SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3957-21

SAUNDRA THOMAS, individually and as Administratrix Ad Prosequendum and General Administrator of the Estate of BERRY THOMAS, deceased,

Plaintiff-Appellant,

v.

JOHN FENWICK SERVICE PLAZA, HMS HOST FAMILY RESTAURANTS, INC., and NEW JERSEY TURNPIKE AUTHORITY,

Defendants,

and

AAA LIFE INSURANCE COMPANY,

Defendant-Respondent.

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Argued May 31, 2023 – Decided August 23, 2023

Before Judges Sumners and Berdote Byrne.

On appeal from the Superior Court of New Jersey, Law Division, Essex County, Docket No. L-2479-18.

Joel I. Rachmiel argued the cause for appellant.

Kurt H. Dzugay argued the cause for respondent (Lewis Brisbois Bisgaard & Smith, LLP, attorneys; Kurt H. Dzugay, of counsel and on the brief).

PER CURIAM

Plaintiff Saundra Thomas appeals the Law Division's summary judgment order dismissing her amended complaint seeking a $15,000 accidental death insurance benefit from a life insurance policy with defendant AAA Life Insurance Company arising from the death of her husband, Berry Thomas. We affirm because, as AAA pled in its seventh separate defense, Berry's[1] death stemmed from injuries suffered in an accident that occurred before the policy's effective date. There is no merit to Saundra's contention the motion judge erred in dismissing her argument that the equitable doctrines of waiver, estoppel, and/or laches prevent AAA from obtaining summary judgment.

I

The facts before the motion judge were undisputed. On February 15, 2017, Berry died from bilateral pulmonary emboli stemming from injuries

[1] Because Saundra and Berry share a surname, we refer to them by their first names, intending no disrespect.

sustained in an accident on January 17, where he slipped on black ice in the parking lot of the John Fenwick Service Area, injuring his head, shoulder, groin, and back.

Berry's AAA life insurance policy did not become effective until January 25, eight days after his accident. The policy's "[d]eath [b]enefit is limited during the first two years . . . to 110% of the [p]remium paid, unless [Berry] dies by an [a]ccidental [d]eath." If Berry died an accidental death in the first two years, the death benefit was $15,000. Accidental death is defined as "death that results from an accidental bodily injury, occurs within . . . (180) days of the injury, is the sole cause of death, completely and wholly independent of any sickness or disease, suicide, and all other natural causes." Furthermore, "[t]he injury and death must occur while the [p]olicy is in force." The policy also had a travel accident endorsement that paid an additional $15,000 if Berry died during a covered travel accident, including "[w]hile driving or riding in a [p]rivate [p]assenger [a]utomobile."

In April 2017, Saundra submitted Berry's medical records from the date of his fall and his death certificate to AAA, requesting "the full $15,000 life insurance policy limit." AAA declined coverage, stating it needed more information regarding the connection between Berry's injuries and his death.

In September 2018, Saundra sued various parties who she alleged negligently caused her husband's accident,[2] as well as AAA for not paying insurance benefits totaling $30,000—$15,000 each for the accidental death and travel accident benefits. In its answer denying coverage, AAA's seventh separate defense stated:

> The Policy provides that within the first and second year of the Policy that a Death Benefit will be paid in the amount of $15,000 unless the insured dies by an "Accidental Death[.]"[] "Accidental Death" as defined in the Policy is:
>
> > death that results from an accidental bodily injury, occurs within one hundred eighty (180) days of the injury, is the sole cause of death, completely and wholly independent of any sickness or disease, suicide, and all other natural causes. The injury and death must occur while the Policy is in force.
>
> If the insured's death is not the result of a[n] "Accidental Death[,]"[] the amount payable is limited to 110% of the premiums paid. The insured in this matter did not suffer an "Accidental Death" and died within the first year of the Policy. Therefore[,] the $15,000 Death Benefit is not payable in this matter.

[2] These parties are John Fenwick Service Plaza, HMS Host Family Restaurants, Inc. (HMS), and New Jersey Turnpike Authority (NJTA). NJTA was granted summary judgment on common law weather immunity grounds. After AAA was granted summary judgment, dismissing all claims against it, John Fenwick Service Plaza and HMS settled with Saundra for $225,000.

On December 20, 2019, the motion judge granted AAA partial summary judgment dismissal of Saundra's claim for the travel accident benefit. Saundra conceded Berry's death was not due to injuries incurred while driving or riding in a private passenger automobile, and, therefore, not covered under the insurance policy's definition of a travel accident.

On February 18, 2021, a different motion judge denied AAA's motion for summary judgment dismissal of Saundra's remaining claim for the $15,000 accidental death benefit. The motion judge rejected AAA's contention that Saundra's medical expert rendered an inadmissible net opinion that Berry's death was caused by injuries he suffered from the accident.

On June 24, 2021, the same judge entered an order and bench decision granting AAA summary judgment dismissal of Saundra's claim for the accidental death benefit. The judge held summary judgment was appropriate as there were no genuine issues of material fact regarding the date of the accident, the policy's effective date, and the date of Berry's death. Based on the insurance policy's ordinary plain meaning—as pled in AAA's seventh separate defense—the judge determined Saundra was not entitled to the accidental death benefit because Berry's death was caused by an accident occurring on January 17, 2017, before the policy took effect on January 25, 2017.

