NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5771-12T4

REBECCA WALCZAK,

Plaintiff,

v.

TARGET CORPORATION,

Defendant,

and

LIPINSKI SNOW SERVICES, INC.,

Defendant-Respondent,

and

LORE SWEEPING COMPANY, INC.

Defendant-Appellant.

Argued October 7, 2014 – Decided April 1, 2015

Before Judges Fisher, Nugent and Accurso.

On appeal from Superior Court of New Jersey, Law Division, Middlesex County, Docket No. L-4080-10.

Brian C. Harris argued the cause for appellant (Braff, Harris & Sukoneck, attorneys; Mr. Harris, of counsel; Michael S. Goldenberg, on the brief).

Juan C. Perez argued the cause for respondent (Beckman Roth Ogozalek & Perez

attorneys; Darryl S. Beckman, of counsel; Jonathan S. Roth, on the brief).

PER CURIAM

Claiming she slipped and fell on ice or snow on defendant Target's premises, plaintiff Rebecca Walczak commenced this personal injury action against Target, as well as defendant Lipinski Snow Services, Inc., which had contracted with Target for snow and ice removal, and defendant LoRe Sweeping Co., which had contracted with Lipinski to perform the same services. In deciding motions that followed a defense verdict on plaintiff's claims, the trial judge determined that LoRe was obligated to bear Target's defense costs because LoRe had agreed to defend both Lipinski "and Client" from any such claims, and the word "client" in this context could only mean Target. Because we agree there could be no other plausible interpretation of the contract, we affirm the award of summary judgment in Lipinski's favor.

The record reveals that, in October 2004, Target entered into an agreement with Lipinski for snow and ice removal services at its Clifton location. This agreement contained Lipinski's promise to indemnify Target for any litigation costs related to its snow and ice removal services and permitted Lipinski to enter into a subcontract concerning its snow and ice removal services.

In December 2008, Lipinski entered into a subcontract with LoRe, obligating LoRe to perform snow and ice removal on Target's premises. In the indemnification provision of the Lipinski/LoRe agreement, LoRe promised:

> to assume responsibility for all injuries or damages to persons or property which relate to or arise out of [LoRe's] performance or failure to perform services under this Agreement. To the fullest extent permitted by law, [LoRe] agrees to indemnify, defend and hold harmless Lipinski Snow Services, Inc., its owners, employees and Client in connection with the performance of [LoRe's] duties under this Agreement. [LoRe] specifically agrees this indemnification shall apply to any loss, liability, damage or claims due to property damage or personal injury caused or alleged to be caused in whole or in part by any actions, inactions or omissions of [LoRe], it[]s employees and agents. This indemnification obligation shall not apply to any injury, damage or loss caused by the sole negligence of Lipinski Snow Services, Inc. All obligations under this paragraph shall survive the termination of this Agreement.
>
> [Emphasis added.]

Plaintiff fell on Target's premises on December 19, 2009. In May 2011, plaintiff filed a complaint against defendants Target, Lipinski, and LoRe. Following the jury's defense verdict on plaintiff's claims, Target moved to hold Lipinski liable for the costs of defending against plaintiff's suit, and Lipinski moved to hold LoRe liable for both Lipinski's defense costs and those defense costs Lipinski was obligated to

reimburse Target. LoRe agreed it was obligated to pay for Lipinski's defense, but argued it was not responsible for Target's defense costs. Finding the Lipinski/LoRe agreement to be unambiguous, the judge granted summary judgment in Lipinski's favor.

LoRe appeals, arguing:

> I. THE LOWER COURT ERRED WHEN IT FOUND THAT THE SUBCONTRACT AGREEMENT BETWEEN LIPINSKI AND LORE WAS UNAMBIGUOUS.
>
> II. THE LOWER COURT ERRED WHEN IT FAILED TO CONSIDER THE PARTIES' INTENTIONS.
>
> > A. THE TESTIMONY OF DOUG COOK ILLUSTRATES THE PARTIES[] DID NOT INTEND FOR LORE TO DEFEND AND INDEMNIFY TARGET.
> >
> > B. THE LOWER COURT ERRED BY IGNORING QUESTIONS OF FACT RELATED TO THE PARTIES' INTENTIONS.
>
> III. THE INDEMNIFICATION CLAUSE IS NOT COMPLIANT WITH NEW JERSEY LAW AND IS THEREFORE UNENFORCEABLE.
>
> IV. TO THE EXTENT THE LOWER COURT RELIED UPON LIPINSKI'S INTERPRETATION AND APPLICATION OF KIEFFER V. BEST BUY[,] [205 N.J. 213 (2011),] SAME WAS ERROR.

These arguments lack sufficient merit to warrant further discussion in a written opinion. R. 2:11-3(e)(1)(E). We add only the following brief comments.

We review summary judgment using the same standard that governs the trial courts. L.A. v. N.J. Div. of Youth & Family

Servs., 217 N.J. 311, 323 (2014). Thus, we consider "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 536 (1995) (citation omitted).

In interpreting a contract, the plain meaning of contractual words controls unless the words and phrases utilized are ambiguous. M.J. Paquet v. N.J. DOT, 171 N.J. 378, 396 (2002); Nester v. O'Donnell, 301 N.J. Super. 198, 210 (App. Div. 1997). "[W]hen the terms of a contract are clear and unambiguous, there is no room for construction and the court must enforce those terms as written." Watson v. City of E. Orange, 175 N.J. 442, 447 (2003) (citations omitted). Whether a contract is clear or ambiguous is a question of law. Grow Co. v. Chokshi, 403 N.J. Super. 443, 476 (App. Div. 2008); Nester, supra, 301 N.J. Super. at 210.

After careful review, we agree with Judge Weisberg that the meaning of the word "client" in the Lipinski/LoRe agreement refers to Target and no one else. The only client to which LoRe provided snow and ice removal services was Target and, therefore, "client" is not subject to more than one plausible interpretation. Grow Co., supra, 403 N.J. Super. at 476. The indemnification provision does not conflict with any other

provisions of the Lipinski/LoRe agreement, and no rational explanation was offered to explain whom the parties intended to identify through the use of the word "client" if they were not referring to Target. In fact, LoRe's operations manager, Joseph LoRe, essentially conceded the point, when he expressed LoRe's intentions in contracting with Lipinski in the following way:

> Q. Okay. Does it use the term client in the contract in that paragraph 27?
>
> A. In that paragraph, it uses the term client.
>
> Q. And what is your understanding of who that is referring to?
>
> A. You're telling me that it refers to Target —
>
> [LoRe's Attorney]: He's asking your understanding.
>
> A. My understanding is that it refers to the blanket client, I guess Target.
>
> Q. What does "blanket client" mean?
>
> A. Target.
>
> [Emphasis added.]

There being no legitimate or genuine dispute about the meaning of the word "client" in the agreement, as even LoRe's operations manager recognized in his sworn testimony, summary judgment was properly granted.

Affirm.