COURT OF APPEALS
DECISION
DATED AND FILED

March 14, 2018

Sheila T. Reiff
Clerk of Court of Appeals

Appeal No. 2017AP100 **Cir. Ct. No. 2015CV5805**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

KAY GNAT-SCHAEFER,

PLAINTIFF,

V.

JASON AMRANI AND CHASE PROPERTIES AND INVESTMENTS LLC,

DEFENDANTS-APPELLANTS,

AUTO-OWNERS INSURANCE COMPANY,

DEFENDANT,

ERIE INSURANCE,

INTERVENING DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Milwaukee County: CLARE L. FIORENZA, Judge. *Affirmed*.

Before Reilly, P.J., Gundrum and Hagedorn, JJ.

Per curiam opinions may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

¶1 PER CURIAM. In this insurance-coverage dispute, Jason Amrani and his development company, Chase Properties and Investments LLC, appeal from an order granting a judgment in favor of intervening defendant Erie Insurance declaring that Erie is not required to defend or indemnify Amrani and/or Chase in an action filed by Kay Gnat-Schaefer. We agree with the circuit court that the Erie policies' business-pursuit exclusions apply to exclude coverage and the occasional-business exception to that exclusion does not reinstate coverage. We affirm the judgment.

¶2 The background facts are undisputed. Amrani and Gnat-Schaefer had a decade-long business and personal relationship. In 2013, they decided to purchase and renovate a Milwaukee residential duplex to restore it to a single-family dwelling. Gnat-Schaefer would hire Amrani and/or Chase to serve as general contractor. They discussed a projected cost of $163,970, a number Amrani said he felt "confident in." The seller accepted Chase's offer to purchase the property for $96,000. Chase then assigned its right, title, and interest in and to the offer to purchase to Gnat-Schaefer. At closing, Gnat-Schaefer executed a fixed-rate balloon note for the principal sum of $300,000 and a mortgage on the property to secure the note. Amrani acted as mortgagee.

¶3 The parties did not execute a written contract memorializing the scope or cost of the work. Gnat-Schaefer became dissatisfied with the renovation work and ended Amrani's involvement with the project. In June 2014, Amrani informed Gnat-Schaefer he would not release the mortgage unless she paid him

$282,174.25. He supported his demand with a multipage spreadsheet detailing the project's final costs.

¶4 Gnat-Schaefer filed suit. The amended complaint alleged numerous WIS. ADMIN. CODE § ATCP 110 (Mar. 2014) violations; breach of contract, unjust enrichment, breach of the duty of good faith and fair dealing, accounting, theft by contractor under WIS. STAT. §§ 779.02 and 779.16 (2015-16), negligent misrepresentation, strict responsibility misrepresentation, and intentional deceit.[1] Broadly stated, Gnat-Schaefer claims that Amrani failed to complete the renovation work he was supposed to do, improperly performed some of the work he did do, and failed to keep Gnat-Schaefer apprised of delays, cost overruns, and change orders. Gnat-Schaefer also alleged that the HVAC system was defectively installed and, because Amrani left dust, exposed dirt, and piles of debris in the basement, the combination makes the home unsafe to occupy due to poor air quality.

¶5 Erie insured Amrani under a Tenantcover policy and a personal catastrophe liability policy. Erie moved for declaratory and summary judgment on the basis that the policies did not provide coverage for defense or indemnity, as the allegations in Gnat-Schaefer's amended complaint did not allege bodily injury or

[1] The original complaint was filed against only Amrani. Auto-Owners Insurance, which had issued a commercial general liability (CGL) policy to Amrani, later intervened. Gnat-Schaefer filed an amended complaint in January 2016, naming Amrani, Chase, and Auto-Owners. The circuit court granted Auto-Owners' motion for declaratory and summary judgment on grounds Auto-Owners owed no duty to defend or indemnify Amrani or Chase. Erie intervened soon thereafter. Auto-Owners is not a party to this appeal.

All references to the Wisconsin Statutes are to the 2015-16 version unless noted.

property damage caused by an occurrence. The circuit court granted Erie's motion. Amrani and Chase appeal.

