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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

INTERSTATE FIRE AND
CASUALTY COMPANY,

Plaintiff and Appellant,

v.

AXIS SURPLUS INSURANCE
COMPANY,

Defendant and Respondent.

B286980

(Los Angeles County
Super. Ct. No. BC604994)

APPEAL from a judgment of the Superior Court of Los Angeles County. Randolph M. Hammock, Judge. Affirmed.

Haight Brown & Bonesteel LLP, Michael J. Leahy and Kristian Moriarty for Plaintiff and Appellant.

Boornazian, Jensen & Garthe, Thomas E. Mulvihill and Tamiko A. Dunham for Defendant and Respondent.

Appellant Interstate Fire and Casualty Company (Interstate) brought this action against respondent Axis Surplus Insurance Company (Axis), seeking reimbursement for expenses Interstate expended in defending non-party Pulte Home Corporation (Pulte) in a separate lawsuit. Interstate alleged that Axis had a duty to defend Pulte in the underlying action because Pulte is an additional insured under insurance policies Axis issued to non-party Gothic Landscaping, Inc. (Gothic). The trial court entered judgment in favor of Axis after granting Axis's motion for summary judgment and denying Interstate's motion for summary adjudication. On appeal, Interstate argues the trial court erred in determining Pulte is not an additional insured under Axis's policies. We disagree and affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Contracts Between Gothic and Pulte

In October 2004, Gothic entered into a "Contractor Project Agreement" with Pulte to provide landscaping, drainage, and irrigation services for Pulte's Madeline Court housing development project (Madeline Project). The Contractor Project Agreement expressly incorporated the terms of the parties' master agreement, which went into effect on the same date (2004 Master Agreement).

The 2004 Master Agreement stated its terms "are intended to govern the relationship of the parties with respect to each individual Contractor Project Agreement and each individual Project. . . . Reference to this 'Agreement' shall include all . . . Contractor Project Agreements entered into between Pulte and [Gothic], such that this Agreement and each Contractor Project Agreement shall be read as one and the same agreement." The 2004 Master Agreement was to remain in effect "for any and

all work completed by [Gothic] for Pulte on or after the Agreement Date, until such time as another Master Contractor Agreement is signed of a later date, which specifically states that such later Contractor Master Agreement supersedes this Agreement.” It further provided that “Pulte at its sole option may terminate this Agreement at any time and for any reason or no reason, by giving [Gothic] written notice”

The 2004 Master Agreement included the following provisions related to insurance coverage:

“Insurance. [Gothic] represents that it does carry and will continue to carry, as of the date hereof and any applicable Contractor Project Agreement, . . . the following insurance coverages continuously during the life of this Agreement (and in the case of products and completed operations coverage, for two years after the expiration of the Contractor Project Agreement):

Commercial General Liability Coverage—Commercial General Liability Insurance . . . protecting against bodily injury, property damage and personal injury claims arising from the exposure of (1) premises operations . . . ; (2) products and completed operations . . . ; (3) independent subcontractors; (4) contractual liability risk . . . ; (5) where applicable, property damage resulting from explosion, collapse and underground (x,c,u) exposures.”

The agreement further required Gothic “add Pulte as an Additional Insured on the above general liability policy by having the insurance carrier issue a [CG2010 (10/93) Endorsement]”¹ A CG2010 (10/93) Endorsement provides

¹ A CG2010 (10/93) Endorsement is a policy form issued by the Insurance Services Office, Inc. (ISO). “ISO is a non-profit trade association that provides rating, statistical, and actuarial

coverage to the additional insured “only with respect to liability arising out of . . . ongoing operations performed for [the additional] insured.”

Gothic performed landscaping, irrigation, and drainage work for the Madeline Project starting in September 2005.

In July 2006, Gothic and Pulte entered into a new master agreement (2006 Master Agreement). The 2006 Master Agreement stated its terms were to be incorporated into all subsequent individual project agreements between the parties. It did not expressly supersede the 2004 Master Agreement.

