EDITED BY THE COURT
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BURLINGTON COUNTY SUPERIOR COURT

OCT 20 2021

James J. Ferrelli, J.S.C.

JOSEPH MCGUIGAN and
DONNA MCGUIGAN,

Plaintiffs,

vs.

ALLSTATE NEW JERSEY
INSURANCE COMPANY

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – BURLINGTON COUNTY

DOCKET NO.: BUR-L-0053-20

CIVIL ACTION

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND DENYING DEFENDANT'S CROSS-MOTION FOR SUMMARY JUDGMENT

THIS MATTER having been opened to the Court by Merlin Law Group, PA, attorneys for Plaintiffs, Joseph McGuigan and Donna McGuigan, on Motion for Summary Judgment, and by Green, Lundgren & Ryan, P.C., attorneys for Defendant Allstate New Jersey Insurance Company, on Cross-Motion for Summary Judgment; and the Court having considered all written submissions by the parties, and having heard oral argument on Friday, September 10, 2021 in the presence of Daniel W. Ballard, Esquire, attorney for Plaintiff, and Francis X. Ryan, Esquire, attorney for Defendant; and for the reasons stated on the record and in the accompanying Statement of Reasons, the Court finding that there is no genuine issue of material fact and that the Plaintiffs are entitled to Partial Summary Judgment in their favor and against the Defendants as a matter of law;

IT IS, on this 20th day of October, 2021, ORDERED:

1. Plaintiffs' Motion for Summary Judgment is hereby GRANTED IN PART, and Defendant's Cross-Motion for Summary Judgment is DENIED.

2. Plaintiffs' loss is covered under the insurance policy issued by Defendant.

3. The only issue to be decided at trial is damages.

4. This Order shall be deemed served upon all counsel of record upon uploading to eCourts.

/s/ James J. Ferrelli
HONORABLE JAMES J. FERRELLI, J.S.C.

STATEMENT OF REASONS

The Court grants Plaintiffs' Motion for Summary Judgment, entering partial summary judgment in favor of Plaintiffs and against Defendant regarding insurance coverage under the subject policy, and denies Defendant's Cross-Motion for Summary Judgment, for the reasons set forth in its tentative ruling on the record on September 10, 2021, as supplemented by this written Statement of Reasons. The Court's ruling is dictated by the finding that the subject policy's use of the adjectives "sudden and accidental" in both its coverage provisions ("Losses We Cover Under Coverages A and B") and its exclusion provisions ("Losses We Do Not Cover Under Coverages A and B") is ambiguous, and the applicable legal principles governing the interpretation of insurance policies under New Jersey law dictates a finding in favor of coverage.

A motion for summary judgment is governed by R. 4:46-2. The rule provides that summary judgment shall be "rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2.

Brill v. Guardian Life Insurance Company of America, 142 N.J. 520 (1995), set forth the now well-settled standard for a trial court to apply when determining whether an alleged disputed issue should be considered "genuine" for purposes of R. 4:46-2. The Brill court stated that:

> Under this new standard, a determination whether there exists a "genuine issue" of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party.

142 N.J. at 540.

The Brill court further clarifies that, "[i]f there exists a single, unavoidable

resolution of the alleged disputed issue of fact, that issue should be considered insufficient to constitute a 'genuine' issue of material fact for purposes of *R.* 4:46-2." Id. Rather, when the evidence "is so one-sided that one party must prevail as a matter of law, the trial court should not hesitate to grant summary judgment." Id. (citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986)).

The Court, in viewing the record and relevant evidence, has determined that there is no genuine issue of material fact challenged by either party. The remaining issue is one of contract interpretation, a matter of law that is decided by the Court.

