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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

ADAM ASKARI,

Plaintiff and Appellant,

v.

CSAA INSURANCE EXCHANGE,

Defendant and Respondent.

B344941

(Los Angeles County

Super. Ct. No. 23SMCV04834)

APPEAL from a judgment of the Superior Court of Los Angeles County, Lisa K. Sepe-Wiesenfeld, Judge. Affirmed.

Law Office of Donald J. Melancon and Donald J. Melancon for Plaintiff and Appellant.

Woolls Peer Dollinger & Scher, Lisa Darling-Alderton and Katy A. Nelson for Defendant and Respondent.

Adam Askari commenced this coverage action against his insurer, defendant CSAA Insurance Exchange (CSAA), for refusing to tender a defense in an underlying lawsuit accusing him of harassing conduct. CSAA moved for summary judgment, arguing Askari’s insurance policy did not cover injuries resulting from non-accidental conduct. The trial court agreed and granted summary judgment.

Askari appeals, arguing the court erred by finding CSAA had no duty to defend him in the litigation. Askari has forfeited several arguments in this appeal. As to his remaining claim, we conclude CSAA had no duty to defend Askari because the injuries he caused were from intentional, not “accidental,” conduct. We affirm.

BACKGROUND

A. The Policy

In 2022, CSAA issued Askari a Homeowners Policy covering his residence in Beverly Hills, personal property, and liability for claims or suits. Section II of the Policy, entitled “Liability Coverages” (some capitalized omitted), provides in relevant part:

“If a claim is made or a suit is brought against any ‘insured’ for ‘damages’ because of ‘personal injury’ or ‘property damage’ caused by an ‘occurrence’ to which this coverage applies, we will:

- “1. Pay up to our limit of liability for the ‘damages’ for which the ‘insured’ is legally liable; and
- “2. Provide a defense at our expense by counsel of our choice, even if the allegations are groundless, false or fraudulent. . . .”

The Policy defines an “[o]ccurrence” as “an accident, including exposure to conditions which results” in personal injury or property damage. It also defines “[p]ersonal injury” as bodily injury, false arrest, wrongful entry or invasion of the right of private occupancy, or the “publication or utterance of a libel or slander or of other defamatory or disparaging material, or a publication or utterance in violation of an individual’s right of privacy; . . .”

B. The Horwich Litigation and Denial of Coverage

In June 2023, James and Ada Horwich filed a complaint against Askari, their immediate neighbor, for nuisance and misdemeanor violation of Beverly Hills Ordinance 5-1-104 (see Gov. Code, § 36900). The complaint alleged the ordinance made unlawful any willful or continued making of “loud, unnecessary, excessive, or unusual noise which unreasonably disturbs the peace and quiet . . . to any reasonable person of normal sensitiveness.”

The Horwiches’ claims are based on a course of conduct in which Askari allegedly engaged between late 2020 and 2023 as retaliation for their reporting Askari’s unpermitted construction. Askari’s conduct included “spying” on people who used the Horwiches’ tennis court, yelling at and recording people from his fence, playing “loud, amplified” music into their yard, and making complaints to city officials about loud noises and “running an ‘illegal tennis business’” on their property.¹ Both claims allege Askari’s acts “were intentional (not accidental),

¹ The complaint further alleged that Askari commenced litigation against them in August 2021 for nuisance, trespass, and violating the same noise ordinance.

deliberate, willful, and done knowing they would create a nuisance” to his neighbors.

In June 2023, Askari tendered the Horwich litigation to CSAA. In a denial letter, CSAA noted Askari’s “wrongdoing was not accidental” as required under the Policy.

C. Coverage Litigation

Askari commenced this action in October 2023 and filed the operative first amended complaint (FAC) in January 2024 based upon CSAA’s denial of coverage. The FAC alleged claims for declaratory relief, breach of contract, and breach of the implied covenant of good faith and fair dealing.²

According to the Register of Actions and a trial court minute order, CSAA filed a motion for summary judgment in September 2024.³ Following additional briefing and a hearing, the court issued an order granting the motion. After interpreting the Policy and finding Askari “provided no evidence” his conduct was accidental, the court found CSAA owed no duty to defend him. Askari appealed.

DISCUSSION

Askari challenges the trial court’s construction of the Policy language and its conclusion CSAA owed no duty to defend him in the Horwich litigation. He raises various arguments that are not

² The FAC lists but does not plead an additional claim for bad faith denial of insurance coverage.

