[Cite as *Allied Roofing, Inc. v. W. Res. Group*, 2013-Ohio-1637.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Allied Roofing, Inc.,	:	
Plaintiff-Appellant,	:	
		No. 12AP-575
v.	:	(C.P.C. No. 10CVH-02-3107)
Western Reserve Group et al.,	:	(REGULAR CALENDAR)
Defendants-Appellees.	:	

D E C I S I O N

Rendered on April 23, 2013

Caborn & Butauski Co., LPA, and *David A. Caborn*, for appellant.

Weston Hurd LLP, Ronald A. Rispo and *Robert E. Goff, Jr.*; *David L. Jarrett*, for appellee Western Reserve Group.

APPEAL from the Franklin County Court of Common Pleas

DORRIAN, J.

{¶ 1} Plaintiff-appellant, Allied Roofing, Inc. ("Allied Roofing"), appeals from a judgment of the Franklin County Court of Common Pleas denying Allied Roofing's motion for summary judgment and granting the motion for summary judgment filed by defendant-appellee, Western Reserve Group ("Western Reserve"). We conclude that Western Reserve is entitled to judgment as a matter of law because the underlying claim in this case does not involve "property damage" caused by an "occurrence" for purposes of the applicable insurance policy; therefore, we affirm.

{¶ 2} This case arises from work performed by Michael Beish ("Beish") under a subcontract agreement with Allied Roofing. The subcontract provided that Beish would remove rubber roofing from a damaged roof at Brown Logistics's building in Columbus, Ohio, and replace it with new rubber roofing. As part of Beish's work, he was required to

remove and reinstall air conditioning units that were located on the roof. At some point during the process of removing and reinstalling the air conditioning units, the coils became twisted, causing the coolant to leak out. The damage to the air conditioning units was discovered when they were turned back on after Beish completed his work. Allied Roofing reimbursed Brown Logistics for the damage, incurring costs of $10,148.

{¶ 3} Beish was insured under a policy issued by Western Reserve. Allied Roofing filed a lawsuit against Beish and Western Reserve seeking to recover the costs of remedying the damage. Allied Roofing and Western Reserve entered into an agreement to adjudicate all coverage issues in exchange for an agreement that Allied Roofing would not seek to recover damages from Beish in his personal capacity and would limit any recovery to the proceeds available under the insurance policy. As part of that agreement, Allied Roofing and Western Reserve agreed to certain stipulations regarding the underlying facts of the case. Allied Roofing and Western Reserve each moved for summary judgment. The trial court granted Western Reserve's motion for summary judgment and denied Allied Roofing's motion for summary judgment, concluding that the damage to the air conditioning units was not covered under the insurance policy because it fell into exclusions set forth in the policy.

{¶ 4} Allied Roofing appeals from the trial court's judgment, assigning three errors for this court's review:

> [1.] THE TRIAL COURT ERRED IN GRANTING WESTERN RESERVE GROUP'S MOTION FOR SUMMARY JUDGMENT[.]
>
> [2.] THE TRIAL COURT ERRED IN DENYING ALLIED ROOFING'S MOTION FOR SUMMARY JUDGMENT[.]
>
> [3.] THE TRIAL COURT ERRED IN NOT ENTERING JUDGMENT IN FAVOR OF ALLIED ROOFING IN THE AMOUNT OF $10,148.00[.]

{¶ 5} Allied Roofing's three assignments of error are interrelated, asserting that the trial court erred by denying its motion for summary judgment and by granting Western Reserve's motion for summary judgment. Therefore, we will address all three assignments of error together.

{¶ 6} We review a trial court's ruling on a summary judgment motion de novo. *Capella III, L.L.C. v. Wilcox*, 190 Ohio App.3d 133, 2010-Ohio-4746, ¶ 16 (10th Dist.), citing *Andersen v. Highland House Co.*, 93 Ohio St.3d 547, 548 (2001). "De novo appellate review means that the court of appeals independently reviews the record and affords no deference to the trial court's decision." (Citations omitted.) *Holt v. State*, 10th Dist. No. 10AP-214, 2010-Ohio-6529, ¶ 9. Summary judgment is appropriate where "the moving party demonstrates that (1) there is no genuine issue of material fact, (2) the moving party is entitled to judgment as a matter of law, and (3) reasonable minds can come to but one conclusion, and that conclusion is adverse to the party against whom the motion for summary judgment is made." *Capella III* at ¶ 16, citing *Gilbert v. Summit Cty.*, 104 Ohio St.3d 660, 2004-Ohio-7108, ¶ 6. Therefore, we undertake an independent review to determine whether Western Reserve or Allied Roofing was entitled to judgment as a matter of law.