The insurance provisions in the 2006 Master Agreement differed in a few respects from those in the 2004 Master Agreement. While the 2004 Master Agreement required that Gothic maintain completed operations coverage for two years after expiration of the agreement, the 2006 Master Agreement required Gothic maintain such coverage “through the applicable statute of limitations.”² Additionally, in contrast to the 2004 Master Agreement’s requirement of a CG2010 (10/93) Endorsement, the 2006 Master Agreement required “an endorsement at least as broad as the [CG2010 (11/85)

policy forms and related drafting services to . . . property or casualty insurers. Policy forms developed by ISO are approved by its constituent insurance carriers and then submitted to state agencies for review. Most carriers use the basic ISO forms, at least as the starting point for their general liability policies.” (*Montrose Chemical Corp. v. Admiral Ins. Co.* (1995) 10 Cal.4th 645, 671, fn. 13.)

² Gothic was obligated to maintain all other insurance for the “life” of the 2006 Master Agreement.

Endorsement].”³

In August 2006, Pulte provided Gothic a letter stating it was terminating “our contractual agreement for the Madeline Court project” and Gothic was relieved of its “contractual obligations effective immediately.” Gothic completed its work on the Madeline Project the next month and received its final payment from Pulte on September 30, 2006. There is no evidence that Gothic performed other work for Pulte beyond that date.

Gothic’s Insurance Policies

Interstate insured Gothic under a commercial general liability insurance policy, which was effective from April 1, 2006 through April 1, 2007.

Axis insured Gothic under two commercial general liability insurance policies, which were effective from April 1, 2007 to April 1, 2009, and April 1, 2009 to April 1, 2010 (together, Axis Policies). Each policy contains two “Additional Insured Endorsements.” One endorsement covers liability arising from Gothic’s ongoing operations (Ongoing Operations Endorsement),⁴

³ The record contains no evidence regarding the terms of a CG2010 (11/85) Endorsement. The trial court noted that it performed independent research through which it discovered the scope of the endorsement is broader than a GC2010 (10/93) Endorsement, and arguably covers liability arising from completed operations.

⁴ The Ongoing Operations Endorsement provides coverage to the additional insured for damage caused by acts or omissions “[i]n the performance of [Gothic’s] ongoing operations for the additional insured(s)” It expressly excludes coverage for damage occurring after “[a]ll work, including materials, parts or equipment furnished in connection with such work, on the project . . . to be performed by or on behalf of the additional

while the other covers liability arising from Gothic's completed operations (Completed Operations Endorsement).⁵ The endorsements do not specifically identify who is an additional insured. Instead, each provides that an additional insured is "[a]ny person or organization that [Gothic] is required by written contract to name as an additional insured."

Underlying Litigation Against Pulte

In October 2012, numerous homeowners of residences constructed as part of the Madeline Project filed a lawsuit against Pulte (the Underlying Litigation). Among other things, the homeowners alleged their homes' landscaping, irrigation, and drainage were defective. Gothic performed landscaping, drainage, and irrigation work on 41 of the 61 homes at issue.

Pulte tendered its defense in the Underlying Litigation to both Interstate and Axis, asserting it was an additional insured under the various policies with Gothic. Interstate agreed to defend Pulte subject to a reservation of rights, and expended more than \$134,000 in connection with its defense. Axis rejected Pulte's tender of defense, insisting Pulte was not an additional insured under the Axis Policies.

insured(s) at the location of the covered operations has been completed."

⁵ The Completed Operations Endorsement provides coverage to the additional insured for damage caused by Gothic's work performed for the additional insured and included in the "'products-completed operations hazard.'" The "'products-completed operations hazard'" provides coverage for liability arising out of Gothic's work, with the exception of work that has not been completed.

Interstate's Lawsuit Against Axis

In December 2015, Interstate filed the present lawsuit against Axis for equitable contribution, equitable indemnity, and declaratory relief. Interstate alleged that Axis had an obligation to defend Pulte in the Underlying Action, and it sought reimbursement of an equitable share of the expenses it incurred in defending Pulte.

In May 2017, Interstate filed a motion for summary adjudication and Axis filed a motion for summary judgment. The parties stipulated to the facts summarized above, but they disagreed as to whether Pulte is an additional insured under the Axis Policies. Interstate argued that Gothic was required to name Pulte as an additional insured pursuant to the Contractor Project Agreement and 2006 Master Agreement. Axis, in turn, maintained that such contractual obligations ended in 2006, before the Axis Policies went into effect.

The court denied Interstate's motion for summary adjudication and granted Axis's motion for summary judgment. The court provided two separate bases for its decision. First, it determined the Additional Insured Endorsements afford coverage only to persons and organizations Gothic was required to name as additional insureds while the Axis Policies were in effect. Although Gothic had an obligation to name Pulte as an additional insured pursuant to the 2004 Master Agreement, the court determined that obligation terminated when Gothic completed its work on the Madeline Project, which occurred before the effective dates of the Axis Policies.⁶

⁶ The court determined the 2006 Master Agreement was irrelevant because its terms were not incorporated into the Contractor Project Agreement.

Alternatively, the court determined that because the 2004 Master Agreement referred to the CG2010 (10/93) Endorsement, Gothic was contractually obligated to name Pulte as an additional insured only on coverage related to its ongoing operations. As a result, the court found Pulte would qualify as an additional insured under the Ongoing Operations Endorsement, but not the Completed Operations Endorsement. Accordingly, the court concluded Axis had no duty to defend Pulte in the Underlying Litigation, which concerned Gothic's completed operations.

The court entered judgment in favor of Axis, and Interstate timely appealed.

STANDARD OF REVIEW

"The rules applicable to summary judgments apply equally to motions for summary adjudication." (*Blue Shield of California Life & Health Ins. Co. v. Superior Court* (2011) 192 Cal.App.4th 727, 732.) Summary judgment is proper where there is no triable issue of material fact and the moving party is entitled to judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c).) "We review the trial court's decision de novo, considering all the evidence presented by the parties (except evidence properly excluded by the trial court) and the uncontradicted inferences reasonably supported by the evidence." (*Namikas v. Miller* (2014) 225 Cal.App.4th 1574, 1581.)

DISCUSSION

The parties agree that Interstate is entitled to relief only if Pulte is an additional insured under the Axis Policies. Because the material facts are not in dispute, the resolution of that issue depends entirely on our interpretation of the Additional Insured Endorsements and the relevant contracts between Gothic and

Pulte. For the reasons we discuss, we conclude Pulte is not an additional insured.

The usual rules of contract interpretation apply to insurance policies. (*Hervey v. Mercury Casualty Co.* (2010) 185 Cal.App.4th 954, 961.) “‘The fundamental goal of contractual interpretation is to give effect to the mutual intention of the parties.’ [Citations.] ‘Such intent is to be inferred, if possible, solely from the written provisions of the contract.’ [Citations.] ‘If contractual language is clear and explicit, it governs.’ [Citation.]” (*State of California v. Continental Ins. Co.* (2012) 55 Cal.4th 186, 195.) If, however, a policy provision is susceptible to alternative readings, we construe the language against the insurer and in favor of coverage. (*Paramount Properties Co. v. Transamerica Title Ins. Co.* (1970) 1 Cal.3d 562, 569.)

To determine whether Pulte is an additional insured under the Axis Policies, we first look to the terms of the Additional Insured Endorsements. The endorsements do not specifically identify who is an additional insured. Instead, they define an additional insured as “[a]ny person or organization that [Gothic] is required by written contract to name as an additional insured.”

Interstate urges us to interpret this language as encompassing any person or organization with whom Gothic has ever had a contractual obligation to name as an additional insured, even if the obligation expired before the Axis Policies went into effect. We do not read the language so broadly. By using the present-tense phrase “is required,” Axis and Gothic clearly and unambiguously intended that the contractual obligation be presently existing. Accordingly, for an individual or organization to qualify as an additional insured under the

Additional Insured Endorsements, Gothic must have had a contractual obligation to name it as an additional insured while the Axis Policies were in effect.

