[Cite as *Motorists Mut. Ins. Co. v. Gene Patton, Inc.*, 2012-Ohio-3112.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Motorists Mutual Insurance Co., et al.	Court of Appeals No. L-11-1180
Plaintiffs	Trial Court No. CI0200903505
v.	
Owners Insurance Co.	
Appellee	
v.	
Gene Patton, Inc., et al.	**DECISION AND JUDGMENT**
Appellant	Decided: July 6, 2012

* * * * *

Robert J. Bahret and Andrew J. Ayers, for appellee.

Marvin A. Robon and R. Ethan Davis, for appellant.

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OSOWIK, J.

{¶ 1} This is an appeal from a judgment of the Lucas County Court of Common Pleas which granted summary judgment in favor of appellee in the underlying defective construction and defective construction materials dispute. For the reasons set forth below, this court affirms the judgment of the trial court.

{¶ 2} Appellant, Gene Patton Inc. ("Patton"), sets forth the following two assignments of error:

1. The Trial Court erred in granting Appellee's Motion for Summary Judgment, and concluding that the business risk exclusions preclude coverage under the policy.

2. The Trial Court erred in granting Appellee's Motion for Summary Judgment and finding that Appellee Owners is not obligated to provide Appellant Patton with a Legal Defense.

{¶ 3} The following undisputed facts are relevant to this appeal. On March 9, 2000, Robert and Barbara May contracted with Patton to purchase one of Patton's new construction villa homes in the Carrietowne subdivision, Sylvania Township, Ohio. Less than a year after purchasing the new home, the Mays observed a crack forming on an interior wall of the home. They notified Patton of the issue. Patton suggested increasing the level of humidity inside the home. They complied with this recommendation. Subsequently, the Mays observed condensation forming on windows on the interior of the home during colder weather conditions.

{¶ 4} In 2006, a window washer working on the Mays' home alerted them that one of their windows was badly deteriorating and cracking. The Mays again notified Patton. The Mays also began to observe water dripping on the wall and window sill around the window inside the home during rainstorms. Patton and the window manufacturer both inspected the window but failed to determine the underlying problem. Ultimately, the Mays alerted their insurer, Motorists Mutual Insurance Company ("Motorists").

{¶ 5} Upon receipt of the claim, Motorists dispatched an adjuster to inspect the premises and prepare an estimate for corrective repairs. Based upon this, a check was issued to the Mays in the amount of $2,274.68. In the course of the designated repairs being performed, significant additional property damage was discovered. On April 18, 2008, Motorists had a second check issued to the Mays in the amount of $15,413.13.

{¶ 6} On July 17, 2007, Motorists filed a complaint alleging negligence against Patton in Toledo Municipal Court seeking recovery of its initial payments to the Mays. On June 6, 2008, a request by Motorists to file an amended complaint pertaining to the additional funds disbursed to the Mays was granted. The matter was subsequently transferred to the Lucas County Court of Common Pleas as the amended complaint encompassed an amount exceeding municipal court jurisdiction.

{¶ 7} On March 22, 2010, Motorists filed the second amended complaint with leave of the court. This complaint incorporated additional allegations against the underlying window manufacturer, Andersen Window Corporation. On April 2, 2010, appellee Owners Ins. Co. ("Owners"), Patton's commercial general liability carrier,

intervened in the case. On January 13, 2011, Owners filed for summary judgment on the basis that the allegations set forth in the second amended complaint were excluded from coverage pursuant to the contractual terms of its commercial general liability policy with Patton and it therefore had no duty to defend Patton in the matter. On February 14, 2011, Patton filed a brief in opposition.

{¶ 8} On June 7, 2011, the trial court granted summary judgment to Owners. The trial court found that the allegation of negligently performed construction services against Patton fell within a specific exclusion provision of the insurance contract on the basis of the language of exclusionary provision j(7) which expressly excluded coverage for property damage due to work, "incorrectly performed on it." Thus, this exclusion pertained to negligent construction work such as that alleged in the second amended complaint. In addition, the trial court referenced coverage exclusion provision 2(l) which expressly excluded coverage for property damage arising out of "your work" defined to include materials, parts, or equipment furnished in connection to the construction work. Thus, this second referenced exclusion pertained to potentially defective materials, such as the window utilized by Patton in the course of construction. Lastly, the trial court referenced a policy definition set forth in section V. (17) which further defined the exclusionary language set forth in 2(l) delineating that damages stemming from materials used in connection with the construction work are to be construed as having occurred "away from [the] premises."