Our Supreme Court summarized the applicable principles regarding the interpretation of the subject policy in Flomerfelt v. Cardiello:

> An insurance policy is a contract that will be enforced as written when its terms are clear in order that the expectations of the parties will be fulfilled. Kampf v. Franklin Life Ins. Co., 33 N.J. 36, 43, 161 A.2d 717 (1960); Scarfi v. Aetna Cas. & Sur. Co., 233 N.J. Super. 509, 514, 559 A.2d 459 (App.Div.1989). In considering the meaning of an insurance policy, we interpret the language 'according to its plain and ordinary meaning.' Voorhees v. Preferred Mut. Ins. Co., 128 N.J. 165, 175, 607 A.2d 1255 (1992) (citing Longobardi v. Chubb Ins. Co., 121 N.J. 530, 537, 582 A.2d 1257 (1990)).
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> If the terms are not clear, but instead are ambiguous, they are construed against the insurer and in favor of the insured, in order to give effect to the insured's reasonable expectations. Doto v. Russo, 140 N.J. 544, 556, 659 A.2d 1371 (1995); Voorhees, supra, 128 N.J. at 175, 607 A.2d 1255. This is so even if a 'close reading' might yield a different outcome, Zacarias v. Allstate Ins. Co., 168 N.J. 590, 595, 775 A.2d 1262 (2001), or if a 'painstaking' analysis would have alerted the insured that there would be no coverage, Sparks v. St. Paul Ins. Co., 100 N.J. 325, 338-39, 495 A.2d 406 (1985) (citation omitted). Even so, when considering ambiguities and construing a policy, courts cannot 'write for the insured a better policy of insurance than the one purchased.' Walker Rogge, Inc. v. Chelsea Title & Guar. Co., 116 N.J. 517, 529, 562 A.2d 208 (1989); see Kampf, supra, 33 N.J. at 43, 161 A.2d 717.
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> Exclusionary clauses are presumptively valid and are enforced if they are 'specific, plain, clear, prominent, and not contrary to public policy.' Princeton Ins. Co. v Shunmuang, 151 N.J. 80, 95, 698 A.2d 9, (1997) (quoting Doto, supra, 140 N.J. at 559, 659 A.2d 1371); see Zacarias, supra, 168 N.J. at 601-02, 775 A.2d

> 1262 (holding that intra-family exclusion in boatowners' policy precluded coverage); Boddy v. Cigna Prop. & Cas. Cos., 334 N.J. Super. 649, 659-60, 760 A.2d 823 (App.Div.2000) (enforcing homeowners' policy exclusion for 'motorized land vehicles'). If the words used in an exclusionary clause are clear and unambiguous, 'a court should not engage in a strained construction to support the imposition of liability.' Longobardi, supra, 121 N.J. at 537, 582 A.2d 1257; see Cobra Prods., Inc. v. Fed. Ins. Co., 317 N.J. Super. 392, 400-01, 722 A.2d 545 (App.Div.1998), certif. denied, 160 N.J. 89, 733 A.2d 494 (1999).
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> We have observed that '[i]n general, insurance policy exclusions must be narrowly construed; the burden is on the insurer to bring the case within the exclusion.' Am. Motorists Ins. Co. v. L-C-A Sales Co., 155 N.J. 29, 41, 713 A.2d 1007 (1998) (quoting Chunmuang, supra, 151 N.J. at 95, 698 A.2d 9). As a result, exclusions are ordinarily strictly construed against the insurer, Aetna Ins. Co. v. Weiss, 174 N.J. Super. 292, 296, 416 A.2d 426 (App.Div.), certif. denied, 85 N.J. 127, 425 A.2d 284 (1980), and if there is more than one possible interpretation of the language, courts apply the meaning that supports coverage rather than the one that limits it, Cobra Prods., supra, 317 N.J. Super. at 401, 722 A.2d 545.
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> Nonetheless, courts must be careful not to disregard the 'clear import and intent' of a policy's exclusion, Westchester Fire Ins. Co. v. Cont'l Ins. Cos., 126 N.J. Super. 29, 41, 312 A.2d 664 (App.Div.1973), aff'd o.b., 65 N.J. 152, 319 A.2d 732 (1974), and we do not suggest that 'any far-fetched interpretation of a policy exclusion will be sufficient to create an ambiguity requiring coverage,' Stafford v. T.H.E. Ins. Co., 309 N.J. Super. 97, 105, 706 A.2d 785 (App.Div.1998). Rather, courts must evaluate whether, utilizing a 'fair interpretation' of the language, it is ambiguous. Ibid."

