

2020 WL 2463778

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District Court of Appeal of Florida, Third District.

SOUTH WINDS CONSTRUCTION
CORP., Appellant,
v.
PREFERRED CONTRACTORS
INSURANCE COMPANY RISK
RETENTION GROUP, LLC, et al., Appellees.

No. 3D18-2131

Opinion filed May 13, 2020.

An Appeal from the Circuit Court for Miami-Dade County,
[Spencer Eig](#), Judge. Lower Tribunal No. 16-12634

Attorneys and Law Firms

Florida Advocates, and [Russel M. Lazega](#) and [Yasmin Gilinsky](#) (Dania Beach), for appellant.

Phelps Dunbar LLP, and Justin N. Shindore (Tampa), for
appellee, Preferred Contractors Insurance Company Risk
Retention Group, LLC.

Before [SALTER](#), [FERNANDEZ](#) and [LOBREE](#), JJ.

Opinion

PER CURIAM.

*1 South Winds Construction Corp. (“South Winds”) appeals a final judgment and order granting a cross-motion for summary judgment rejecting South Winds’ third-party claim against its insurer, Preferred Contractors Insurance Company Risk Retention Group, LLC (“PCIC”). The trial court also denied South Winds’ motion for summary judgment. South Winds contended that PCIC had a contractual duty to defend South Winds regarding a construction-related claim against South Winds for allegedly causing water damage at the Parc Central Aventura condominium building.

South Winds’ third-party complaint attached a copy of the complaint against it, a copy of the PCIC insurance policy, and other documents pertaining to the claim. The complaint against South Winds specifically alleged that the water damage was caused by South Winds when: “an agent or employee of South Winds ... caus[ed] damage to unit 1115 and 21 units, elevator landings and corridors from the 6th to the 11th floor.”

The insurance policy issued by PCIC to South Winds (“Policy”), also attached to the third-party complaint, included an exclusion for construction projects of more than three stories in height:

2. Exclusions

This insurance does not apply to:

[...]

ab. Buildings and Structures Exceeding Three Stories

... “[P]roperty damage” arising out of, resulting from, caused by, contributed to by, or in any way related to work, development, construction, renovation or reconstruction on any building, house, apartment, condominium or any other structure that exceeds three stories in height when measured from ground level to the highest point. This exclusion applies to exclude coverage for work on buildings higher than three stories whether as planned, while any insured is working thereon, as completed, or when the injury or damage occurs or is caused

Our standard of review of the policy provisions and allegations is de novo. [Advanced Sys., Inc. v. Gotham Ins. Co.](#), 272 So. 3d 523, 526 (Fla. 3d DCA 2019). An insurer’s duty to defend is separate from its duty to indemnify and more extensive. *Id.* It was and is PCIC’s burden to establish that the allegations against it are entirely outside the coverage provisions of the Policy. *Id.* at 527.

In the present case, applying the “eight corners rule”¹ to the four corners of the third-party complaint (including attached exhibits), and the four corners of the Policy, it is indisputable that the claim against South Winds for which South Winds sought a defense from PCIC involved construction-related water damage above the third floor of the Parc Central Aventura condominium building. This placed the claim squarely and unambiguously within the exclusion from

coverage applicable to work in buildings above three stories in height.


Affirmed.

*2 The trial court's denial of South Winds' motion for summary judgment, and the order and final judgment granting PCIC's cross-motion for summary judgment, were correct.

All Citations

--- So.3d ----, 2020 WL 2463778

Footnotes

- 1  [Mid-Continent Casualty Co. v. Royal Crane, LLC](#), 169 So. 3d 174, 182 (Fla. 4th DCA 2015) (“An insurer’s duty to defend arises from the ‘eight corners’ of the complaint and the policy.”). Although there are also limited exceptions to the “eight corners rule,” a consideration of such exceptions is unnecessary in the present case. See R. Hugh Lumpkin & Alex Stern, [We Need A Hard Eight: Florida’s Growing Exception to the Eight Corners Rule](#), 89 Fla. B.J., 8, 10 (March 2015).

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