{¶ 9} On the basis of its contractual analysis, applying the above referenced contract provisions and definitions to the allegations set forth in the second amended complaint, the trial court determined that liability coverage pursuant to the express terms of the commercial liability contract between Owners and Patton was not provided in scenarios of property damaged due to incorrect or negligent work or due to materials used in connection with said work. These were the precise allegations set forth in the second amended complaint. As such, the trial court concluded that Owners had no potential liability under the complaint and no duty to defend Patton against allegations that could not trigger any potential liability under that insurance policy. Summary judgment was granted to Owners. This appeal ensued.

{¶ 10} In the first assignment of error, appellant asserts that the trial court erred in concluding that the allegations of the second amended complaint were excluded under the policy and thereby erred in granting summary judgment to Owners. In the second assignment, appellant asserts that the trial court likewise erred in the corresponding conclusion that Owners is not obligated to defend Patton. Due to their common legal foundation, we will simultaneously consider the assignments.

{¶ 11} When reviewing a trial court's summary judgment decision, the appellate court conducts a de novo review. *Grafton v. Ohio Edison Co.*, 77 Ohio St. 102, 671 N.E.2d 241 (1996). Summary judgment will be granted when there are no genuine issues of material fact, and when construing the evidence most strongly in favor of the nonmoving party, reasonable minds can only conclude that the moving party is entitled to

judgment as a matter of law. *Harless v. Willis Day Warehousing Co.*, 54 Ohio St.2d 64, 375 N.E.2d 46 (1978).

{¶ 12} In applying this guiding standard of review to the instant case, we note at the onset that this case is determined pursuant to an application of the allegations of the second amended complaint to the language of the underlying insurance policy executed between Owners and Patton. If the allegations set forth in the complaint are encompassed by exclusionary provisions, then reasonable minds can only conclude that there is no conceivable coverage pursuant to the policy and Owners is entitled to judgment as a matter of law.

{¶ 13} In conjunction with the above, according to Ohio law, insurance policies are contracts. Their language must be limited to the plain meaning of the words used. Thus, we conduct our review of the relevant insurance policy language under the plain meaning standard. *Gregoire v. Nationwide Mut. Ins. Co*., 6th Dist. No. L-10-1280, 2011-Ohio-5683.

{¶ 14} The allegation against Owners' insured, Patton, in the second amended complaint specifically asserts in relevant part that the insured, "negligently performed construction services in such a manner to cause water damage to Plaintiff insured's real property in the amount of $18,187.81." The determinative exclusionary provision of the underlying insurance policy is set forth in the exclusions portion of the coverage sections at j(7). That provision excludes coverage under the policy for damages to property that, "must be restored, repaired or replaced because 'your work' was incorrectly performed

on it." The definitions portion of the contract defines "your work" to include, "work or operations performed by you or on your behalf." This policy coverage exclusion language and its corresponding definitions clearly encompass the allegations by the Mays of negligent construction services by Patton. There can be no liability under the policy for any property damage caused by negligent construction on the part of Patton or those working on its behalf.

{¶ 15} In conjunction with this, the policy exclusion language set forth at section 2(l) further excludes coverage arising out of "your work" or any part of it, as defined to include materials furnished in connection with the work, such as the Andersen windows used by Patton in the construction of the Mays' home. There can be no liability under the policy for any property damage caused by materials, such as the Andersen windows, used in the construction by Patton or those operating on his behalf. While Patton goes to great lengths to find conflicting language and/or coverage with respect to the Section V definition of "products-completed operations hazard," we note that this section is simply further delineating the coverage exclusion for damages stemming from defective materials used in construction except in certain enumerated circumstances in which coverage for the insured may be possible. We note that there are no allegations in the second amended complaint which conceivably fall within those exceptions to the exclusion enumerated in the "products-completed operations hazard" language of Section V. (17).

{¶ 16} We have thoroughly considered any possible coverage pursuant to the underlying commercial general liability policy by which coverage could be triggered on the part of Owners in connection to the second amended complaint. We find that there are none. The exclusionary provisions set forth in the policy negate any potential coverage for defective construction work or defective materials utilized in the course of the construction work. Reasonable minds can only conclude that there is no potential coverage pursuant to this insurance contract. As such, Owners is entitled to judgment as a matter of law. Accordingly, Owners bears no duty to defend Patton pursuant to a commercial liability insurance policy which provides no conceivable coverage for the allegations of the second amended complaint.

{¶ 17} Wherefore, we find appellant's first and second assignments of error not well-taken. The judgment of the Lucas County Court of Common Pleas is hereby affirmed. Appellant is ordered to pay the cost of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J. _____
JUDGE

Thomas J. Osowik, J. _____

Stephen A. Yarbrough, J. _____
JUDGE

CONCUR.

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JUDGE