SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0005-22

CARLOS A. TERRANOVA,

Plaintiff,

v.

SKYLINE RESTORATIONS, INC., and POFI CONSTRUCTION,

Defendants,

and

ONE TEAM RESORATION, INC.,

Defendant-Appellant.

SKYLINE RESTORATIONS, INC.,

Third-Party Plaintiff-Respondent,

v.

IRON WORKS FE CORP.,

Third-Party Defendant.

IRON WORKS FE CORP.,

Fourth-Party Plaintiff,

v.

ONE TEAM RESTORATION, INC.,

Fourth-Party Defendant-
Appellant.

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Submitted February 15, 2023 – Decided September 20, 2023

Before Judges Accurso, Vernoia, and Firko.

On appeal from an interlocutory order of the Superior Court of New Jersey, Law Division, Hudson County, Docket No. L-0581-19.

Litchfield Cavo LLP, attorneys for appellant (Joseph E. Boury, on the briefs).

Golden, Rothschild, Spagnola, Lundell, Boylan, Garubo & Bell, PC, attorneys for respondent (Hristo Zevlikaris, on the brief).

The opinion of the court was delivered by

VERNOIA, J.A.D.

By leave granted, One Team Restoration, Inc. (One Team), a subcontractor of Skyline Restoration, Inc. (Skyline) on a construction project, appeals from an order granting Skyline summary judgment on its crossclaims

asserting One Team is contractually obligated to defend and indemnify Skyline for the causes of action asserted by plaintiff Carlos A. Terranova, an employee of another subcontractor, Iron Works FE Corp. (Iron Works), who allegedly suffered injuries while working at the project. One Team also appeals from an order denying its motion for reconsideration of the summary judgment order. Based on our de novo review of the summary judgment record, we reverse and remand for further proceedings.

I.

We discern the following undisputed facts from the summary judgment record and consider them in a light most favorable to One Team because it is the party against whom summary judgment was entered.[1] Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995).

On July 20, 2018, plaintiff was employed by Iron Works, a subcontractor at a construction project (the project) on which Skyline served as the general or prime contractor. Plaintiff alleges on that day an electrical cable, which snapped

[1] We limit our summary of the facts to those presented to the motion court in accordance with Rule 4:46-2. Skyline filed a statement of material facts in support of its motion. One Team filed a response to Skyline's statement that included a counterstatement of material facts. Skyline did not submit opposition to One Team's counterstatement.

when it became entangled with scaffolding at the site, fell on him and caused injuries.

Plaintiff filed suit against various defendants, including Skyline and One Team, alleging their negligence proximately caused his injuries. In its response to plaintiff's second amended complaint, Skyline asserted crossclaims against One Team for contribution under the New Jersey Joint Tortfeasors Contribution Act, N.J.S.A. 2A:53A-1 to -5, contractual indemnification, common law indemnification, and breach of the "Subcontractor Agreement" between Skyline and One Team.

Skyline later moved for summary judgment on its crossclaims against One Team. The record before the motion court established that prior to the date of plaintiff's alleged accident, One Team entered into a "Subcontractor Agreement" (the subcontract) with Skyline to perform work at the project. The subcontract included a Scope of Work provision that refers to an "attached breakdown" of the work to be performed by One Team, but the record on appeal does not include the breakdown. The subcontract further required One Team to execute its work pursuant to the "Subcontractor Documents" and "other project-related conditions, manual[s], and contract drawings," but they are also not included in the record on appeal.

The subcontract includes indemnification and insurance provisions upon which Skyline in part based its crossclaims against One Team. In general terms, the indemnification provision requires One Team to indemnify and hold harmless Skyline for claims, damages, loss, expenses, and attorney's fees incurred by Skyline and "arising out of or resulting from the performance of" One Team's work at the project "but only to the extent caused by" One Team's "negligent acts or omissions."

The subcontract further requires that One Team maintain certain types of insurance coverage and levels of coverage, including commercial general liability insurance. The subcontract requires One Team name Skyline as an additional insured on the policy.

One Team obtained a commercial general liability policy from United Specialty Insurance Company (United Specialty) for a policy period of June 30, 2018 to June 30, 2019. The policy included an endorsement stating that an additional insured includes "any person or organization to whom [One Team] has agreed by written contract to provide coverage, but only with respect to operations performed or on behalf of" One Team. A separate endorsement explained the policy "shall be primary to any insurance carried by an additional

insured." For purposes of the summary judgment motion, it is undisputed the policy was in effect when plaintiff suffered his injuries on July 20, 2018.

