

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION-CIVIL

525 LANCASTER AVE APTS., L.P., : September Term 2012
Plaintiff, :
v. : No. 341
PENNSYLVANIA NATIONAL MUTUAL :
INSURANCE CO. and UTICA NATIONAL : COMMERCE PROGRAM
INSURANCE GROUP, :
Defendants. : Control Number 12120616

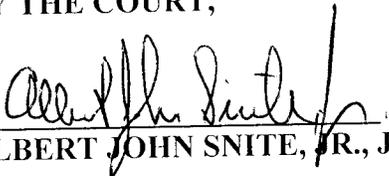
ORDER

AND NOW, this 23rd day of April 2013, upon consideration of Defendant Pennsylvania National Mutual Casualty Insurance Company's Motion for Judgment on the Pleadings and upon consideration of Plaintiff's response in opposition and Cross Motion for Summary Judgment and all replies, it hereby is **ORDERED** as follows:

1. Defendant's Motion for Judgment on the Pleadings is **Granted**.
2. Plaintiff's Cross Motion for Summary Judgment is **Denied**.

Plaintiff's complaint against defendant Penn National Mutual Insurance Co. is dismissed.

BY THE COURT,


ALBERT JOHN SNITE, JR., J.

525 Lancaster Ave. Apts-ORDOP



DOCKETED

APR 23 2013

C. HART
CIVIL ADMINISTRATION

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OPINION

This is an insurance coverage dispute. Plaintiff 525 Lancaster Ave. Apt. LP (hereinafter “Plaintiff”) instituted this action against defendants Pennsylvania National Mutual Insurance Company (“Penn National”) and Utica National Insurance Group (“Utica”) seeking insurance coverage for property damage to its apartment building. Presently pending before the court is Penn National’s Motion for Judgment on the Pleadings and Plaintiff’s Cross Motion for Summary Judgment.

On August 26, 2011, Plaintiff and Longview Construction LLC, a general contractor, entered into a contract to renovate Plaintiff’s apartments located at 525 Lancaster Avenue in Reading, Pa. On November 21, 2011, Longview entered into a subcontract with United States Plumbing, LLC (“US Plumbing”) to install a complete plumbing system in the apartment building. Pursuant to the Subcontract, US Plumbing was required to purchase and maintain insurance and to name the Contractor, Project Owner and Property Owner additional insureds on each of the insurance policies purchased with the exception of the worker’s compensation policy. US Plumbing procured insurance from Penn National and named Longview and Plaintiff as additional insureds under the policy.

On July 18, 2012, a leak developed in the plumbing work performed by US Plumbing under the Subcontract and caused damage to Plaintiff's apartment building which delayed completion of the renovation project. Plaintiff submitted a claim to Penn National for the property damage. Penn National denied the claim.

On September 5, 2012, Plaintiff instituted this action against defendants US Plumbing LLC for negligence and breach of contract, against Penn National for declaratory judgment, breach of contract and bad faith and against Utica National Insurance Group for declaratory judgment. Penn National filed preliminary objections asserting improper venue and misjoinder of claims.

On October 1, 2012, Plaintiff filed an amended complaint against Penn National and Utica. The amended complaint asserted a claim against Penn National for declaratory judgment, breach of contract and bad faith and against Utica for declaratory judgment. US Plumbing was not named as a defendant.¹ On November 19, 2012, Plaintiff filed a praecipe to discontinue the action against Utica and US Plumbing, Inc.

DISCUSSION

The interpretation of an insurance policy is a question of law. The primary goal in interpreting a policy is to ascertain the parties' intentions as manifested by the policy's terms. When the language of the policy is clear and unambiguous, the court must give effect to that language. When a provision of the policy is ambiguous, it is to be construed in favor of the

¹ On September 28, 2012, Plaintiff filed a complaint for negligence and breach of contract against US Plumbing in the Court of Common Pleas of Philadelphia County. On November 14, 2012, the action was transferred to Berks County. Penn National is providing a defense to US Plumbing subject to a reservation of rights.

insured to further the contract's prime purpose of indemnification and against the insurer, as the insurer drafts the policy, and controls coverage.²

The Penn National Policy insures US Plumbing under a Commercial General Liability Insurance Policy, number SU90683220 for the period of May 1, 2012 to May 11, 2013. Pursuant to the terms of the policy, Penn National agreed to pay those sums that the insured becomes legally obligated to pay as damages for property damage.³ The Policy applies only if the "property damage" is caused by an "occurrence" that takes place in the coverage territory and during the policy period.⁴ "Property damage" is defined by the policy as physical injury to tangible property, including all resulting loss of use of that property.⁵ An "occurrence" is defined by the policy as an accident, including continuous or repeated exposures to substantially the same general harmful condition.⁶ The term accident is not defined by the policy; however, words of common usage in an insurance policy are construed according to their natural, plain and ordinary sense.⁷ In its ordinary meaning, accident is an unexpected and undesirable event or something that occurs unexpectedly or unintentionally, involving some degree of fortuity.