We find no merit to Interstate's various contentions as to why, despite the plain language in the endorsements, it is unreasonable to require a presently existing contractual obligation. First, Interstate argues that such an interpretation renders the Completed Operations Endorsement illusory. As best we can tell, Interstate's argument is that there can never be a presently existing contractual obligation for additional insured coverage related to completed operations, because such coverage, by definition, concerns work done in the past. Interstate, however, overlooks that a party may be contractually obligated to provide additional insured coverage for a period of time after completion of work and termination of the contract. In fact, the Contractor Project Agreement contained several such provisions, including a provision requiring Gothic to maintain completed operations coverage for two years after expiration of the contract. Gothic and Pulte were free to include a similar provision mandating that Pulte be named as an additional insured for a period of time beyond termination of the contract.

Similarly lacking is Interstate's contention that, had Axis and Gothic intended to require a presently existing contractual obligation, they would have done so using more explicit terms. In support, Interstate points to other provisions of the Axis Policies that refer to liability arising "subsequent to the execution of the contract or agreement." It suggests that, had the parties intended to require a presently existing contractual obligation, they would have included similar language in the Additional Insured Endorsements. The plain language of the endorsements,

however, clearly and unambiguously requires a presently existing contractual obligation. “‘[T]he fact that language could be more explicit does not render it ambiguous.’ [Citation.]” (*California Casualty Ins. Co. v. Northland Ins. Co.* (1996) 48 Cal.App.4th 1682, 1694; see *Great Western Drywall, Inc. v. Interstate Fire & Casualty Co.* (2008) 161 Cal.App.4th 1033, 1042.)

Having determined the meaning of the relevant policy language, we now turn to whether Gothic had a contractual obligation to name Pulte as an additional insured while the Axis Policies were in effect. Interstate suggests this requirement was satisfied by the Contractor Project Agreement, which mandated that Gothic name Pulte as an additional insured on its commercial general liability insurance policy.⁷ Interstate acknowledges that Pulte terminated the Contractor Project Agreement in 2006—before the Axis Policies incepted—but suggests the additional insured obligation extended beyond that date. In support, Interstate points to a provision in the contract requiring that Gothic maintain completed operations coverage “for two years after the expiration” of the Contractor Project Agreement.⁸ This, Interstate suggests, shows that Gothic had a

⁷ Throughout its briefing, Interstate refers to a “2004 subcontract” without specifying whether it is referring to the Contractor Project Agreement or the 2004 Master Agreement. Any distinction, however, appears to be immaterial given the terms of the 2004 Master Agreement were incorporated into the Contractor Project Agreement. Further, Interstate does not contend the 2004 Master Agreement had independent significance or that it remained in effect beyond the termination of the Contractor Project Agreement.

⁸ Confusingly, Interstate asserts this language appears in

contractual obligation to name Pulte as an additional insured through at least 2008, while the Axis Policies were in effect. We disagree.

The Contractor Project Agreement required that Gothic name Pulte as an additional insured by having its insurer issue a CG2010 (10/93) Endorsement. Such an endorsement explicitly limits additional insured coverage to “liability arising out of . . . ongoing operations performed for the [additional] insured.” Accordingly, Gothic’s obligation to name Pulte as an additional insured was limited to coverage for ongoing operations; it did not extend to coverage for completed operations. (See *Pardee Construction Co. v. Insurance Co. of the West* (2000) 77 Cal.App.4th 1340, 1359 [CG2010 (10/93) Endorsement does not extend coverage to completed operations losses]; *Fibreboard Corp. v. Hartford Accident & Indemnity Co.* (1993) 16 Cal.App.4th 492, 500 [ongoing operations coverage and completed operations coverage are complementary and not overlapping].)⁹

the 2006 Master Agreement. It does not.