Following the filing of plaintiff's complaint, Skyline tendered its defense to United Specialty under One Team's insurance policy. United Specialty rejected the tender. It acknowledged Skyline was an additional insured under the policy, but it determined that because One Team had not conceded plaintiff's alleged accident and injuries "arose or resulted from the performance of" One Team's work, coverage under the policy would not be extended to Skyline until One Team's involvement in plaintiff's accident was established.[2]

Skyline subsequently provided United Specialty with additional information—obtained during discovery—to establish that plaintiff's accident and injuries "arose or resulted from the performance of" One Team's work such as to qualify Skyline for coverage as an additional insured under the policy. However, United Specialty did not change its position.

In support of the summary judgment motion on its claims against One Team, Skyline asserted United Specialty's denial of coverage established Skyline was not, as required by the subcontract, "named" as an additional

[2] United Specialty's third-party claims administrator communicated the rejection of Skyline's tender of its defense.

insured under the policy. Skyline argued the policy only permitted it to "qualify" as an additional insured. Thus, Skyline claimed the denial of coverage established One Team's breach of its contractual obligation to obtain a policy that named Skyline as an additional insured.[3]

Skyline also argued it was entitled to summary judgment on its claim One Team breached the subcontract's indemnification requirement. Skyline asserted plaintiff's accident "ar[ose] out of or result[ed] from the performance of" One Team's work under the subcontract thereby triggering One Team's indemnification obligation.

In support of the argument, Skyline relied on statements of material fact asserting Skyline project manager, Michael Kelson, described One Team employee, Breiner Sarmiento, as the project superintendent and Skyline's "eyes and ears" at the construction site. Skyline also asserted that a One Team owner, Mario Rojas, testified One Team was retained by Skyline as a "supervisor for

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[3] The record on appeal does not reflect that Skyline moved for summary judgment on any putative coverage claims against United Specialty. And the issues presented on appeal do not require a determination whether United Specialty is obligated to provide coverage to Skyline under the policy for claims related to plaintiff's accident and injuries. As we read its decisions on the summary judgment and reconsideration motions, the motion court did not determine any coverage issues. Nor do we. Nothing in this opinion shall be construed as expressing an opinion on any insurance coverage issues under One Team's policy with United Specialty.

[the] . . . job site," and it assigned Sarmiento to fill that role. Skyline further asserted Rojas testified the role of a supervisor on a job site is to: keep track of the workers and progress of the work, as well as the hazards at the site; let the job foreman know of any hazards; and "just working in a safe manner and working on time."

Skyline also asserted Sarmiento confirmed he walked the job site to address any unsafe conditions. In addition, Skyline noted Sarmiento testified he had the authority to stop the work at the site if there was an unsafe condition such as the wind blowing the scaffolding or debris falling from the scaffolding.

One Team disputed the statements of material fact upon which Skyline's summary judgment motion was based. One Team argued the statements of material fact concerning One Team's and Sarmiento's work at the site were inaccurate because they rested on incomplete representations of Kelson's, Rojas's, and Sarmiento's deposition testimony.

For example, in its counterstatement of material facts, One Team showed that although Kelson testified Sarmiento was the project superintendent and Skyline's "eyes and ears" at the job site, Kelson more fully testified that One Team "supplied" Sarmiento to be Kelson's "eyes and ears on [the] site for how the work was going, scheduling and stuff like that."

Similarly, according to One Team, Skyline's statement of material facts did not refer to Kelson's testimony that Sarmiento's responsibility "to make sure that the work was done safely" "would be to just make sure the guys were wearing their harnesses."[4] One Team further noted Kelson testified that Sarmiento's role concerning safety at the site was "to just see obvious issues," and that "[t]he safety of the site was [for] the foreman."

