COURT OF APPEALS
DECISION
DATED AND RELEASED

OCTOBER 15, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62(1), STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-0454

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

WILLIAM F. WEAVER and JANE G. WEAVER,

Plaintiffs-Co-Appellants,

v.

DOUG DREW, d/b/a DREW CONSTRUCTION, n/k/a D. DREW CONSTRUCTION, INC.,

Defendant-Appellant,

AMERICAN FAMILY MUTUAL INSURANCE COMPANY,

Defendant-Respondent,

CUSTOM COMPONENTS OF EAGLE RIVER, INC., and INDIANA LUMBERMEN'S MUTUAL INSURANCE COMPANY,

Defendants.

APPEAL from a judgment of the circuit court for Vilas County: JAMES B. MOHR, Judge. *Affirmed.*

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Doug Drew, d/b/a/ Drew Construction, and William and Jane Weaver (collectively "Drew") appeal a summary judgment dismissing the Weavers' claims against American Family Mutual Insurance Company on the basis of a policy exclusion. Drew argues that (1) the insurance contract covers the Weavers' claims and that none of the exclusions apply and (2) the policy exclusion is ambiguous and should be construed in favor of coverage. Because the exclusion is unambiguous and excludes coverage, we affirm the judgment.

The material facts are not in dispute for purposes of this appeal. Drew, a general contractor, retained the services of Custom Components, a carpenter subcontractor, to construct portions of a house Drew had contracted to build for the Weavers. Custom was to supply virtually all the materials and labor relating to the structural support, including framing the walls and roof trusses, floor joists, subflooring and joists for the deck. American Family insured Drew with a commercial general liability policy, containing products-completed operations hazard coverage.

After the Weavers moved into their home, they initiated this action alleging breach of contract and common law negligence against Drew and Custom. The complaint alleges that Drew left the job site although the home was still not completed according to the terms of the contract and the home was not constructed according to the terms of the contract, resulting in a diminution in value. The Weavers have not alleged loss of use of their house because of the alleged defects, and allege no damage to other property.

Drew answered the complaint denying its allegations and alleging that any deficiencies, problems and resulting damages resulted from the acts of others. American Family answered and alleged that there was no coverage under its policy and sought summary judgment. In opposition to American Family's motion for summary judgment, Drew's affidavit asserted that any defective workmanship was the work of subcontractors.[1] The trial court

[1] Drew does not argue that the damage was caused by defective "products" incorporated into the structure, but rather defective "workmanship." Therefore, we do not address the issue whether damage was caused by the incorporation of defective components into the larger structure. *See* ***St.***

granted American Family's motion for summary judgment, concluding that the general liability policy does not cover faulty workmanship. Drew appeals.

When reviewing summary judgment, we apply the standard set forth in § 802.08(2), STATS., in the same manner as the circuit court. ***Kreinz v. NDII Secs. Corp.,*** 138 Wis.2d 204, 209, 406 N.W.2d 164, 166 (Ct. App. 1987). Summary judgment is appropriate when material facts are undisputed and when inferences that may be reasonably drawn from the facts are not doubtful and lead only to one conclusion. ***Green Spring Farms v. Kersten,*** 136 Wis.2d 304, 314-15, 401 N.W.2d 816, 820 (1987). The allegations of the complaint determine whether the action comes within policy coverage. ***Smith v. State Farm Fire & Cas. Co.,*** 127 Wis.2d 298, 301, 380 N.W.2d 372, 373 (Ct. App. 1985). Where there is no factual dispute, questions of insurance coverage are customarily decided on motions for summary judgment. ***Id.*** at 301, 380 N.W.2d at 374.

Contracts of insurance are controlled by the same principles of law applicable to other contracts. ***Garriguenc v. Love,*** 67 Wis.2d 130, 134, 226 N.W.2d 414, 417 (1975). Words used in a contract are to be given their plain or ordinary meaning but technical words are to be interpreted as usually understood by persons in the profession or business to which they relate, unless the context of the contract clearly indicates a different meaning. ***Mutual Fed. S & L Ass'n v. Wisconsin Wire Works,*** 58 Wis.2d 99, 105, 205 N.W.2d 762, 766 (1973). The policy terms are to be construed according to what a reasonable person in the position of the insured would have understood the words to mean. ***Garriguenc,*** 67 Wis.2d at 134-35, 226 N.W.2d at 417. Whether an ambiguity exists is a question of law. *See* ***Moran v. Shern,*** 60 Wis.2d 39, 46-47, 208 N.W.2d 348, 351-52 (1973). A contract is ambiguous when it is fairly read to have two different meanings. ***Jones v. Jenkins,*** 88 Wis.2d 712, 722, 277 N.W.2d 815, 819 (1979).

We are asked to construe policy exclusions to determine whether they deny coverage.[2] Assuming that certain allegations may fall within the

(..continued)

John's Home v. Continental Cas. Co., 147 Wis.2d 764, 787-88, 434 N.W.2d 112, 122 (Ct. App. 1988).