202 N.J. 432, 441-442 (2010).

Here, the coverage language in the policy states that the Defendant carrier "will cover sudden and accidental direct physical loss to property described in Coverage A Dwelling Protection and Coverage B Other Structures Protection except as limited or excluded in this policy." Policy at 6. Additionally, the policy excludes coverage to a number of categories enumerated in section 15, but also states that "If any of (a) through (g) cause the sudden and accidental escape of water or steam from a plumbing, heating, or air conditioning system…we cover the direct physical damage caused by the water or steam." Policy at 7-8. It is undisputed that the phrase "sudden and accidental" is not

defined anywhere in the policy, and Defendant's representative testified that the facts of Plaintiffs' loss comprised an "accidental" loss. Thus, the main issue brought before the Court in argument was the interpretation of the word "sudden," and the application of the defined term to the subject incident.

In common usage, the word "sudden" has at least two different meanings, and coverage under the insurance policy in this case would change depending upon which meaning is used in interpreting the policy. The word "sudden" used as an adjective may be defined as "happening or coming unexpectedly." *Sudden*, Merriam-Webster, https://www.merriam-webster.com/dictionary/sudden (Last updated Oct. 14, 2021) (Entry 1 of 2, part 1(a)). However, "sudden" may also be defined as "marked by or manifesting abruptness or haste." Id., (Entry 1 of 2, part 2). The language from Merriam-Webster is also found in other definitions for the word "sudden." See, e.g., *Sudden*, thefreedictionary.com, https://www.thefreedictionary.com/sudden, (Last visited Oct. 19, 2021)("1. Happening without warning; unforeseen, 2. Happening or done without delay; hasty or immediate."); *Sudden*, The Oxford Dictionary, https://www.lexico.com/en/definition/sudden?locale=en, (Last visited Oct. 19, 2021)("Occurring or done quickly and unexpectedly *or* without warning.") (emphasis added).

The Defendants argue the subject damage to the McGuigan home was not "sudden" under the policy based upon an expert report that opined the damage had been caused by a long-term leak. In contrast, the Plaintiffs viewed the definition of "sudden" to be "happening or coming unexpectedly," and argued that the New Jersey Supreme Court analyzed the word "sudden" in Morton International, Inc. v. General Accident

Insurance Company of America, 134 N.J. 1 (1993). While the Morton Court discussed the word "sudden," the case was decided within the context of a public policy concern for pollution insurance policies. Id. at 29 ("[W]e are persuaded that 'sudden' possesses a temporal element, generally connoting an event that begins abruptly or without prior notice or warning, but the duration of the event—whether it lasts an instant, a week, or a month—is not necessarily relevant to whether the inception of the event is sudden."). That public policy concern is not present in the instant coverage dispute and, accordingly, the analysis of Morton is of little relevance here.

Regardless of Morton, Defendant has provided an insurance policy with an ambiguous, undefined term. New Jersey case law is clear that any ambiguities are to be construed against the insurer and in favor of coverage for the insured. See, e.g., Doto, 140 N.J. at 556, and cases cited above. The subject policy involves an exclusionary clause that warrants a strict analysis, and where, as here, the court finds that there is more than one reasonable interpretation of a policy's language, the court applies the meaning that supports coverage rather than the one that limits it. Cobra Prods., 317 N.J. Super. at 401.

This Court must engage in a fair interpretation under Stafford, 309 N.J. Super. 97, to determine whether the policy language is in fact ambiguous. Because Defendant chose not to define the term "sudden" within the policy, the insureds were left to their own reasonable interpretation based upon plain meaning of the language chosen. A fair and reasonable interpretation of the meaning of "sudden," as evidenced by the various dictionary definitions noted above, demonstrates that the subject policy contains an ambiguity that must be construed against the insurer, the drafter of the policy, and in

favor of the interpretation supporting coverage on behalf of the insureds, the Plaintiffs here. Therefore, this Court finds that the term "sudden" in the exclusionary phrase "the sudden and accidental escape of water or steam" refers to an escape of water that was "unexpected" or "unforeseen," without a temporal requirement of immediacy as urged by Defendant. The water damages to the Plaintiffs' home was both unexpected and unforeseen by the Plaintiffs, irrespective of how long it took to manifest itself, and therefore the Court finds coverage for Plaintiffs for the damages to their property under the plain language of the subject policy. Accordingly, the Court grants summary judgment for Plaintiffs in part, and denies Defendant's cross motion for summary judgment. Inasmuch as the parties presented no evidence concerning the damages claimed by Plaintiffs, the issue of damages remains subject to trial.