One Team also pointed to evidence undermining Skyline's reliance on Rojas' testimony concerning Sarmiento's work at the site. As noted, in its statement of material facts, Skyline cited Rojas's testimony concerning what a supervisor's duties at a job site might ordinarily entail. In its response to Skyline's reliance on that testimony, One Team cited Rojas's testimony that he did not have any recollection of the role as to safety that the supervisor, Sarmiento, had at the site under One Team's subcontract with Skyline.[5]

One Team also contested Skyline's reliance on its assertion Sarmiento testified he walked the job site for the purpose of addressing safety issues and

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[4] The record does not include an allegation plaintiff's accident or injuries were caused by a failure to wear, or a failure of, a harness.

[5] Rojas also testified he never "stepped foot" on the site and that "all One Team did was send [Sarmiento] out to the job and that's pretty much it from [One Team's] end."

could stop work at the site if he chose to do so. In its opposition to the motion, One Team disputed the assertion, citing Sarmiento's testimony that as he walked the job site, he would inform the foreman if he saw "something wrong." Sarmiento also generally testified that his authority to stop work he had determined was unsafe depended on the situation, but Sarmiento was not asked if he had the authority to stop the work based on the circumstances extant when plaintiff's accident occurred.

One Team also offered a counterstatement of facts supported by citations to competent record evidence.[6] See R. 4:46-2(b). The counterstatement disputes many of the facts upon which Skyline's summary judgment was based.

For example, One Team cited Sarmiento's testimony his job did not involve ensuring the site was safe and the "point" of walking the site each day was only "[t]o make sure everything was ready for work, if the guys were there, [and] if they got the tools, all of that." Sarmiento also testified he was forty to fifty feet from the location plaintiff was injured when the accident occurred, it happened quickly, and he did not see the electrical cable that caused plaintiff's injuries get entangled with the scaffolding.

[6] The record does not include a response to One Team's counterstatement of material facts.

In its counterstatement, One Team also cited Rojas's testimony Skyline requested a "supervisor" at the site and not a "superintendent." Citing Sarmiento's testimony, One Team also asserted that it instructed "Sarmiento to assist the project manager with communications between the building, the foreman, and the project manager" while on site. One Team also again relied on Kelson's testimony that the safety of the site was with "the [Iron Works] foreman" and "Sarmiento did not supervise the Iron Works' foreman."

One Team further claimed a lack of evidence required the denial of Skyline's summary judgment motion. It asserted the record presented to the motion court did not include any evidence establishing "Sarmiento ever actually became involved in any safety issues, the inspection of scaffolds, supervision of Iron Works' laborers, or the means and methods of the work being performed by Iron Works."

Following oral argument on the motion, the court rendered a written opinion granting Skyline summary judgment on its claims, finding One Team owed Skyline contractual indemnification under the subcontract's indemnification provision and One Team breached the subcontract by failing to obtain commercial general liability insurance naming Skyline as an additional insured. The court denied Skyline's motion as to its crossclaim alleging common

law indemnification. The court entered an order granting Skyline summary judgment on its crossclaims against One Team, dismissing One Team's crossclaims against Skyline, and directing One Team to defend Skyline and indemnify Skyline "for any settlement and/or adverse judgment that may be entered against it in favor of any party."[7]

The court subsequently denied One Team's motion for reconsideration of the summary judgment order. We granted One Team's motion for leave to appeal from the court's orders.

II.

We review an order granting a summary judgment motion de novo, Gilbert v. Stewart, 247 N.J. 421, 442 (2021), applying "the same standard as the trial court," State v. Perini Corp., 221 N.J. 412, 425 (2015). Summary judgment is

[7] The court's decision and order did not expressly address Skyline's crossclaim against One Team under the New Jersey Joint Tortfeasors Act. The order also does not reflect the court's denial of Skyline's motion for summary judgment on the common law indemnification claim. Additionally, the court's decision does not provide a rationale for the order's broad and unsupportable requirement that One Team indemnify Skyline for every judgment entered against Skyline by any party to the lawsuit, as well as any settlement Skyline enters with any party to the lawsuit. Such relief is not supported by any reasoned interpretation of the subcontract's indemnification provision, which expressly limits One Team's indemnification obligation "only to the extent" the claims, damages, losses or expenses, are attributable to "bodily injury, sickness, disease or death," "caused by" One Team's negligence.

proper if the record demonstrates "no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment . . . as a matter of law." Burnett v. Gloucester Cnty. Bd. of Chosen Freeholders, 409 N.J. Super. 219, 228 (App. Div. 2009) (quoting R. 4:46-2(c)).

