

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3977-12T2

ROBERT McCLEES,

Plaintiff-Appellant,

v.

NEW JERSEY INSURANCE
UNDERWRITING ASSOCIATION,

Defendant-Respondent,

and

JACOB RUBIN and SURIE RUBIN,

Defendants.

Submitted October 16, 2014 – Decided June 2, 2015

Before Judges Alvarez and Maven.

On appeal from the Superior Court of New
Jersey, Law Division, Mercer County, Docket
No. L-923-12.

Robert McClees, appellant pro se.

Riley & Shovlin, P.A., attorneys for
respondent (Thomas A. Shovlin, on the
brief).

PER CURIAM

Plaintiff Robert McClees appeals an October 19, 2012 Law
Division order denying reconsideration of the grant of summary
judgment to defendant New Jersey Insurance Underwriting

Association. McClees represents himself on the appeal, as he did before the Law Division. We affirm the denial of reconsideration for the reasons stated by Judge Anthony M. Massi in his October 19, 2012 written decision and his supplemental statement, R. 2:5-1(b), elaborating the reasons for his order.

McClees fails to enumerate points of error for our consideration. See R. 2:6-2(a)(1), (5). Having reviewed the record in light of McClees's brief, however, we discern that his principal contention on appeal is that he is exempt from the one-year limitation period included in the fire insurance policy he purchased for a rental property he owns in Trenton.

McClees draws our attention to Warren v. Employers' Fire Insurance Co., 53 N.J. 308 (1969), as authority for the proposition that the insurance company could not rely on the policy's one-year limitation provision as a basis to deny him coverage. Since this case does not apply, we add only the following brief comments.

By way of background, the policy at issue provides that the insurer will pay for losses on the covered property only if the structure has been vacant for no more than sixty days. Here, upon investigation, the insurer obtained court records establishing that McClees had evicted the tenant who occupied the home, a warrant of removal having been executed on November

9, 2009. The fire, which according to McClees originated next door, occurred on March 17, 2010. McClees gave his insurer notice of the claim that same day.

Believing the property was vacant, the insurer declined coverage. Following the procedures described in the policy, McClees first internally appealed the denial with the insurer. McClees documented the alleged occupation of the premises by the tenant through January 2010, and the occupation by a subsequent tenant, a contractor, on an informal agreement. After McClees provided the additional documentation, the insurer continued to decline coverage, still convinced that the premises had been vacant more than sixty days before the fire.

McClees again wrote to the insurance company—but not until September 20, 2011—asking for clarification of the one-year deadline date. On October 6, 2011, the insurer responded, advising McClees that the thirty days within which to pursue in-house appeals had already expired, and that he had only one year from December 21, 2010, the date of the initial denial of his appeal, in which to file a lawsuit. The letter explicitly stated that McClees had to file his complaint by December 21, 2011, to come within the one-year limitation period.

McClees did not answer until January 20, 2012. At that juncture, the insurer advised that the allowable time under the

terms of the policy for the filing of a lawsuit had elapsed. McClees nonetheless filed his lawsuit on March 10, 2012.

The policy states: "no action can be brought unless the policy provisions have been complied with and the action is started within one year after the date of loss." McClees relies on Warren, based on a misunderstanding of the case's import, to support his argument that the one-year limit does not apply to him.

In Warren, the insurer acknowledged liability. Having acknowledged liability, and attempted to negotiate a lower amount than the covered loss, thus delaying the matter beyond the policy time limit, the insurer could not fairly rely on the one-year limit. It was obliged to extend coverage since the action was brought within the statutory limitations period. Warren, supra, 53 N.J. at 310.

In this case, the insurer has never conceded liability. The insurer has never attempted to negotiate a figure for payment on account of the loss. This distinguishes the matter from Warren. The insurer has always contended that the structure stood vacant for more than sixty days, contrary to the policy terms, based on court records of the eviction proceeding. That the insurer never acknowledged the claim had any merit

makes Warren inapplicable. Warren does not apply here. Hence, the policy's one-year limitation bars McClees's lawsuit.

McClees also argues for the first time on appeal that his civil and constitutional rights have been abrogated and that he has suffered discrimination at the hands of the insurer. We see nothing in the record that either indicates either a factual basis for these allegations or any reference by any Law Division judge regarding them. In any event, we consider the arguments to be so lacking in merit as to not warrant further discussion in a written opinion. R. 2:11-3(e)(1)(E).

McClees requests both compensatory and punitive damages because of the insurance company's alleged breach of its contract, arguing that his property was in fact occupied within sixty days of the fire. Had McClees timely filed his complaint by December 21, 2011, as was explained to him, he would have had the opportunity in a courtroom to refute the insurer's position that the property was vacant. Since McClees failed to comply with the policy provision, no court has ever ruled on the underlying factual dispute. We have nothing to review on the issue. We consider this point to also not warrant further discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION