IN THE SUPREME COURT OF THE STATE OF NEVADA

CREEL PRINTING & PUBLISHING COMPANY, INC., A NEVADA CORPORATION; AND ALLAN CREEL, AN INDIVIDUAL,
Appellants,
vs.
CONTINENTAL CASUALTY COMPANY, A CORPORATION,
Respondent.

No. 49980

FILED

JUN 04 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court summary judgment in an insurance action. Eighth Judicial District Court, Clark County; Timothy C. Williams, Judge.

BACKGROUND

Appellant Creel Printing & Publishing Company, Inc., had purchased employment practice liability insurance policies from respondent Continental Casualty Company, which provided insurance coverage from December 19, 2002, through December 19, 2005. These policies contained a clause requiring Creel to provide written notice to Continental of any claims made against Creel "as soon as practicable." The policy defined a "claim" as either "a written demand for monetary damages" or "a formal civil, administrative, or regulatory proceeding or investigation or an arbitration."

On January 30, 2004, Creel received a notice from the Nevada Equal Rights Commission (NERC) that a charge of discrimination had been filed against the company by an employee, Aaron Dalton. On October 18, 2004, Creel also received a notice from the United States Equal Employment Opportunity Commission (EEOC) that a charge of discrimination had been filed against the company by another employee, Thomas Mason. These administrative charges were ultimately resolved,

however, when the NERC issued a determination on November 15, 2004, providing that it was closing the charge filed by Dalton because "the evidence presented did not meet the legal criteria for establishing that discriminatory acts occurred." On or about May 4, 2005, the EEOC dismissed the charge filed by Mason, for the reason that the EEOC was "unable to conclude that the information obtained establishes violations of the [applicable] statutes."

Thereafter, on June 27, 2005, Dalton filed a complaint against Creel in Nevada state district court alleging that the company committed unlawful discriminatory practices. On August 1, 2005, Mason filed a complaint against Creel in the United States District Court for the District of Nevada, also alleging that the company committed unlawful discriminatory practices. On August 10, 2005, Creel provided Continental with written notice of the Dalton litigation, approximately one and a half years after Creel received notice of the NERC discrimination charge, but just over a month after Dalton's complaint was filed in state district court. On August 24, 2005, Creel provided Continental with written notice of the Mason litigation more than ten months after the EEOC notified Creel of Mason's discrimination charge, but less than one month after Mason's complaint was filed in the Nevada federal district court. Continental subsequently denied coverage for both the Dalton and Mason claims, asserting that notice of the claims had not been made as soon as practicable, as was required under the insurance policy.

Creel then filed a complaint in district court regarding Continental's denial of coverage for the Dalton and Mason claims. The district court granted Continental summary judgment, concluding that the NERC and EEOC notice of charges satisfied the definition of "claim" set forth in Continental's policy, and that, as a result, Continental properly

denied coverage because, in light of the lengthy delay, Creel had failed to provide notice of the "claims" as soon as practicable. Creel now appeals.

On appeal, Creel argues, among other things, that the district court erred in determining that the preliminary NERC and EEOC notice of charges fell within the policy's definition of "claim."[1] Continental, however, contends that the district court properly granted summary judgment by determining that these administrative notices constituted claims under the policy and, thus, that Creel did not provide timely notice of the Dalton and Mason claims.

DISCUSSION

We review both a district court's order granting summary judgment and its interpretation of a contract de novo. Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (summary judgment); Farmers Ins. Exch. v. Neal, 119 Nev. 62, 64, 64 P.3d 472, 473 (2003) (contract interpretation). We will not rewrite unambiguous contract provisions and, in interpreting a contract, we give contractual terms their plain and ordinary meaning. Farmers Ins. Exch., 119 Nev. at 64-65, 64 P.3d at 473.

Having reviewed the briefs and the record on appeal, we conclude that, under the plain and unambiguous language of the Continental policy, neither the NERC and EEOC notices of charges nor the charges themselves were sufficiently formal so as to constitute a "claim," and thus Creel's contractual duty to provide written notice was not triggered. In City of Santa Rosa v. Twin City Fire Insurance, 143 P.3d

[1]Because, for the reasons discussed below, we conclude that this appeal can be resolved on this first issue, we do not address Creel's additional assertions of district court error.

196, 198 (N.M. Ct. App. 2006), the New Mexico Court of Appeals reviewed whether a notice of charge of discrimination filed with the EEOC or the New Mexico Human Rights Division constituted a "claim" as defined by the underlying insurance policy.[2] Noting that the notices were merely "request[s] for information in the context of an administrative grievance," id. at 199, and rejecting an attempt to characterize the notices and related charges as "affirmative legal action," the court determined that neither the notice nor the charge met the policy's definition of a claim. Id. at 200.

Although the policy's definition of a "claim" in the policy at issue is different here than the definition in City of Santa Rosa, we nonetheless find the New Mexico Court of Appeals' analysis helpful in our resolution of this appeal. Here, the definition of "claim" expressly includes the word "formal." We agree with Creel that the notices of charges from the EEOC and the NERC, which were mere requests for information, lacked the necessary formality to trigger Creel's duty under the policy to provide written notice of the charges to Continental. See id. While we acknowledge that these administrative requests for information could very well lead to more formal administrative action, this possible eventuality is not, as the facts of this case demonstrate, preordained.[3] See id.; see also

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[2]The insurance policy in City of Santa Rosa defined a "claim" as "a demand received by any insured for damages alleging injury or damage to persons or property, including the institution of a suit for such damages against any insured." 143 P.3d at 199.

[3]We also note that while the parties focus on the "formal civil, administrative, or regulatory proceeding or investigation or an arbitration" language in the policy's definition of a claim, we would also find the City of Santa Rosa analysis persuasive authority for the proposition that the EEOC and NERC notices did not constitute "a written demand for monetary damages," which the policy also defines as a claim.

Bensalem Tp. v. Western World Ins. Co., 609 F. Supp. 1343, 1347-49 (E.D. Pa. 1985) (finding that an EEOC notice of charge under an insurance policy did not constitute a "claim" under an insurance policy that did not define the term "claim"). But see LodgeNet Entertainment v. Amer. Intern. Specialty, 299 F. Supp. 2d 987 (D. S.D 2003) (finding that an EEOC charge constituted a "claim" under a particular insurance policy). We therefore conclude that neither the notices nor the related charges constituted "claims" under the policy at issue here. City of Santa Rosa, 143 P.3d at 200. Further, having reviewed the policy's definition of an "EEOC Proceeding" and the provision addressing when a claim shall be deemed made, we conclude that these portions of the policy do not alter our conclusion that the EEOC and NERC notices did not constitute a formal claim as set forth in the insurance policy.

Accordingly, as the district court erred as a matter of law by granting summary judgment after concluding that the administrative notices of discrimination charges constituted "claims" under the Continental policy, we

ORDER the judgment of the district court REVERSED and REMAND this matter to the district court with instructions to conduct further proceedings consistent with this ORDER.

Cherry, J.

Cherry

Saitta, J.

Saitta

Gibbons, J.

Gibbons

cc: Hon. Timothy C. Williams, District Judge
Carolyn Worrell, Settlement Judge
Lionel Sawyer & Collins/Las Vegas
Lipson Neilson Cole Seltzer & Garin, P.C.
Eighth District Court Clerk