To determine whether there are genuine issues of material fact, 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." Davis v. Brickman Landscaping, Ltd., 219 N.J. 395, 406 (2014) (quoting Brill, 142 N.J. at 540). "An issue of material fact is 'genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact.'" Grande v. St. Clare's Health Sys., 230 N.J. 1, 24 (2017) (quoting Bhagat v. Bhagat, 217 N.J. 22, 38 (2014)).

A.

We first consider Skyline's claimed entitlement to summary judgment for indemnification under the subcontract. The indemnification provision states:

> § 4.6.1 To the fullest extent permitted by law, the Subcontractor shall indemnify and hold harmless the

> Owner, Contractor, Architect, Architect's consultants, and agents, servants, assigns, officers, directors, members, shareholders, and employees of any of them from and against claims, damages, losses and expenses, including but not limited to reasonable attorney's fees (of Contractor's choosing), arising out of or resulting from performance of the Subcontractor's Work under this Subcontract, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.
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> [(Emphases added.)]

"The objective in construing a contractual indemnity provision is the same as in construing any other part of a contract — it is to determine the intent of the parties." Kieffer v. Best Buy, 205 N.J. 213, 223 (2011). We give the terms of the contract "their plain and ordinary meaning," ibid. (quoting M.J. Paquet, Inc. v. N.J. Dep't of Transp., 171 N.J. 378, 396 (2002)), "unless specialized language is used peculiar to a particular trade, profession, or industry," Kieffer, 205 N.J. at 223. Unlike "provisions in a typical contract," ambiguous indemnification provisions are "strictly construed against the indemnitee." Ibid. Indemnification provisions are ambiguous when their terms "are susceptible to

at least two reasonable alternative interpretations." Chubb Custom Ins. Co. v. Prudential Ins. Co. of Am., 195 N.J. 231, 238 (2008). If the terms are clear and unambiguous, the court's inquiry is at an end. Ibid.

The parties agree that under the indemnification provision's plain language, One Team's indemnification obligation turns on whether plaintiff's claims against Skyline "aris[e] out of or result[] from performance of" One Team's work "under" the subcontract. However, the indemnification obligation is also expressly limited; it applies "only to the extent" plaintiff's alleged injuries are "caused by the negligent acts or omissions of" One Team.

Thus, to establish an entitlement to indemnification under the subcontract's plain language, Skyline was required to prove the claims against it arose out of or resulted from One Team's work under the subcontract, and also that plaintiff's injuries were caused by One Team's negligence. Based on the record presented, Skyline failed to sustain its burden of demonstrating it satisfied either burden. See R. 4:4-6(c) (providing the moving party must show there is no genuine issue as to any material fact and they are "entitled to judgment or order as a matter of law" to succeed on a summary judgment motion).

Skyline claims the undisputed facts establish plaintiff's claim's arise out of the performance of One Team's work under the subcontract because Sarmiento was assigned by One Team to serve as a supervisor on the project, Sarmiento testified he would point out safety-related issues if he saw them, and he acknowledged that under certain situations, he had the authority to stop the work if he observed a safety issue. One Team claims entry of summary judgment on the indemnification claims was incorrect because the motion record reflects a myriad of fact issues as to the scope of Sarmiento's responsibility for safety at the site under the subcontract and plaintiff otherwise failed to present any evidence plaintiff's injuries were caused by One Team's negligence.

In Leitao v. Damon G. Douglas Co., we construed the phrase "arising out of or resulting from the performance of the subcontractor[]'s work" in an indemnity provision in a subcontract. 301 N.J. Super. 187, 189, 193 (App. Div. 1997). We explained the phrase "arising out of" has been construed as "referring to a claim 'growing out of' or having its 'origins' in the subject matter of the subcontractor's work duties." Id. at 193 (emphasis added).

Here, the subcontract requires indemnification only as to claims arising out of Sarmiento's performance of One Team's work "under the" subcontract. The subcontract provided in the record on appeal, however, does not include any

description of the subject matter of One Team's work duties at the site, and the parties do not cite to a provision in the subcontract defining One Team's work duties. Thus, the record lacks a clear definition of One Team's work under the subcontract permitting a determination as to whether plaintiff's claims grow out of the subject matter of One Team's responsibilities under the agreement.

