

FOR PUBLICATION WITHOUT THE  
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-2124-08T3

ANTHONY FRISCIA,

Plaintiff-Appellant,

v.

ABBOLINO ANDRADE,

Defendant,

and

HOMESITE INSURANCE COMPANY,

Defendant-Respondent.

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Argued September 29, 2009 - Decided

October 9, 2009

Before Judges Lisa and Baxter.

On appeal from the Superior Court of New Jersey, Law Division,  
Hudson County, Docket No. L-5879-07.

Lynda R. O'Brien argued the cause for appellant (Law Offices of  
Jonathan Wheeler, P.C., attorneys; Jonathan Wheeler and Ms.  
O'Brien, on the brief).

Melissa Berger Brill argued the cause for respondent (Cozen  
O'Connor, attorneys; Ms. Brill, on the brief).

PER CURIAM

Plaintiff Anthony Friscia appeals from the grant of summary judgment to defendant Homesite Insurance Company (Homesite) in which the motion judge concluded that he was not entitled to insurance coverage for his property damage claim because he failed to file

his Law Division complaint within the one-year suit limitation period specified in the policy of insurance Homesite issued. We agree with the motion judge's conclusion that because Homesite had alerted Friscia on numerous occasions that its policy of insurance contained limitations and conditions, Friscia was bound by the one-year suit limitation provision even though he claimed he never received a copy of the actual policy of insurance. We affirm.

I.

On November 16, 2004, Friscia purchased a homeowner's insurance policy from Homesite by telephone after speaking with Homesite's agent, Abbolino Andrade.<sup>1</sup> Shortly thereafter, Homesite issued a policy of insurance to Friscia and sent him a document entitled "Evidence of Insurance for Policy Number 30216205." At the bottom of the fourth and final page of that document, in bold-face type, was this notice:

Important Message[]

These Declarations are not the entire Insurance Policy. All information contained in the Declarations regarding the insured, covered property, coverage limits, deductibles, and premium charges is subject to the specific terms and conditions of the policy contract. Please read your policy contract and amendments carefully.

[Emphasis added.]

According to Friscia, he never received a copy of the actual insurance policy, and did not ask Homesite to send it to him.

In November 2005, Friscia renewed his policy for an additional year, covering the period from November 16, 2005 until November 16, 2006. Friscia received a "Renewal

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<sup>1</sup> All claims and cross-claims against Andrade were subsequently dismissed, and he is not a party to this appeal.

Declarations" form from Homesite, as well as various endorsements to the policy, but did not receive a copy of the actual policy of insurance. Again, he did not ask Homesite to send it to him. When it sent Friscia the Renewal Declarations form, Homesite provided the same "Important Message[]" -- directing him to read his "policy contract . . . carefully" -- that it had provided a year earlier.

Shortly after the policy was renewed, Friscia sustained a property damage loss as a result of vandalism and submitted a claim to Homesite. Between December 4, 2005, when Friscia sustained the loss, and April 25, 2006, when Homesite denied the claim, Homesite sent Friscia four separate letters reporting on the status of its investigation or scheduling Friscia's examination under oath. In each of those letters, Homesite made extensive and numerous references to its policy contract. For example, in its February 27, 2006 reservation of rights letter, Homesite observed that it was "reserving our right[] to raise all defenses, policy exclusions and policy conditions in response to [his request] for insurance coverage for this claim." (emphasis added). The February 27, 2006 letter, seven pages in length, contained fourteen quotations from the policy language, each of which concluded with a bold-face reference to the page and paragraph number of the policy provision in question.

Similarly, the March 2, 2006 letter, which scheduled Friscia's examination under oath, referred to the "Cooperation Conditions in [his] Homesite Insurance Policy," specifically referring to page nine of the policy where those Cooperation Conditions were set forth. The April 6, 2006 letter rescheduling Friscia's examination under oath contained a similar reference, noting that Friscia was required to submit to such examination "pursuant to [his] Homesite policy."

On April 25, 2006, when Homesite sent a letter notifying Friscia that his claim had been denied,<sup>2</sup> it made numerous references to the actual policy contract it had issued, quoted the policy language, and in one instance referred Friscia to "page 1 of 18," thereby signaling that the policy contract was eighteen pages long. The denial letter concluded with instructions on the filing of an appeal; however, those instructions did not advise Friscia that any such appeal would need to be filed within one year of the date of the rejection letter dated April 25, 2006.

On November 30, 2007, Friscia filed suit in the Law Division seeking a declaration that Homesite was obliged to provide coverage for his December 4, 2005 property loss. The complaint was filed nearly two years after the date of loss and approximately nineteen months after Friscia's claim was denied by Homesite on April 25, 2006. Homesite moved for summary judgment, asserting that Friscia was not entitled to coverage because he had breached the one-year suit limitation provision contained in Homesite's policy. That section provides:

**Suit Against Us**

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.