⁹ At oral argument, Interstate contended two recent cases—*McMillin Management Services, L.P. v. Financial Pacific Ins. Co.* (2017) 17 Cal.App.5th 187 (*McMillin*) and *Pulte Home Corp. v. American Safety Indemnity Co.* (2017) 14 Cal.App.5th 1086 (*Pulte Home Corp.*)—interpreted the CG2010 (10/93) Endorsement to include completed operations coverage. We disagree with Interstate’s reading of those cases. Although *McMillin* involved a similarly worded endorsement, the court never interpreted it to extend coverage beyond liability arising from ongoing operations. (See *McMillin, supra*, 17 Cal.App.5th at pp. 204–205.) Moreover, the endorsement in *Pulte Home Corp.* contained significant additional language not present in a CG2010 (10/93) Endorsement. (See *Pulte Home Corp., supra*, 14 Cal.App.5th at

Unlike the two-year requirement for completed operations coverage, Gothic was required to maintain ongoing operations coverage only for the “life” of the Contractor Project Agreement. It follows that Gothic’s obligation to name Pulte as an additional insured under such coverage was similarly limited. As Interstate concedes, Pulte terminated the Contractor Project Agreement in 2006, which was before the effective dates of the Axis Policies. As a result, Gothic had no presently existing obligation under the Contractor Project Agreement to name Pulte as an additional insured while the Axis Policies were in effect.

We are also not persuaded by Interstate’s cursory suggestion that Gothic’s obligations under the 2006 Master Agreement triggered additional insured coverage under the Axis Policies. Unlike the Contractor Project Agreement, the 2006 Master Agreement arguably required that Gothic name Pulte as an additional insured on its completed operations coverage. Further, Gothic was required to maintain such coverage “through the applicable statute of limitations.”¹⁰ Although Interstate seems to suggest this obligation persisted while the Axis Policies were in effect, it wholly fails to address the meaning or effect of the phrase “applicable statute of limitations.” Interstate’s failure to address this language constitutes a waiver of its argument. (See *Reyes v. Kosha* (1998) 65 Cal.App.4th 451, 466, fn. 6

p. 1097.)

¹⁰ As noted above, there is no evidence in the record showing the terms of the additional insured endorsement required under the 2006 Master Agreement. Solely for the sake of argument, we consider the trial court’s representation—based on its independent research—that the endorsement may have provided coverage for completed operations.

[“Although our review of a summary judgment is de novo, it is limited to issues which have been adequately raised and supported in plaintiffs’ brief.”].)

In any event, because there is no evidence in the record to suggest that Gothic performed any work for Pulte pursuant to the 2006 Master Agreement, it would seem the “applicable statute of limitations” language was never implicated. If so, Gothic’s obligation to maintain completed operations coverage would have ended, at the latest, when the 2006 Master Agreement terminated. Interstate represented to the trial court that the agreement terminated in 2006, before the effective dates of the Axis Policies. As such, Gothic had no presently existing obligation under the 2006 Master Agreement to name Pulte as an additional insured while the Axis Policies were in effect.

Because Interstate has failed to show that Gothic was contractually obligated to name Pulte as an additional insured while the Axis Policies were in effect, it has failed to show that Pulte is an additional insured under the Additional Insured Endorsements. Absent such a showing, Axis had no duty to defend Pulte in the Underlying Litigation or reimburse Interstate for its costs in defending Pulte. Accordingly, we conclude the trial court correctly denied Interstate’s motion for summary adjudication and correctly granted Axis’s motion for summary judgment.¹¹

¹¹ Because we conclude Pulte is not an additional insured under the Axis Policies, we need not consider Interstate’s arguments that the trial court interpreted too narrowly the scope of additional insured coverage under the policies.

DISPOSITION

The judgment is affirmed. Axis is awarded its costs on appeal.

BIGELOW, P.J.

We concur:

RUBIN, J.

DUNNING, J.*

* Judge of the Orange Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.