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STATE OF MICHIGAN

COURT OF APPEALS

DILLION WERTH,

Plaintiff-Appellee,

v

THE LASALLE GROUP, doing business as LASALLE CONSTRUCTION SERVICES,

Defendant/Cross-Plaintiff/Third-Party Plaintiff,

and

HASTINGS INSURANCE COMPANY,

Cross-Plaintiff-Appellant,

and

METRO CONCRETE CORPORATION,

Defendant/Cross-Defendant-Appellee,

and

MASTERCRAFT & ASSOCIATES,

Third-Party Defendant.

UNPUBLISHED
November 25, 2026
10:29 AM

No. 375651
Macomb Circuit Court
LC No. 2023-000546-NO

Before: ACKERMAN, P.J., and BORRELLO and KOROBKIN, JJ.

PER CURIAM.

In this negligence and premises-liability action, cross-plaintiff, Hastings Insurance Company (Hastings),[1] appeals as of right from the trial court's final order dismissing this action, preserving the right of defendant/cross-plaintiff/third-party plaintiff, The LaSalle Group, doing business as LaSalle Construction Services (LaSalle), to appeal the trial court's earlier dispositive ruling on LaSalle's cross-claim against defendant/cross-defendant, Metro Concrete Corporation (Metro), and substituting Hastings, as LaSalle's assignee, for purposes of pursuing this appeal. On appeal, Hastings specifically challenges the trial court's earlier order granting Metro's motion for summary disposition with respect to Lasalle's cross-claim seeking contractual indemnity from Metro for any damages stemming from plaintiff's claims of injury and the costs of defending the principal lawsuit, as well as further alleging that Metro breached its contractual obligation to provide insurance covering LaSalle from personal injury claims. For the reasons set forth in this opinion, we affirm.

I. FACTS AND PROCEDURAL HISTORY

This case arises out of injuries that plaintiff, Dillion Werth, suffered while working on a construction site. Werth was employed as a painter by third-party defendant, Mastercraft & Associates (Mastercraft). While working on the mezzanine floor of a renovation project, Werth fell through a hole that had been created for a stairway and suffered injuries. LaSalle was the general contractor for the project.

At the present juncture, details regarding the underlying factual circumstances of plaintiff's injuries are relatively unimportant because the dispute before us only concerns the allotment of financial responsibilities stemming from this litigation. Relevant to this dispute, LaSalle and Metro had entered into a subcontract for the project at issue, under which Metro would perform certain concrete work. The subcontract also included certain indemnity provisions in favor of LaSalle.

After incurring his injuries, plaintiff filed this lawsuit against both LaSalle and Metro, alleging that both parties had created the hazardous condition at issue and breached their duty to keep the construction site free from dangerous conditions. Specifically, Werth alleged that Metro had, during the course of its work on the site, moved barriers protecting workers from falling through the hole in the mezzanine deck. Werth also alleged that he was injured in a common work area under LaSalle's dominion and control, which LaSalle had failed to keep reasonably safe and free of hazards.

LaSalle filed a cross-claim against Metro, claiming that LaSalle was entitled to complete indemnification from Metro, under the parties' subcontract, for any liability LaSalle was determined to have to Werth for his injuries. LaSalle also alleged the terms of the subcontract obligated Metro to defend LaSalle in the principal lawsuit at Metro's sole expense and further required Metro to "procure and maintain insurance providing coverage to [LaSalle] for the claims of the principal Plaintiff in the principal Complaint." LaSalle alleged that Metro had breached the contractual duty to provide such insurance coverage to LaSalle.

[1] Because there are multiple defendants with different designations on appeal, we refer to the parties by name to avoid confusion.

LaSalle cited a provision of the subcontract stating that Metro, as subcontractor, agreed to "assume entire responsibility and liability for all damages or injury to all persons[] . . . arising out of or in any manner connected with the execution of the Work under this Subcontract" and further, "to the fullest extent permitted by law," agreed to "defend and indemnify" LaSalle, as contractor, "from all such claims, including without limitation claims for which the Contractor may be or may be claimed to be liable by reason of its own independent negligence." This provision also stated that "The Subcontractor's obligation under this paragraph expressly excludes only total liability created by the sole and exclusive gross negligence of the Contractor." LaSalle additionally cited another provision of the subcontract providing that Metro agreed to "procure and maintain, at its own expense, such insurance as will protect against suits and claims for [b]odily injury or death[] . . . that may arise in any manner out of the Subcontractor's operations and completed operations, or by any sub-subcontractor or by anyone employed by any of them, or by anyone for whose acts anyone of them may be liable."

Metro moved for summary disposition of LaSalle's cross-claim under MCR 2.116(C)(10) (no genuine issue of material fact), arguing that the subcontract did not require it to indemnify LaSalle because Werth's injuries arose out of LaSalle's negligence, not Metro's work on the project. Metro claimed it did not install the precast floor, did not create the stairway hole, and was not responsible for installing barriers around the hole in the floor. In response, LaSalle argued that Metro was required to indemnify it because Werth alleged that his injuries arose out of Metro's actions, specifically Metro's employees negligently placing concrete forms around the hole in the floor, and Metro still had a common-law duty to act so as to not unreasonably endanger other employees or subcontractors.

The trial court granted Metro summary disposition and dismissed LaSalle's cross-claim. The trial court reasoned that LaSalle had admitted that it was "primarily responsible for safety at the subject worksite," that the record was "devoid of any evidence suggesting defendant Metro Concrete disturbed the warning line [of construction barrels and caution tape surrounding the stairway hole] in any manner," that the presence of concrete forms in the vicinity was irrelevant because plaintiff did not trip over a cement form before falling in the hole, and that LaSalle had therefore not established that Metro breached any common-law duty not to endanger plaintiff.

We now turn to Hastings's appellate challenge to this ruling.

II. JURISDICTION

As a threshold matter, Metro challenges this Court's jurisdiction, arguing that Hastings is not an aggrieved party entitled to appeal. Metro asserts that LaSalle suffered no injury from the dismissal of its cross-claim because Hastings acknowledges that it paid LaSalle's defense costs and a portion of the settlement on LaSalle's behalf. Metro further contends that, as LaSalle's assignee, Hastings stands in LaSalle's shoes and therefore cannot qualify as an aggrieved party if LaSalle suffered no pecuniary loss.

This Court has jurisdiction over an appeal as of right from a final judgment or order only when the appeal is "filed by an aggrieved party." MCR 7.203(A)(1). An aggrieved party must have "some interest of a pecuniary nature in the outcome of the case[] . . . ." *Federated Ins Co v Oakland Co Road Comm'n*, 475 Mich 286, 291; 715 NW2d 846 (2006) (quotation marks and citation

omitted). The litigant must also have suffered "a concrete and particularized injury" arising from the trial court's action or the appellate judgment, rather than from the underlying facts of the case. *Id*. at 291-292. As LaSalle's assignee, Hastings "stands in [LaSalle's] position . . . , possessing the same rights and being subject to the same defenses." *Fed Home Loan Mtg Corp v Werme*, 335 Mich App 461, 471; 966 NW2d 729 (2021) (quotation marks and citation omitted).

Metro's argument rests on Hastings's representations in its appellate brief that, as Mastercraft's insurer, it "provided a defense to LaSalle on the basis that LaSalle was potentially an additional insured pursuant to the Mastercraft subcontract terms" and, after settlement, paid "a portion of the settlement amount on behalf of LaSalle based on LaSalle's additional insured status under the Mastercraft subcontract." From these payments, Metro reasons that LaSalle has already been indemnified and that any separate obligation Metro may owe is immaterial. That argument is foreclosed by this Court's decision in *Eller v Metro Indus Contracting, Inc*, 261 Mich App 569; 683 NW2d 242 (2004).

In *Eller*, as here, the dispute concerned indemnification arising from a construction accident. *Id*. at 570. Metro Industrial Contracting, Inc., sought indemnification from Mid–American Gunite, Inc. (Gunite). On appeal, Gunite argued that the trial court should have granted summary disposition because Metro Industrial[2] had "already had been fully indemnified by Power Process Piping, Inc. (PPP), a co-indemnitor." *Id*. at 570-571.

Because both PPP and Gunite were potentially liable under their respective subcontract indemnity provisions, this Court explained: "[W]here two or more insurance companies are in the same tier of priority—for example, both are primarily liable or both contain irreconcilable escape clauses—an insured's loss is to be apportioned or prorated among the insurance companies on the basis of policy limits." *Id*. at 572. Applying that principle by analogy, the Court concluded that, because PPP and Gunite had agreed to identical indemnity provisions, they were equally liable to indemnify Metro Industrial and should share the cost equally. *Id*.

The Court further held that "PPP's indemnification of Metro in full did not necessarily extinguish Gunite's otherwise proven obligation of indemnity" and that "[e]xposure to legal defense costs and liability on a judgment triggered Gunite's indemnity obligation, even if Metro [Industrial] was indemnified by PPP." *Id*. at 572-573 (quotation marks and citation omitted). At the same time, the Court recognized that Metro Industrial could not recover twice for the same loss. *Id*. Because PPP had satisfied Gunite's indemnity obligation, PPP became equitably subrogated to Metro Industrial's rights against Gunite. *Id*. Thus, *Eller* treated the existence of a co-indemnitor's obligation and the allocation of any recovery between the indemnitee and the party that paid its loss as distinct questions.

That distinction answers Metro's jurisdictional argument. Hastings's payments on LaSalle's behalf do not, by themselves, establish that Metro had no obligation under the indemnity provision or that dismissal of LaSalle's cross-claim caused no cognizable injury. As in *Eller*, payment by one potentially responsible party may affect who is entitled to recover and the amount

[2] We will use "Metro Industrial" to distinguish the party in *Eller* from the party in the present case.

recoverable without necessarily extinguishing another party's alleged indemnity obligation. Here, the order dismissing the cross-claim foreclosed adjudication of the claim against Metro. Hastings asserts the assigned claim and represents that it paid LaSalle's defense costs and part of the settlement; those alleged payments give the claim a pecuniary dimension, while the dismissal supplies the injury arising from the trial court's action. See *Federated Ins Co*, 475 Mich at 291-292.

This conclusion is limited to appellate standing. Whether the indemnity provision covers the underlying loss, whether Metro is liable under that provision, and what effect Hastings's payments have on the amount or proper recipient of any recovery are merits questions not resolved by the jurisdictional inquiry. As *Eller* illustrates, any recovery must account for amounts already paid and applicable subrogation rights so that LaSalle does not obtain a double recovery. But the possibility that another party has paid some or all the loss does not, standing alone, render the assigned claim moot or deprive Hastings of an aggrieved party's interest in obtaining review of its dismissal. As we stated in *Eller,*

> In the present case, PPP provided a defense and paid [Metro Industrial's] entire share of the principal judgment pursuant to its indemnity agreement. By doing so, PPP protected its own interests by avoiding another potential action for breach of contract. Therefore, contrary to Gunite's argument, PPP was not a volunteer. By satisfying Gunite's obligation to indemnify Metro [Industrial], PPP became equitably subrogated to [Metro Industrial's] right to assert an indemnity claim against Gunite for half of [Metro Industrial's] share of the principal judgment.
>
> Where a party pays the debt of another pursuant to an obligation, it becomes the real party in interest and a substitution of parties may be appropriate. [*Id*. at 574-575.]

The same reasoning applies here. As LaSalle's assignee, Hastings may pursue the portion of LaSalle's indemnification claim that it alleges Metro was obligated to pay. The dismissal of that claim therefore affected Hastings's pecuniary interests and rendered it an aggrieved party under MCR 7.203(A)(1). Accordingly, this Court has jurisdiction over the appeal.

III. INDEMNIFICATION/DUTY TO DEFEND

Turning to the merits, Hastings argues that the trial court erred by dismissing LaSalle's cross-claim because Metro had a contractual duty to defend LaSalle against Werth's negligence claim. Hastings contends that the duty was triggered by the allegations in Werth's complaint, which allegedly placed Werth's injury within the scope of Metro's work. Hastings maintained in their filings and at oral argument that a duty to defend is broader than a duty to indemnify and arises when the complaint alleges facts that potentially fall within the relevant coverage, regardless of whether the evidence ultimately establishes liability. Hastings further argues that, even if the evidence did not support a finding that Werth's fall arose out of Metro's work, the trial court could dismiss only the indemnification claim, not the separate claim for a defense.

We review de novo a trial court's decision on a motion for summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). Summary disposition under MCR

2.116(C)(10) is appropriate when, "[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." The cross-claim rests on provisions in the parties' subcontract concerning defense and indemnification. Contract interpretation presents a question of law that we also review de novo. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 463; 663 NW2d 447 (2003). Indemnity agreements are construed under the general rules governing contract interpretation. *Grand Trunk Western R, Inc v Auto Warehousing Co*, 262 Mich App 345, 350; 686 NW2d 756 (2004).