In the case at bar, Plaintiff seeks coverage for a leak resulting from US Plumbing's misapplication of pipe fitting glue at the supply line junction and the resulting damage caused by said leak. The property damage caused by the leak does not constitute an occurrence under the

² 401 Fourth St. Inc. v. Investors Ins. Group., 583 Pa. 445, 879 A.2d 166, 170 (2005).

³ Penn National Insurance Policy attached to Defendant's Motion for Judgment on the Pleadings attached hereto as Exhibit "D", section 1 paragraph 1 a.

⁴ Id. at section 1 paragraph 1.b (1) and (2).

⁵ Id. at section V paragraph 17.

⁶ Id. at section V paragraph 13.

⁷ Madison Constr. Co. v. Harleysville Mut. Ins. Co., 557 Pa. 595, 735 A.2d 100, 108 (1999).

Penn National Policy. In Kvaerner U.S. Inc. v. Commercial Union Insurance Co.,⁸ the Pennsylvania Supreme Court, faced with similar facts and policy language, held the definition of “accident” required to establish an “occurrence” under the policy cannot be satisfied by claims based on faulty workmanship. The Court reasoned that such claims simply do not present the degree of fortuity contemplated by the ordinary definition of “accident” and to hold otherwise would convert a policy for insurance into a performance bond.⁹

In the underlying action currently pending in Berks County, Plaintiff avers that the leak was the result of US Plumbing’s poor workmanship. Specifically, Plaintiff avers US Plumbing failed to properly apply the pipe fitting glue at a supply line junction, US Plumbing was negligent in applying glue to the particular fitting, US Plumbing deviated from the manufacturer’s specifications as well as best practices in failing to install the fitting properly, and US Plumbing failed to perform the work required under the Subcontract Agreement in a workman-like manner.¹⁰ Since poor workmanship does not constitute an “occurrence” as defined by the Penn National policy, the July loss does not constitute a covered claim under the Penn National policy.¹¹

⁸ 589 Pa. 317, 908 A.2d 888 (2006).

⁹ *Id.* at 899.

¹⁰ First Amended Complaint ¶¶ 21-25, 32, 37(a), (c).

¹¹ Plaintiff argues that coverage exists since the Penn National Policy is primary over all other insurance. Although Plaintiff is correct, in order for this provision to apply, the loss must constitute an “occurrence”. Since, the loss does not constitute an occurrence, whether the Penn National Policy is primary is not relevant. The court further notes that coverage under a Commercial General Liability Policy, as the one at issue here, is for tort liability for physical damages to others and not for contractual liability of the insured for economic loss because the product or completed work is not that for which the damaged person bargained. See Kvaerner, *supra* footnote 10.

Moreover, Plaintiff's claim is specifically excluded by the policy. The Penn National Policy excludes from coverage certain types of property damages. Specifically, the policy provides as follows:

3. Exclusions

This insurance does not apply to:

j. Damage to Property

"Property damage" to:

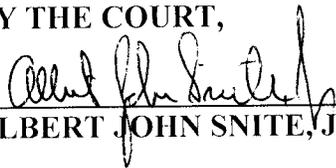
6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Based on this unambiguous policy language, it is clear that Plaintiff's claim is excluded from coverage under this policy. The term "You" refers to the named insured under this policy. The named insured is US Plumbing. US Plumbing was hired under the Subcontract to perform work for Plaintiff, the additional insured. Plaintiff specifically alleges under the underlying complaint, that the loss suffered by Plaintiff was caused by US Plumbing's poor workmanship. As such, the policy excludes coverage for said claim.

CONCLUSION

For the foregoing reason, Penn National's Motion for Judgment on the Pleadings is granted and Plaintiff's Cross Motion for Summary Judgment is Denied.¹²

BY THE COURT,


ALBERT JOHN SNITE, JR., J.

¹² In addition to breach of contract, Plaintiff has further alleged bad faith. Since the court finds that the property damage is not an occurrence under the policy, it is impossible based on said finding for Plaintiff to demonstrate that Penn National lacked a reasonable basis to deny coverage. Therefore, the claim for bad faith is dismissed. *See, T.A. v. Allen*, 868 A.2d 594 (Pa. Super. 2005), *Cresswell v. Nat'l Mut. Cas. Ins. Co.*, 820 A.2d 172 (Pa. Super. 2003), *Frog, Switch & Mfg. Co. v. Travelers Ins. Co.*, 193 F.3d 742 (3d Cir. 1999).