³ The appellate record does not contain CSAA’s motion for summary judgment, Askari’s original and corrected separate statements, his supporting declaration, or evidentiary objections.

properly before this court. We address these forfeited arguments before analyzing CSAA's duty to defend under the Policy.

A. Contentions Not Properly Before This Court

““As with an appeal from any judgment, it is the appellant's responsibility to affirmatively demonstrate error and, therefore, to point out the triable issues the appellant claims are present by citation to the record and any supporting authority.”” (*Bains v. Moores* (2009) 172 Cal.App.4th 445, 455; *Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784–785.) ““A necessary corollary to this rule is that if the record is inadequate for meaningful review, the *appellant* defaults and the decision of the trial court should be affirmed.” [Citation.]” (*Jameson v. Desta* (2018) 5 Cal.5th 594, 609, italics added.)

Reviewing courts need not consider arguments that were neither raised below, raised in a party's opening appellate brief, nor supported by reasoned legal argument. (E.g., *Magallanes de Valle v. Doctors Medical Center of Modesto* (2022) 80 Cal.App.5th 914, 924; *Golden Door Properties, LLC v. Superior Court* (2020) 53 Cal.App.5th 733, 786; *Provost v. Regents of University of California* (2011) 201 Cal.App.4th 1289, 1294; *Bardis v. Oates* (2004) 119 Cal.App.4th 1, 13, fn. 6.)

Askari's appellate briefs violate these rules. All but one argument raised in his opening brief are unsupported by legal authority or analysis. Three arguments, including an accusation that CSAA “fail[ed] to include its own motion papers, declarations, and exhibits in the appellate record,” even though it is appellant's burden to provide an adequate record for review, were raised for the first time in reply. The reply brief also fails to provide pin citations or directions to any portion of decisions he

purports to analyze. (See *In re S.C.* (2006) 138 Cal.App.4th 396, 412 [citing case with no direction lends “no help as to what part of the opinion has relevance to this case”].) Askari has forfeited his improperly raised and unsupported arguments on appeal.

B. CSAA Had No Duty to Defend Askari

The sole contention properly raised is whether CSAA had a duty under the Policy to defend Askari in the Horwich litigation. In Askari’s view, there is a triable issue as to the insurer’s duty because the Horwiches allege he engaged in defamation and wrongful entry, which “may be actionable without a showing of specific intent to cause harm.” Absent such intent, Askari argues his conduct was “accidental” under the Policy. We disagree.

1. Standards of Review

A motion for summary judgment is properly granted only when “all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” (Code Civ. Proc., § 437c, subd. (c).) We review the grant of summary judgment de novo and decide independently whether the facts not subject to triable dispute warrant judgment for the moving party as a matter of law. (*Intel Corp. v. Hamidi* (2003) 30 Cal.4th 1342, 1348; see *Federal Deposit Ins. Corp. v. Dintino* (2008) 167 Cal.App.4th 333, 345 [under such circumstances, the court “must” grant summary judgment].)

“The interpretation and application of an insurance policy to undisputed facts presents a question of law subject to this court’s independent review.” (*State Farm General Ins. Co. v. Frake* (2011) 197 Cal.App.4th 568, 577.) Like other contracts

reduced to writing, we construe an insurance policy as a whole and interpret its provisions in context to ascertain the parties' mutual intention. (See *Haynes v. Farmers Ins. Exchange* (2004) 32 Cal.4th 1198, 1204; *Rios v. Scottsdale Ins. Co.* (2004) 119 Cal.App.4th 1020, 1025; see also Civ. Code, §§ 1636–1639.)

2. *The Policy Does Not Cover Intentional Conduct*

To prevail on the question of the duty to defend, “the insured must prove the existence of a *potential for coverage*, while the insurer must establish *the absence of any such potential*.” (*Delgado v. Interinsurance Exchange of Automobile Club of Southern California* (2009) 47 Cal.4th 302, 308 (*Delgado*).) We must ““compar[e] the allegations of the complaint with the terms of the policy. . . .” [Citation.] “If, at the time of tender, the allegations of the complaint together with extrinsic facts available to the insurer demonstrate no potential for coverage, the carrier may properly deny a defense.” [Citation.]’ [Citations.]” (*Stellar v. State Farm General Ins. Co.* (2007) 157 Cal.App.4th 1498, 1504 (*Stellar*).)