{¶ 7} The insurance policy at issue in this case provides in part that Western Reserve will pay all sums to which the insured becomes legally obligated to pay as damages due to "bodily injury" or "property damage" caused by an "occurrence." The policy further defines "occurrence" as "an accident and includes repeated exposure to similar conditions." Western Reserve asserted that it was entitled to summary judgment because the damage to the air conditioning units did not constitute an "occurrence" under the terms of the policy. In the alternative, Western Reserve argued that various exclusions in the policy applied to the particular claim asserted in this case. Allied Roofing argued that it was entitled to summary judgment because the damage to the air conditioning units was an "occurrence" under the policy and that none of the exclusions cited by Western Reserve applied to exempt the damages from coverage.

{¶ 8} The Supreme Court of Ohio recently addressed the question of what constitutes an "occurrence" under a commercial general liability insurance policy in *Westfield Ins. Co. v. Custom Agri Sys., Inc.*, 133 Ohio St.3d 476, 2012-Ohio-4712. The *Westfield* case, which was filed in federal court under diversity jurisdiction, involved damages resulting from a defective steel grain bin. *Id.* at ¶ 2. The company that constructed the grain bin, Custom Agri Systems, sought to have its insurance company, Westfield Insurance, defend and indemnify it against claims for defective construction

and consequential damages under the terms of its commercial general liability insurance policy. *Id*. at ¶ 2-3. Westfield Insurance argued that the claims were not covered under the insurance policy because they did not seek compensation for property damage caused by an occurrence within the terms of the policy. *Id*. at ¶ 3. The federal trial court granted summary judgment for Westfield Insurance, and Custom Agri Systems appealed.

{¶ 9} After finding a lack of controlling precedent in its own decisions, the United States Court of Appeals for the Sixth Circuit certified a question of state law to the Supreme Court of Ohio as to whether claims of defective construction or workmanship brought by a property owner are claims for "property damage" caused by an "occurrence" under a commercial general liability policy. *Id*. at ¶ 6. In examining this question, the Supreme Court noted that, in general, commercial general liability policies are not intended to insure against "business risks" that are the normal, frequent or predictable consequences of doing business that a business can and should control or manage. *Id*. at ¶ 10. The specific insurance policy at issue in the case provided that Westfield Insurance would pay damages due to "bodily injury" or "property damage" to which the policy applied and that Westfield Insurance had the right and duty to defend against any suit seeking those damages. *Id*. at ¶ 9. The policy further provided that the insurance applied to bodily injury or property damage only if it was caused by an "occurrence" that took place within the coverage territory. *Id*. The policy defined the term "occurrence" as "an accident, including continuous or repeated exposure to substantially the same general harmful conditions." *Id*. at ¶ 12. Because the policy did not define the term "accident," the Supreme Court concluded that the natural and commonly accepted meaning of that term would apply. *Id*.

{¶ 10} Reviewing decisions from other courts, the Supreme Court noted that a central concept in the realm of insurance coverage was the doctrine of fortuity and the idea that commercial general liability policies cover truly accidental property damage, not damages arising from processes controlled by the insured and that could be anticipated. *Id*. at ¶ 13. Ultimately, the Supreme Court concluded that the insurance policy did not provide coverage for alleged defective construction of and workmanship on the steel grain bin. *Id*. at ¶ 14. Responding to the certified question of state law, the Supreme Court held that "claims of defective construction or workmanship brought by a property owner are

not claims for 'property damage' caused by an 'occurrence' under a commercial general liability policy." *Id*. at ¶ 19.

{¶ 11} The insurance policy at issue in this case is substantially similar to the policy at issue in *Westfield*. The policy provides coverage for "bodily injury" or "property damage" caused by an "occurrence." In this case, the policy defines "occurrence" as "an accident and includes repeated exposure to similar conditions." This language is effectively the same as the policy at issue in *Westfield*. Therefore, the question is whether the claim in this case involves defective construction or workmanship. The parties stipulated that, as part of Beish's work, he had to remove and reinstall air conditioning units located on the roof. Further, in response to Western Reserve's requests for admission, Allied Roofing admitted that Beish was negligent in failing to ensure that the air conditioner coils did not become twisted and that the air conditioning unit was damaged when the coils became twisted, causing the coolant to leak out. Thus, the claim in this case is a result of Beish's defective workmanship in performing his obligations under the contract. Pursuant to *Westfield*, such a claim does not constitute "property damage" caused by an "occurrence," and therefore it falls outside the grant of coverage under the terms of the insurance policy. Because the claim does not involve property damage caused by an occurrence, we need not address whether any of the other exclusions in the policy apply. Western Reserve is entitled to judgment as a matter of law because the claim that Allied Roofing asserts is not covered under the terms of the insurance policy.

{¶ 12} Accordingly, the trial court did not err by granting Western Reserve's motion for summary judgment and denying Allied Roofing's motion for summary judgment. Because we reach the same result as the trial court, albeit for a different reason, we overrule appellant's three assignments of error and affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

SADLER and CONNOR, JJ., concur.

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