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DISTRICT II

October 11, 2017

To:

Hon. Patrick C. Haughney
Circuit Court Judge
Waukesha County Courthouse
515 W. Moreland Blvd.
Waukesha, WI 53188

Kathleen A. Madden
Clerk of Circuit Court
Waukesha County Courthouse
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Renee Mack
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You are hereby notified that the Court has entered the following opinion and order:

2017AP87

Renee Mack v. American States Insurance Company
(L.C. # 2015CV1114)

Before Neubauer, C.J., Reilly, P.J., and Hagedorn, J.

Summary disposition orders 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).

Renee Mack appeals from a circuit court order dismissing on summary judgment her claim against American States Insurance Company arising from the allegedly defective installation of Lumber Liquidators wood flooring by a subcontractor who was insured by American States. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. WIS. STAT. RULE 809.21 (2015-16).¹ The

¹ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

circuit court’s opinion correctly states the law and is well-reasoned. Therefore, with the exception of that portion of the opinion referred to below,² we adopt the circuit court’s opinion and affirm. WIS. CT. APP. IOP VI(5)(a) (Nov. 30, 2009) (court of appeals may adopt circuit court opinion).

Mack alleged that Nico Tanzini d/b/a Elegant Floors by Tanzini defectively installed Lumber Liquidators wood flooring in her home. By the time Mack pursued her claim relating to the floor, Tanzini was no longer in business. Mack brought her claim against American States³ seeking coverage under the commercial general liability policy it had issued to Tanzini. The circuit court granted summary judgment to American States because Mack’s claim did not constitute a covered “occurrence” under the policy. Furthermore, even if Mack’s claim were an occurrence, the claim would be subject to two policy exclusions that would deny coverage: “Damage to Your Work” and “Damage to Impaired Property or Property Not Physically Injured.”

On appeal, Mack argues that there were factual disputes requiring resolution by a jury. We review the circuit court’s grant of summary judgment de novo, and we apply the same methodology employed by the circuit court. *Brownelli v. McCaughtry*, 182 Wis. 2d 367, 372, 514 N.W.2d 48 (Ct. App. 1994). We conclude that the circuit court properly applied the summary judgment methodology in this case. With the exception of that portion of the circuit court’s opinion

² We do not adopt that portion of the circuit court’s opinion discussing and relying upon the exclusion in the American States policy for “Recall of Products, Work or Impaired Property” because the record does not indicate that this exclusion applies.

³ Mack also brought her claim against Lumber Liquidators, but the parties stipulated to the dismissal of Lumber Liquidators.

discussed in footnote two, we adopt as our own the circuit court's decision granting summary judgment and dismissing Mack's claim.

Mack's appellate briefs do not address the coverage exclusions relied upon by the circuit court. Therefore, Mack has conceded that the exclusions apply. *Schlieper v. DNR*, 188 Wis. 2d 318, 322, 525 N.W.2d 99 (Ct. App. 1994) (when a party ignores a ground upon which the circuit court ruled, we assume the party concedes the matter).

The circuit court's opinion correctly states the law and is well-reasoned. Therefore, with the exception of that portion of the opinion discussed in footnote two, we adopt the circuit court's opinion. WIS. CT. APP. IOP VI(5)(a).

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Diane M. Fremgen
Clerk of Court of Appeals