Here, CSAA’s duty to defend was not triggered under the Policy. The insuring clause of the Policy (Section II, Liability Coverages) triggered its duty to defend any claim brought against Askari for personal injury or property damage “caused by an ‘occurrence,’” which is expressly defined as “an accident.” This clause unambiguously requires injuries resulting from accidental conduct as a “fundamental precondition to coverage.” (*MRI Healthcare Center of Glendale, Inc. v. State Farm General Ins. Co.* (2010) 187 Cal.App.4th 766, 777–778.)

Askari did not establish this precondition to coverage. “Under California law, the word ‘accident’ in the coverage clause

of a liability policy refers to the conduct of the insured for which liability is sought to be imposed on the insured.” (*Delgado, supra*, 47 Cal.4th at p. 311.) “[A]n injury-producing event is not an ‘accident’ within the policy’s coverage language when all of the acts, the manner in which they were done, and the objective accomplished occurred as intended by the actor.” (*Id.* at pp. 311–312.)

The Horwiches’ complaint alleged injuries that resulted from Askari’s intentional conduct. Askari photographed and recorded people on their property, made false complaints to local authorities, and repeatedly played “loud, amplified” music into their yard. These acts “were intentional (not accidental), deliberate,” and willfully committed. Askari cites no evidence in the appellate record disputing these allegations or suggesting how his conduct was unintended. Indeed, the appellate record contains no evidence offered by Askari in opposition to CSAA’s motion for summary judgment.⁴

Contrary to Askari’s assertion, defamation and other misconduct is not accidental simply because the person engaging in it does not specifically intend to cause harm. (See *Stellar, supra*, 157 Cal.App.4th at pp. 1505–1506 [defamation not “accidental” triggering duty to defend]; *Northland Ins. Co. v. Briones* (2000) 81 Cal.App.4th 796, 811 [same as to “harassing by written communications”] *Miller v. Western General Agency, Inc.* (1996) 41 Cal.App.4th 1144, 1147–1150 [negligent

⁴ Askari’s opposition to CSAA’s motion for summary judgment accuses CSAA of not investigating “evidence of coverage-triggering facts” he presented but provides no underlying facts in support. The only “evidence” cited in support—Askari’s own declaration—is not in the appellate record.

misrepresentation]; see also *Ghukasian v. Aegis Security Ins. Co.* (2022) 78 Cal.App.5th 270, 277 (*Ghukasian*) [interference with neighboring property]; *Delgado, supra*, 47 Cal.4th at pp. 306, 312 [assault and battery].) “Under California law, the term [“accident”] refers to *the nature of the insured’s conduct, not his state of mind.*’ [Citation.] ‘Negligent’ or not, in this case the insured’s conduct alleged to have given rise to claimant[s] injuries is necessarily non-accidental, not because any ‘harm’ was intended, but simply because the conduct could not be engaged in by ‘accident.’” (*Quan v. Truck Ins. Exchange* (1998) 67 Cal.App.4th 583, 596; see *Delgado, supra*, 47 Cal.4th at p. 314 [an intentional act remains intentional “regardless of the reason or motivation for the act”]; *Shell Oil Co. v. Winterthur Swiss Ins. Co.* (1993) 12 Cal.App.4th 715, 751.)⁵

Moreover, Askari has presented no facts suggesting his “statements and actions were unintended or unexpected.” (*Stellar, supra*, 157 Cal.App.4th at p. 1505; see *ibid.* [“appellants submitted nothing . . . that tended to show their actions were accidental”].) Askari may not “manufacture a dispute on summary judgment, ipse dixit, by refusing to concede the truth of a fact without adducing some evidentiary support for [his] position.” (*Montrose Chemical Corp. v. Superior Court* (1993) 6 Cal.4th 287, 301.)

Thus, because Askari’s “intentional conduct . . . was the *immediate* cause of the injury; [and] there was no additional,

⁵ The authority cited by Askari supports these principles. (See *Merced Mutual Ins. Co. v. Mendez* (1989) 213 Cal.App.3d 41, 50 [“where the insured intended all of the acts that resulted in the victim’s injury, the event may not be deemed an ‘accident’ merely because the insured did not intend to cause injury”].)

independent act that produced the damage” (*Ghukasian, supra*, 78 Cal.App.5th at p. 277), his conduct was not accidental. The trial court properly entered summary judgment in CSAA’s favor.

DISPOSITION

The judgment is affirmed. CSAA shall recover its costs on appeal.

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MORI, J.

We concur:

COLLINS, Acting P. J.

TAMZARIAN, J.