[SECTION I - CONDITIONS, ¶ 8, PAGE 11 OF 18 (emphasis added).]

In his opposition to Homesite's summary judgment motion, Friscia admitted that the policy contained the one-year suit limitation language upon which Homesite relied; however, he asserted that he never received a copy of the policy until he requested it on

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<sup>2</sup> Homesite denied the claim because Friscia did not actually live at the property, which was a precondition for issuance of the policy.

January 7, 2008. He argued that Homesite should be prohibited from asserting the one-year suit limitation defense because it was "based upon policy language which was never provided to the policyholder." He maintained that because the suit limitation clause is critical to a policyholder's ability to institute litigation, it is "incumbent on the part of the insurance [company] to tell the policyholder when it's denying [his] claim that he has a year from the date of loss in which to file suit."

Judge Edward T. O'Connor, Jr. granted Homesite's motion, holding that the one-year suit limitation provision is enforceable in New Jersey, and policyholders are expected to read their policies and may be held to the conditions of the policy as if they had read them. The judge also reasoned that delivery of the policy is not a requirement of a valid insurance contract so long as the insurer has notified its insured that the policy contains restrictive language. Therefore, the judge held, because the one-year suit limitation provision was valid, and Friscia had not complied with it, Homesite was entitled to summary judgment.<sup>3</sup>

## II.

When a trial court is presented with a motion for summary judgment, it must first decide whether "the competent evidential materials presented, when viewed in the light most favorable to the non-moving party," could enable a jury to resolve the alleged disputed issue in favor of the non-moving party. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995). If there is no dispute of fact, summary judgment must be granted if: "the pleadings, depositions, answers to interrogatories and admissions on file, together

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<sup>3</sup> In keeping with the doctrine of equitable tolling, Judge O'Connor concluded that the one-year suit limitation period runs from the date the insurer denied the claim, and not from the date of loss. Peloso v. Hartford Fire Ins. Co., 56 N.J. 514, 521 (1970). Thus, Friscia's period of limitation began when he received the denial letter from Homesite on April 25, 2006.

with 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(c).

When we review a trial court's grant of summary judgment, we apply the same standard the Law Division did. Prudential Prop. & Cas. Ins. Co. v. Boylan, 307 N.J. Super. 162, 167 (App. Div.), certif. denied, 154 N.J. 608 (1998). We review the motion judge's conclusions of law de novo. Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995).

As is evident from the motion record, Judge O'Connor correctly concluded that there were no disputed issues of fact; the judge accepted Friscia's contention that he had never received a copy of Homesite's policy of insurance. Thus, resolving the motion did not turn on the factual question of whether or not Friscia had received a copy of the policy, but instead on the question of whether Friscia should be bound by the terms of the policy even if he had not received it, and whether Homesite should be equitably estopped from asserting the suit limitation provision as a defense. Plaintiff maintains on appeal that he should not be held to the one-year suit limitation provision of his insurance policy because he never received a copy of it before the limitation period elapsed and no communications from Homesite ever made reference to the relevant limitation period.

Insurance companies have the duty to supply their insureds with a copy of the policy contract. Sears Mortgage Corp. v. Rose, 134 N.J. 326, 348 (1993). Insurance companies, however, do not have an obligation to inform insureds of the specific provisions in their policies, Edwards v. Prudential Prop. & Cas. Co., 357 N.J. Super. 196, 204 (App. Div.), certif. denied, 176 N.J. 278 (2003), because policyholders "are expected to read their

policies and 'the law may fairly impose upon [them] such restrictions, conditions and limitations as the average insured would ascertain from such reading.'" Sears, supra, 134 N.J. at 348. (quoting Bauman v. Royal Indem. Co., 36 N.J. 12, 25 (1961)).

In support of his argument that he should not be bound by the one-year limitation period because Homesite failed to provide him with a copy of the policy contract, plaintiff relies upon Fredericks v. Farmers Reliance Insurance Company of New Jersey, 80 N.J. Super. 599 (App. Div. 1963), and Nieder v. Royal Indemnity Insurance Company, 62 N.J. 229 (1973). In Fredericks, we recognized the principle that "'the relative rights of the insured and the company . . . are determinable by . . . the policy, irrespective of the fact that one of the parties may be actually ignorant of the contents of the policy[.]'" 80 N.J. Super. at 603. (quoting Union Fire Ins. Co. of Paris, France v. Stone, 152 S.E. 146, 147 (Ga. Ct. App. 1930)).