[2] Because whether an exclusion denies coverage is the dispositive issue, we do not address coverage. *See* ***Gross v. Hoffman,*** 227 Wis. 296, 299-300, 277 N.W. 663, 665 (1938).

definition of property damage, caused by an "occurrence," we examine the exclusions to determine whether this insurance applies. American Family relies on the following exclusion:

> 2. Exclusions.
> This insurance does not apply to:
> ....
> j. "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.
> ....
> Paragraph (6) ... does not apply to "property damage" included in the "products-completed operations hazard."
> ....
>
> 11. a. "Products-completed operations hazard" includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
> (1) Products that are still in your physical possession; or
> (2) Work that has not yet been completed or abandoned.
> b. "Your work" will be deemed completed at the earliest of the following times:
> (1) When all of the work called for in your contract has been completed.
> (2) When all of the work to be done at the site has been completed if your contract calls for work at more than one site.
> (3) When that part of the work done at the job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.
>
> Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

The plain language of j.(6) excludes coverage because the complaint seeks damages for work that must be restored, repaired or replaced due to faulty workmanship. Drew acknowledges that at least some of the allegations of the complaint claim damages arising out of faulty workmanship. However, he claims that the damages were caused by subcontractors and included driving machinery too close to an unsupported foundation wall. A building contractor's work is considered the entire house that he contracted to build. ***Indiana Ins. Co. v. DeZutti,*** 408 N.E.2d 1275, 1280 (Ind. 1980); *see* ***Knutson Constr. Co. v. St. Paul Fire & Marine Ins. Co.,*** 396 N.W.2d 229, 237 (Minn. 1986). Damage by subcontractors, as well as damage to an unsupported foundation wall by machinery driven too close to it, fall within the scope of faulty workmanship. *See* ***L.F. Driscoll Co. v. American Prot. Ins. Co.,*** 930 F. Supp. 184, 188 (E.D. Pa. 1996) (The negligence of subcontractors created a product of faulty workmanship.).

Drew also argues that exclusion j.(6) does not apply because the alleged property damage is included in the products-completed operations hazard coverage. He contends that all work at the site is completed because all work called for in the contract is complete, the Weavers moved into the house on schedule, the house has been put to its intended use, and the only allegations to the contrary are for needed repairs, corrections or maintenance. Drew contends that the damages, such as sagging floors, cracked floors, warping floors, bowed beams and wall cracks all occurred after completion.[3] We disagree with Drew's characterization of the issue.

Generally, the allegations of the pleadings control the issue of coverage. ***Smith***, 127 Wis.2d at 301, 380 N.W.2d at 373. Here, the pleadings, together with the affidavits submitted on summary judgment, allege that the damages were a result of faulty workmanship. By inference, the faulty workmanship for which compensation is sought occurred contemporaneously with the work's performance. That consequential damages in the form of warping or cracking appeared later and may continue to appear does not change our analysis under these circumstances. Because reasonable inferences

[3] On the other hand, American Family points to the Weavers' complaint that "the home was still not complete according to the terms and conditions of the contract" when Drew left the site. American Family argues that because the complaint seeks damages for uncompleted work, the products completed operations hazard exception does not apply. Because of our conclusion it is unnecessary to address American Family's contention.

drawn from the pleadings and affidavits compel the conclusion that the breaches of contract and common law duty, as well as the resulting damage of faulty workmanship, occurred well before Drew's abandonment or alleged completion of the project, the products completed operations hazard exception to the exclusion j.(6) does not apply.

Our result is consistent with other interpretations of other comprehensive general liability policies. "The policy in question here does not cover an accident of faulty workmanship but rather faulty workmanship which causes an accident." ***Bulen v. West Bend Mut. Ins. Co.,*** 125 Wis.2d 259, 265, 371 N.W.2d 392, 395 (Ct. App. 1985). ***Bulen*** explained:

> The risk intended to be insured is the possibility that the goods, products or work of the insured, once relinquished or completed, will cause bodily injury or damage to property other than to the product or completed work itself, and for which the insured may be found liable. ... *The coverage 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.*

Id. at 264-65, 371 N.W.2d at 394 (citing ***Weedo v. Stone-E-Brick, Inc.,*** 405 A.2d 788, 791 (N.J. 1979)). Because we conclude that exclusion j.(6) bars coverage, it is unnecessary to address whether other exclusions also bar coverage.

Next, Drew argues that because the policy language before us is ambiguous, it must be construed in favor of coverage. He argues that an ambiguity results when exclusion j.(6) is read in conjunction with exclusion l., that provides:

This insurance does not apply to:

> l."Property damage to 'your work' arising out of it or any part of it and included in the "products-completed operations hazard."

> This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

Drew argues that this language creates a reasonable expectation of coverage here, where much of the work complained of was performed by his subcontractor. He argues that at the very least, it appears to give back what exclusion j.(6) took away and therefore an ambiguity results. We disagree. First, our earlier discussion controls where we concluded that the damages sought were not included in the products completed operations hazard coverage. Consequently, l. is inapplicable.

Second, a similar argument, that two exclusions when read together create an ambiguity, has been rejected in ***Bulen,*** 125 Wis.2d at 263-64, 371 N.W.2d at 394. Exclusions subtract from coverage, not broaden it. ***Id.*** Interpretations that render insurance contract language superfluous are to be avoided when a construction can be given that lends meaning to the phrase. ***Id.*** "[E]ach exclusion is meant to be read with the insuring agreement, independently of every other exclusion." ***Weedo***, 405 A.2d at 795. "If any one exclusion applies there is no coverage, regardless of inferences that might be argued on the basis of exceptions or qualifications contained in other exclusions." ***Id.*** Because each exclusion must be read independently of one another, no ambiguity is created.

We conclude exclusion j.(6) unambiguously bars coverage for faulty workmanship. Because the Weavers' complaint seeks damages for faulty workmansip, we affirm the trial court's summary judgment dismissing the claims against American Family.

By the Court.—Judgment affirmed.

This opinion will not be published. RULE 809.23(1)(b)5, STATS.