Skyline attempts to fill in the gap created by the absence of any contractual definition of One Team's agreed-upon work at the site by citing to evidence concerning the duties Sarmiento either performed or had the authority to perform. Plaintiff claims the facts establish that plaintiff's claims arise out of One Team's duties under the subcontract because One Team's employee had responsibility for safety at the project. The proofs at trial may establish to a jury's satisfaction that was the case, but the summary judgment record does not.

As we have noted, One Team presented other facts supported by competent evidence refuting the proffered facts supporting Skyline's argument and, in our view, raising genuine issues of material fact as to the nature and scope of One Team's obligation for the safety of the project as a whole and, more particularly, the safety of the scaffolding that apparently caused the accident resulting in plaintiff's injuries. Skyline is therefore not entitled to summary

judgment on its claim for indemnification based its contention plaintiff's claims arose out of One Team's work under the subcontract.

In Leitao, we also interpreted the words "resulting from" in the subcontract's indemnification provision. Ibid. We explained that although the phrase "perhap[s] impl[ies] some causal relationship between the subcontractor's work and the claim," we nonetheless rejected an interpretation that the phase requires a showing of "fault on the subcontractor's part as a prerequisite to indemnification." Ibid. Instead, we determined the words "resulting from" required only "a substantial nexus between the claim and the subject matter of the subcontractor's work duties." Ibid.

Defendant and the motion court mistakenly relied on our interpretation of the "resulting from" language in the indemnification provision in Leitao, and erred by applying that interpretation to the indemnification provision in the subcontract. Our interpretation of the words "resulting from" in Leitao is of limited utility here because the indemnification provision in that case did not require "fault on the subcontractor's part as a prerequisite to indemnification." Id. at 191, 193.

In contrast, and as noted, One Team's indemnification obligation is triggered "only to the extent" plaintiff's alleged injuries are "caused by the

negligent acts or omissions of" One Team. Thus, to establish an entitlement to indemnification under the "resulting from" language in the subcontract, Skyline was required to prove more than the substantial nexus we applied in Leitao. Because the plain language of the subcontract limits One Team's indemnification obligation to only injuries caused by One Team's negligence, Skyline is not entitled to and order for indemnification on a summary judgment motion unless it presents sufficient evidence establishing undisputed facts proving such was the case. See Mautz v. J.P. Patti Co., 298 N.J. Super. 13, 21 (App. Div. 1997) (finding provision requiring indemnification for injuries "to the extent caused in whole in part by" the negligence of the subcontractor provides indemnification only to the extent of the subcontractor's negligence).

The motion record is devoid of any evidence establishing undisputed facts supporting a finding plaintiff's injuries were caused by any alleged negligence of Sarmiento or One Team as a matter of law. The record offers little more than a vague description of the circumstances pertinent to a determination of fault for the accident. It offers no basis to conclude One Team is responsible as a matter of law for plaintiff's injuries or that Skyline established One Team's negligence caused them. Absent such proof, Skyline failed to establish plaintiff's claims

resulted from, or were "caused by," One Team's negligence thereby triggering the indemnification obligation.

Moreover, because the indemnification obligation for claims that either arise out of or result from One Team's work under the subcontract is triggered "only to the extent caused by" One Team's negligence, the court erred by granting summary judgment also on any putative claims Skyline might argue arose out of One Team's performance of its work under the subcontract. Absent evidence establishing plaintiff's claims against Skyline—for which it seeks indemnification—were caused by "the negligent acts or omissions of" One Team, Skyline is not entitled to indemnification at all.[8]

B.

[8] The court also erred by finding Skyline was entitled to a defense provided by One Team simply because plaintiff alleged that One Team's negligence caused his injuries. We reject Skyline's arguments on appeal to the same effect. In its analysis, the motion court relied on cases in which the issue presented was whether an insurance carrier had a duty to defend under the terms of an insurance policy. See, e.g., Flomerfelt v. Cardiello, 202 N.J. 432, 444 (2010); Hebela v. Healthcare Ins. Co., 370 N.J. Super. 260, 268 (App. Div. 2004). The principles relied on in those cases are inapposite because the subcontract is not an insurance policy, One Team is not an insurance carrier, the plain language of the indemnification provision does not require that One Team provide a defense, and the indemnification obligation is contingent on proof establishing plaintiff's injuries were caused by One Team's negligence. One Team may later be required to reimburse Skyline for its attorney's fees, but resolution of that issue must abide determinations of the factual prerequisites for indemnification under the subcontract.