Hastings relies on *Detroit Edison v Mich Mut Ins Co*, 102 Mich App 136, 141-142; 301 NW2d 832 (1980), and *Citizens Ins Co v Secura Ins*, 279 Mich App 69, 74-75; 755 NW2d 563 (2008). Those decisions recognize that an insurer's duty to defend is broader than its duty to indemnify and is generally assessed by comparing the allegations in the underlying complaint with the insurance policy. Hastings reasons that, because Werth's complaint included allegations potentially related to Metro's work, Metro was required to defend LaSalle even though the trial court determined that the evidence did not establish that Werth's injury arose out of that work. The threshold question, however, is whether the subcontract imposed the same allegations-based duty that governs an insurer under an insurance policy.

An insurance company's duty to defend "arises from the language of the insurance contract" and is "broader than its duty to indemnify." *Citizens*, 279 Mich App at 74. Thus, the duty of an insurance company to defend its insured depends on whether the allegations in the complaint of the underlying lawsuit against the insured arguably fall within the insurance policy's coverage. *Id*. " 'This duty is not limited to meritorious suits and may even extend to actions which are groundless, false, or fraudulent, so long as the allegations against the insured *even arguably* come within the policy coverage,' " and an " 'insurer has a duty to defend, despite theories of liability asserted against any insured which are not covered under the policy, if there are any theories of recovery that fall within the policy.' " *Id*. at 74-75, quoting *Detroit Edison*, 102 Mich App at 141-142.

But Metro is not an insurer, and the subcontract is not an insurance policy. It is a commercial agreement between a general contractor and a subcontractor that addresses, among other matters, insurance procurement, defense of personal-injury claims, and indemnification. The rules governing an insurer's duty to defend therefore do not control the interpretation of the subcontract. Rather, "[t]he general rules for contractual indemnity apply to claims of indemnity in commercial transactions, rather than the specific rules governing an insurer's duty to defend." *Grand Trunk Western*, 262 Mich App at 353. The existence and scope of any contractual duty to defend must be determined from the agreement's language; depending on that language, the duty may be coextensive with the duty to indemnify. *Id*. at 353-354. Thus, the fact that an insurance policy may impose a defense obligation based on allegations alone does not establish that Metro undertook the same obligation in its subcontract with LaSalle.

The subcontract's text confirms that the defense obligation is tied to the same subject matter as the indemnity obligation. Metro agreed to "assume entire responsibility and liability for all damages or injury to all persons[] . . . arising out of or in any manner connected with the execution of the Work under this Subcontract" and to "defend and indemnify" LaSalle "from all such claims." The phrase "all such claims" refers to claims for the specified damages or injuries—those arising out of or connected with execution of Metro's work. Read as a whole, the provision

does not establish a freestanding duty to defend every claim that merely alleges some possible connection to Metro's work; it conditions both defense and indemnity on the contractual relationship between the injury and that work.

Nothing in this language states that the defense obligation is broader than the indemnity obligation or that it is triggered solely by allegations in a complaint. Hastings identifies no other provision in the subcontract that supplies such an allegations-based trigger. Its reliance on insurance-law principles cannot add a term that the parties did not include. See *Grand Trunk Western*, 262 Mich App at 353-354. Because the trial court determined that the evidence did not establish that Werth's fall arose out of or related to Metro's work, the contractual condition for Metro's defense obligation was not met. On this record, the court therefore did not err by dismissing the defense claim along with the indemnity claim.

The subcontract's insurance-procurement provision does not alter this conclusion. It required Metro to "procure and maintain, at its own expense, such insurance as will protect against suits and claims for [b]odily injury or death[] . . . that may arise in any manner out of the Subcontractor's operations and completed operations, or by any sub-subcontractor or by anyone employed by any of them, or by anyone for whose acts anyone of them may be liable." That provision likewise describes the injuries and claims for which coverage was to be procured by reference to Metro's operations. It does not transform Metro into an insurer or establish that Metro itself promised to defend LaSalle against claims outside the scope of the subcontract's defense-and-indemnity provision. Accordingly, Hastings has not demonstrated any error requiring reversal.

Affirmed. Metro is entitled to costs. MCR 7.219(A).

/s/ Stephen L. Borrello
/s/ Daniel S. Korobkin