¶6 Whether to grant or deny declaratory relief falls within the discretion of the circuit court. WIS. STAT. § 806.04(6); ***Olson v. Farrar***, 2012 WI 3, ¶24, 338 Wis. 2d 215, 809 N.W.2d 1. When the exercise of such discretion turns upon a question of law, however, we review the question independently. ***Olson***, 338 Wis. 2d 215, ¶24. As the circuit court's grant of declaratory judgment here turned upon its interpretation of an insurance policy, it presents a question of law. ***Id.*** Whether summary judgment is properly granted also is a question of law. ***Id.***, ¶23. "Summary judgment is appropriate when the record demonstrates that no genuine issue as to any material fact exists and the moving party is entitled to judgment as a matter of law." ***Id.*** Despite our de novo review, we value a circuit court's thorough and well-reasoned decision, as this one was. ***Scheunemann v. City of West Bend***, 179 Wis. 2d 469, 475-76, 507 N.W.2d 163 (Ct. App. 1993).

¶7 Courts use a three-step process to determine whether a claim is covered by a liability insurance policy. ***Acuity v. Society Ins.***, 2012 WI App 13, ¶14, 339 Wis. 2d 217, 810 N.W.2d 812. We first determine if the policy makes an initial grant of coverage. ***Id.*** If there is, we determine whether there is an applicable exclusion. ***Id.*** If an exclusion applies, we determine whether an exception to that exclusion reinstates coverage. ***Id.*** We do not interpret insurance policies in a way that binds an insurer to a risk it did not contemplate covering and for which it was not paid. ***American Family Mut. Ins. Co. v. American Girl, Inc.***, 2004 WI 2, ¶23, 268 Wis. 2d 16, 673 N.W.2d 65.

¶8 After examining the Erie policies' language, the circuit court found an initial grant of coverage, as the policies limit coverage to an "occurrence,"

which "means an accident,"[2] and reasonable minds could differ as to whether an accident occurred. In our de novo review, we may omit this layer of analysis because, like the circuit court, we conclude the business-pursuit exclusion applies to defeat coverage and the occasional-business exception does not salvage it.

¶9 The Tenantcover policy excludes "regular business activities" and defines "business" as "any full-time, part-time or occasional activity engaged in as a trade, profession or occupation, including farming." The personal catastrophe policy excludes coverage for "personal injury or property damage arising out of business pursuits." It defines "business" as "any activity engaged in as a trade, profession or occupation, other than farming." Amrani and Gnat-Schaefer have engaged in other real estate ventures over the years; Amrani has purchased numerous other properties for investment and, for his own purposes, rehabbed and sold them; and Amrani acted as a general contractor on this project. The exclusion applies.

¶10 Finally, we consider whether the occasional-business exception restores the coverage the business-pursuit exclusion knocked out. The occasional-business exception states that Erie provides coverage for "occasional business activities of anyone we protect. These include, but are not limited to, baby-sitting, caddying, lawn care, newspaper delivery and other similar activities."

[2] Under the Tenantcover policy, "'occurrence' means an accident, including continuous or repeated exposure to the same general harmful conditions." Under the personal catastrophe policy, "'occurrence' means an accident, including continuous or repeated exposure to conditions, which results in personal injury or property damage which is neither expected nor intended." Both policies define "property damage" as "injury to or destruction of tangible property, including loss of its use."

¶11 Amrani and Chase argue that the occasional-business exception is "vague, indefinite, and without limitation," as it is unclear what "occasional" means. A term is ambiguous if it is "susceptible [of] more than one reasonable construction." ***Rural Mut. Ins. Co. v. Welch***, 2001 WI App 183, ¶6, 247 Wis. 2d 417, 633 N.W.2d 633 (citation omitted). Ambiguities must be resolved against the insurer and in favor of the insured and coverage. ***Id.*** Amrani contends he acted as general contractor for a third person only in this venture and asks what could be more "occasional" than a one-time endeavor.

¶12 Our reading of the occasional-business exception persuades us that "other similar activities," not "occasional," is the determinative term. For a pursuit to fall under the exception, it plainly must be "similar" to the listed activities. Amrani has invested in real estate with Gnat-Schaefer on multiple occasions and loaned her money for them. He also worked for months on this whole-house renovation project and has done similar undertakings for his own benefit. None of those activities are similar to babysitting, caddying, lawn care, or newspaper delivery. Amrani's construction of the exception is not reasonable; the exception is not ambiguous.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.