE COMPANY,

Defendant-Respondent.

Submitted April 6, 2017 – Decided May 3, 2017

Before Judges Hoffman, O'Connor and Whipple.

On appeal from Superior Court of New Jersey, Law Division, Hudson County, Docket No. L-4535-14.

Law Offices of Jonathan Wheeler, P.C., attorneys for appellant (Jonathan Wheeler, on the briefs).

Methfessel & Werbel, attorneys for respondent (Jacqueline Falcone, of counsel and on the brief).

PER CURIAM

Plaintiff Gracioso Balacuit appeals from a January 26, 2016 Law Division order granting summary judgment to defendant Tower National Insurance Company (Tower). At all relevant times, Tower

insured plaintiff's home in Jersey City. In December 2012, Tower received a claim for damage to plaintiff's home, described as "[building] structure is collapsing." Defendant assigned an adjuster and an engineer to inspect the property.

The engineer's report detailed settlement and cracking throughout the home and concluded the damage resulted from a failed sewer pipe beneath the home. Plaintiff also retained an engineer who inspected the property and agreed the damage came from a faulty sewer pipe. Plaintiff's expert concluded water leaking from the pipe caused soil erosion and consolidation, which caused a movement under the home and resulted in the damage.

Plaintiff's dwelling policy contained a provision excluding coverage for "earth movement," which the policy defined as "earth sinking, rising or shifting." The policy also contained a general exclusion, which excluded coverage for damages caused by earth movement "regardless of any other cause or event contributing concurrently or in any sequence to the loss."

On February 4, 2014, Tower issued a letter "disclaiming coverage" for plaintiff's claim, "[a]s this loss is expressly excluded in the insured's policy." Plaintiff then commenced this action. After discovery, Tower filed the motion under review. Following oral argument, Judge Francis Schultz entered an order granting Tower's motion and dismissing plaintiff's complaint, and

issued a written opinion explaining his decision. The judge concluded, in pertinent part:

> Accepting as true the plaintiff's version of the events[,] it is clear that the earth movement exception, which in particular includes "any other earth movement including earth sinking, rising or shifting" caused by or resulting from "human or animal forces or any act of nature" clearly applied here. Whether the pressure on the pipe causing it to fail was due to "faulty or inadequate construction" of the building (not covered) or not, is irrelevant considering the anti-sequential clause found at the beginning of General Exclusions A. According to the plaintiff's expert[,] where the earth had been[,] it no longer was due to erosion caused by the leaking pipe. This court cannot find that the exclusion is unclear or ambiguous. It should also be noted that the policy includes under General Exclusions A. 3. "water damage" which includes at b. "water and water-borne material which backs up through sewers or drains or which overflows or is discharged from a sump, sump pump or related equipment; or c. water or water-borne material below the surface of the ground, including water which exerts pressure on or seeps or leaks through a building, sidewalk, driveway, foundation, swimming pool or other structure.["] This exclusion is also subject to the anti-sequential clause. For the foregoing reasons the defendant's motion for summary judgment is granted.

We apply a de novo standard of review when evaluating whether summary judgment was proper. Wilson ex rel. Manzano v. City of Jersey City, 209 N.J. 558, 564 (2012). We first decide if there is a genuine issue of material fact, and if none exists, whether

the moving party is entitled to judgment as a matter of law. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 528-29 (1995).

Summary judgment must be granted "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). "[A] non-moving party cannot defeat a motion for summary judgment merely by pointing to any fact in dispute[,]" and must bring forth evidence creating a genuine issue as to a material fact. Brill, supra, 142 N.J. at 529.

As with other contracts, the terms of an insurance policy define the rights and responsibilities of parties to it. N.J. Citizens United Reciprocal Exch. v. Am. Int'l Ins. Co. of N.J., 389 N.J. Super. 474, 478 (App. Div. 2006). "The interpretation of an insurance contract is a question of law for the court to determine, and can be resolved on summary judgment." Adron, Inc. v. Home Ins. Co., 292 N.J. Super. 463, 473 (App. Div. 1996). The court's standard of review regarding conclusions of law is de novo. Estate of Hanges v. Metro. Prop. & Cas. Ins. Co., 202 N.J. 369, 385 (2010).

"Generally, an insurance policy should be interpreted according to its plain and ordinary meaning." Voorhees v.

Preferred Mut. Ins. Co., 128 N.J. 165, 175 (1992). If the plain language of the policy is clear and unambiguous, then there is no need for further inquiry, and courts often consider identical or similar language in prior cases to determine the parties' intent. Chubb Custom Ins. Co. v. Prudential Ins. Co. of Am., 195 N.J. 231, 238 (2008). While language is "construed liberally in favor of the insured and strictly against the insurer," courts must seek to settle on a reasonable meaning consistent with the express purposes and language of the policy. Sinopoli v. N. River Ins. Co., 244 N.J. Super. 245, 250-51 (App. Div. 1990), certif. denied, 127 N.J. 325 (1991). "[A]n insurance policy is not ambiguous merely because two conflicting interpretations have been offered by the litigants." Simonetti v. Selective Ins. Co., 372 N.J. Super. 421, 428 (App. Div. 2004).

On appeal, plaintiff argues the motion court erred in granting summary judgment, asserting Tower's policy contains "ambiguous language" that "gives rise to a genuine issue of material fact." We disagree and affirm substantially for the reasons set forth in Judge Schultz's cogent and well-reasoned opinion.

Affirmed.