The motion court also granted Skyline summary judgment on its claim One Team breached the subcontract by failing to procure the requisite commercial general liability insurance policy. More particularly, Skyline acknowledges One Team procured a policy covering the period during which plaintiff's accident occurred, but Skyline contends One Team breached the subcontract because Skyline was not named as an additional insured on the policy and Skyline did not have the same coverage as One Team under the policy.

The subcontract includes the following provision pertinent to One Team's insurance obligations.

> § 13.1 The Subcontractor shall purchase and maintain insurance of the following types of coverage and limits of liability. Contractor reserves the right to withhold payments to Subcontractor if one or more of the following policies expire without renewal or replacement during the Subcontractor's Work. As a contractor providing services to Contractor, it is required that Subcontractor provide Contractor with evidence of insurance with the minimum outlined below:
>
> Commercial General Liability (Occurrence Form)
> ACORD 25 (09/01)
> General Aggregate (other than Pro/Comp Ops Liability $2,000,000
> Products/Completed Operations Aggregate $1,000,000
> Each Occurrence $1,000,000 or the full per occurrence limits of the policy, whichever is greater.

> Contractor and Owner, and/or Owner's Representative named as Additional Insured.
> Coverage for such additional insureds shall apply as primary and non-contributing insurance, including any deductible, maintained by, or provided to, the additional insured other than the Auto Liability and Employers Liability coverages maintained by the Subcontractor. Umbrella and/or excess coverage for such additional insureds shall "follow form" of Subcontractor's primary layer and apply as primary and non-contributing insurance before any other insurance of Contractor. Building Owner, Building Manager, or self-insurance, including any deductible, maintained by, or provided to, the additional insured other than the CGL, Auto Liability and Employers Liability coverages maintained by the Subcontractor. The insurance afforded to the additional insureds shall be at least as broad as that afforded to the first named insured.
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> [(Emphases added.)]

One Team's commercial general liability policy with United Specialty included an endorsement providing coverage for additional insureds under the policy. The endorsement states:

> ENDORSEMENT #3
>
> BLANKET ADDITIONAL INSURED
>
> It is agreed that this Policy shall include as additional Insureds any person or organization to whom the Named Insured has agreed by written contract to provide coverage, but only with respect to operations performed by or on behalf of the Named Insured and only with respect to occurrence subsequent to the making of such written contract.

> THE INCLUSION OF AN ADDITIONAL INSURED SHALL BE SUBJECT TO ALL OTHER TERMS AND CONDITIONS CONTAINED IN THIS POLICY. ALL OTHER TERMS AND CONDITIONS REMAINING UNCHANGED.[9]

The motion court determined the endorsement is unambiguous and that the policy provides only that Skyline may qualify as an additional insured, and not that Skyline is an additional insured. The court therefore concluded Skyline was not named as an additional insured under the policy as required in the subcontract. The court also found One Team breached the insurance requirement because the record established Skyline does not enjoy the same coverage under the policy as One Team.

The court's findings are dependent on its interpretation of the requirements of the subcontract's insurance provision. Where, as here, a motion involves the interpretation of a contract, the issue presented "is ordinarily a legal question for the court [that] may be decided on summary judgment unless 'there is uncertainty, ambiguity or the need for parol evidence in aid of interpretation.'" Celanese Ltd. v. Essex Cty. Improvement Auth., 404 N.J. 514, 528 (App. Div.

[9] The policy includes a separate Endorsement #19, which explains when the coverage under the "policy shall be primary to any insurance carried by an additional insured" and related issues. Analysis of the endorsement is unnecessary for our determination of the issues presented on appeal.

2009) (citation omitted). We must "try to ascertain the intention of the parties as revealed by the language used, the situation of the parties, the attendant circumstances, and the objects the parties were striving to attain." Ibid. If the language in an agreement is clear, "we enforce the contract as written and ascertain the intention of the parties based upon the language." Pollack v. Quick Quality Res., Inc., 452 N.J. Super. 174, 187-88 (App. Div. 2017).

Skyline's claim One Team violated the insurance requirement is founded on the contention One Team was obligated to obtain an insurance policy providing it with the identical coverage provided One Team under the policy. In support of the argument, Skyline argues One Team failed to include Skyline as an additional named insured on the policy and the policy it obtained did not provide it with the same coverage as One Team's.

The policy does not expressly name Skyline as an additional insured. But the subcontract ambiguously provides in one instance that One Team must "name" Skyline as an additional insured and, in another, that it must "include" Skyline as an additional insured under the policy.[10] The first portion of Endorsement #3 defines those who are included as additional insureds under the

[10] In pertinent part, §13.4 of the subcontract provides One Team shall include Skyline "as [an] additional insured on its general liability policy."

policy. It states the policy "shall include as additional Insureds any person or organization to whom [One Team] has agreed by written consent to provide coverage."

The undisputed facts establish Skyline is party to a written agreement—the subcontract—with One Team in which One Team agreed to obtain coverage for Skyline. Thus, by definition, Skyline is included as an additional insured under Endorsement #3 because it satisfies the criteria as an additional insured under the endorsement's plain language.[11]

Skyline further contends the endorsement does not include it as an additional insured because the endorsement limits an organization's status as an additional insured to "only with respect to operations performed by or on behalf of" One Team. Skyline claims that limitation requires the conclusion that it is not named or included as an additional insured as required by the subcontract. It argues the limitation instead only qualifies it as an additional insured if the conditions of the limitation are satisfied.

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[11] We appreciate the endorsement includes a limit on an organization's status as an additional insured by providing it applies "only with respect to operations performed by or on behalf of" One Team. However, as we explain, that limitation changes Skyline's status as an additional insured under the subcontract in a manner material to Skyline's entitlement to insurance coverage only if the parties intended that the insurance provision require One Team obtain a policy separately covering Skyline for its own negligence.

Skyline's argument is founded on an interpretation of the subcontract that is not expressly set forth in the agreement's plain language. Moreover, any such requirement would plainly be at odds with the scope of One Team's indemnity obligation in Sec. 4.6-1 of the subcontract.

Viewed in that context, the breadth of insurance coverage required by the insurance provision must be similarly limited to the coverage afforded One Team under the policy for acts performed by or on its own behalf. In other words, the insurance provision's requirement of an equal breadth of coverage for additional insureds may not, as Skyline contends and the motion court concluded, unambiguously require that One Team obtain identical coverage for Skyline as it procured for itself. Instead, the provision may be reasonably interpreted to require that One Team obtain for Skyline the same breadth of insurance it enjoys under the policy but only with respect to One Team's operations, not Skyline's.

For those reasons, and based on the summary judgment record, we find the court erred by granting Skyline summary judgment on its breach of contract claim. The proper interpretation of the subcontract requires a consideration of evidence and facts that more clearly define the parties' intentions such that

judgment could not be properly entered as a matter of law. See generally Checchio, 335 N.J. Super. at 502.

We therefore reverse the court's order granting summary judgment on the Skyline's breach of contract crossclaim. In doing so, we offer no dispositive determinations on the meaning of the relevant contractual provisions or on the nature and scope of the coverage under the policy.

C.

We note One Team's concern the motion court's decision denying Skyline's motion for summary judgment on its common law indemnity suggests that claim may be sustained in the absence of any showing plaintiff's injuries were caused by, or resulted from, One Team's negligence. The motion court's decision is not binding as to any issues of fact or law that may be presented by the parties based on evidence and circumstances presented in the future. The motion court properly denied Skyline's motion for summary judgment on the common law indemnity claim based on the limited record presented. Nothing in the court's decisions denying the summary judgment or reconsiderations motions control or limit the legal and factual issues that may be presented as the matter proceeds or remand.

Because we reverse the court's summary judgment award in Skyline's favor, it is unnecessary to address One Team's claim the court erred by denying its reconsideration motion.

In sum, we reverse the court's order granting Skyline summary judgment on its crossclaims for contractual indemnification and breach of contract against One Team.[12] We remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

[12] Skyline did not seek leave to cross-appeal from the court's orders to the extent they may be interpreted as denying Skyline's motion for summary judgment on its crossclaim for common law indemnification. As noted, it does not appear the court considered Skyline's motion as one seeking judgment on Skyline's crossclaim under the New Jersey Joint Tortfeasor's Act. We offer no opinion on the court's disposition of those claims.