The motion judge found no merit to Saundra's contention that the equitable doctrines of waiver, estoppel, and/or laches prevented AAA from asserting its seventh separate defense in its post-discovery summary judgment motion. Noting AAA's defense was "not one that must be raised within a certain period of time after filing the answer," the judge held none of these doctrines precluded it from arguing its seventh separate defense entitled it to summary judgment. The judge reasoned there was "nothing in the [court] rules to preclude AAA from trying its case and . . . asking for a determination at the end of the trial or at the end of plaintiff's presentation of evidence at trial." In sum, the judge explained, there was no: waiver—an intentional relinquishment of the defense; grounds for finding it was estopped from asserting the defense; or evidence that AAA improperly slept on its rights to create an equitable defense to support applying laches.

II

Before us, Saundra argues the doctrines of waiver, estoppel, and laches bar AAA from raising its seventh separate defense to obtain summary judgment. We disagree and affirm substantially for the reasons set forth by the motion judge in his bench ruling.

Summary judgment is correct because "the pleadings, depositions, answers to interrogatories and admissions on file . . . 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); Brill v. Guardian Life Ins. Co., 142 N.J. 520, 540 (1995). "When no issue of fact exists, and only a question of law remains, this [c]ourt affords no special deference to the legal determinations of the [motion judge]." RSI Bank v. Providence Mut. Fire Ins. Co., 234 N.J. 459, 472 (2018) (quoting Templo Fuente De Vida Corp. v. Nat'l Union Fire Ins. Co., 224 N.J. 189, 199 (2016)).

In accordance with our court rules, the motion judge properly considered AAA's seventh separate defense argument that Saundra failed to state a viable claim under the clear terms of the insurance policy. Per Rule 4:6-2, every defense must be asserted in the defendant's answer, except a failure to state a claim defense and other specified defenses not applicable here.[3] A failure to

[3] The defenses which do not have to be asserted in an answer are: (1) lack of subject matter jurisdiction; (2) lack of personal jurisdiction; (3) insufficient process; (4) insufficient service of process; (5) failure to state a claim upon which relief can be granted; and (6) failure to join a party without whom the action cannot proceed. R. 4:6-2(a), (b), (c), (d), (e), and (f).

state a claim defense "may be made in any pleading . . . or by motion for summary judgment or at the trial on the merits." R. 4:6-7.

Accordingly, we reject Saundra's contention that AAA implicitly waived its right to raise its seventh separate defense through indifference because it had full knowledge of the policy language and "waited until the completion of discovery and the verge of trial" before filing this summary judgment motion. Waiver does not apply.

Waiver is "the intentional relinquishment of a known right." G.E. Cap. Mortg. Servs. v. Marilao, 352 N.J. Super. 274, 281 (App. Div. 2002) (citing West Jersey Title and Guar. Co. v. Indus. Tr. Co., 27 N.J. 144, 152 (1958)). "The intention to waive need not be stated expressly, but may be spelled out from a state of facts exhibiting full knowledge of circumstances producing a right and continuing indifference to the exercise of that right." Merchs. Indem. Corp. of N.Y. v. Eggleston, 68 N.J. Super. 235, 254 (App. Div. 1961). Simply, AAA did not waive its defense that Berry's death was not covered under the policy terms because it was pled in its seventh separate defense.

We reject Saundra's contention AAA should have been estopped from raising its separate defense. Estoppel requires a showing "the alleged conduct was done, or representation was made, intentionally or under such circumstances

that it was both natural and probable that it would induce action" and "the conduct must be relied on, and the relying party must act so as to change [their] position to [their] detriment." Miller v. Miller, 97 NJ 154, 163 (1984). There is no showing AAA's conduct or misrepresentations caused Saundra to sue AAA. There was nothing amiss about AAA waiting until the completion of discovery when Berry's cause of death was in dispute. None of the case law cited by Saundra supports a contrary conclusion.

Finally, we dismiss Saundra's contention that laches bars AAA's application of its seventh separate defense because it slept on its right to assert the defense, causing plaintiff legal costs and the emotional burden of three years of litigation. Laches "is invoked to deny a party enforcement of a known right when the party engages in an inexcusable and unexplained delay in exercising that right to the prejudice of the other party." Knorr v. Smeal, 178 N.J. 169, 180-81 (2003). "Laches may only be enforced when the delaying party had sufficient opportunity to assert the right in the proper forum and the prejudiced party acted in good faith believing that the right had been abandoned." Id. at 181. The court should consider "the length of the delay, the reasons for the delay, and the 'changing conditions of either or both parties during the delay'" and the primary concern is "whether a party has been harmed by the delay."

Ibid. (quoting Lavin v. Bd. of Educ., 90 N.J. 145, 152 (1982)). As noted, AAA's summary judgment motion based on a failure to state a claim defense can be made at any stage of litigation. See R. 4:6-7. Moreover, there is no showing that Saundra was prejudiced by the timing of AAA's motion. Indeed, she settled her claims against HMS for $225,000—over a year after AAA's summary judgment motion was granted—whereas the most she could have obtained from AAA was the $15,000 accidental death benefit. Saundra's litigation focus was obviously centered on her claims against HMS, not the significantly less valuable claim against AAA.

To the extent we have not addressed any arguments raised by Saundra, they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.