We held, however, that if the reason for the insured's ignorance of the policy language containing the one-year suit limitation provision is the insurer's unjustified action in withholding the policy from him, the insured can invoke the doctrine of equitable estoppel to preclude the insurer from relying upon the one-year period.<sup>4</sup> Ibid. The insurer's refusal to provide its insured with a copy of the policy that he had specifically requested created an exception to the Sears rule that insureds are expected to read the policy of insurance and will be held to its terms. Id. at 603.

In Nieder, the Court adopted the approach we had taken in Fredericks when it determined whether an insured's failure to comply with the policy's one-year limitation

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<sup>4</sup> In Fredericks, we based our conclusion that the insurer had "unjustifiably withheld" the policy from its insured on evidence in the record demonstrating that despite the insured's specific request that the insurer send him a copy of the policy of insurance, the insurer failed to do so. Id. at 601.

period should be excused based on the insurer's failure to notify her of that provision. 62 N.J. at 232. The Court observed in Nieder that the insurer had not forwarded the requested copy of the policy until after the one-year suit deadline had expired. Id. at 232-33. Nonetheless, the Court stopped short of holding that judgment should be entered in the insured's favor. Instead, the Court observed, again citing Fredericks, that "[t]he rule may be otherwise if the insured should have known of the limitation period provided in the policy." Id. at 232. Consequently, the Court remanded for determination of whether the insured was aware, or should have been aware, of the one-year limitation period:

The facts are conflicting concerning plaintiff's actual knowledge, or knowledge reasonably imputable to her, as to the state of her insurance, and her contention that in the circumstances she was justified in assuming that she had two years within which to institute suit for the fire loss.

[Id. at 233-34.]

Thus, Fredericks and Nieder do not support Friscia's argument here that whenever an insurer has failed to provide its insured with a copy of the policy contract, the insurer is precluded from enforcing its suit limitation period. Rather, two principles clearly emerge, neither of which supports Friscia's position: First, the failure to provide an insured with a copy of the policy will only result in a judgment in the insured's favor if the insurer has ignored an affirmative request from the insured for a copy of the policy, which is not the case here. Second, an insured may be held accountable for compliance with the suit limitation period by means other than actual receipt of the relevant portion of the policy.

Homesite relies on Matos v. Farmers Mutual Fire Insurance Company, 399 N.J. Super. 219, 227 (App. Div. 2008), where we held that the insured was bound by the one-year suit limitation period even though he had not received a copy of the policy.

We held that because a letter from the insurer specifically notified the insured of the time limitation for filing suit under the policy, he was on notice of the limitation even though the insurer never provided him with the actual policy contract. Ibid.

We recognize that, unlike the situation in Matos, none of the letters from Homesite made reference to the one-year suit limitation period. However, each of the letters Homesite did send, as well as the declaration page provided at the time of issuance and renewal of the policy, made reference to the existence of the actual policy, with several of those letters quoting at length from the policy itself. The Declarations page went further, warning Friscia that the Declarations "are not the entire policy" and he should "read [his] policy contract . . . carefully."

We agree with Judge O'Connor's conclusion that Friscia had ample notice that provisions of the policy could limit his coverage or impose conditions upon his ability to receive such coverage. Rather than request a copy of the policy, Friscia chose to remain ignorant of the policy language and not request a copy of his insurance policy until twenty months after he received the April 2006 denial letter. Friscia has offered no explanation for his failure to request a copy of the policy within the one-year period afforded him before that deadline lapsed. Under these circumstances, we conclude that Homesite was entitled to enforce the one-year suit limitation period against him because Friscia "should have known" of that deadline. Matos, supra, 399 N.J. Super. at 227.

Moreover, were we to accept Friscia's contention that anyone who claims not to have received a copy of an insurance policy is thereby -- without more -- absolved of any responsibility for complying with its terms, no insurance company could ever enforce those provisions. Far more is required than Friscia has presented here.

At a minimum, before a claim of equitable estoppel can be asserted, the insured must establish that he requested a copy of the policy and the insurer refused to provide it. Fredericks, supra, 80 N.J. Super. at 605. This, however, is not such a case. Friscia made no such request, despite ample notice from Homesite that various limitations were contained within the policy. That being so, the grant of summary judgment, and the rejection of Friscia's equitable estoppel argument, were correct.

Affirmed.<sup>5</sup>

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



CLERK OF THE APPELLATE DIVISION

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<sup>5</sup> We decline to consider Friscia's alternative argument that

Homesite should be barred from enforcing the one-year suit limitation period because its April 25, 2006 denial letter was ambiguous. Friscia did not present that argument to the Law Division. Absent exceptions not pertinent here, we will not consider on appeal questions or issues that were not presented to the trial court when an opportunity for such presentation was available. Nieder, supra, 62 N.J. at 234.