Circuit Court for Baltimore County
Case No. C-03-CV-19-001838

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND**

No. 776

September Term, 2022

DEPLOY HR, INC., ET AL.

v.

PHILADELPHIA INDEMNITY INSURANCE COMPANY

Wells, C.J.,
Friedman,
Shaw,

JJ.

Opinion by Friedman, J.

Filed: August 15, 2023

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to MD. R. 1-104(a)(2)(B).

** At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

The question in this case is whether, under the terms of an insurance policy issued by Philadelphia Indemnity Insurance Company to PEI Staffing, Deploy HR had become an additional insured under the policy at the time of a loss. The answer to that question turns on whether a nascent contract between PEI Staffing and Deploy HR had been "executed" as that term is used in the Philadelphia Indemnity insurance policy. Because we hold that the term "executed," as used there, meant either (1) signed, or (2) fully performed by both parties, we hold that partial performance was insufficient. As a result, we affirm the grant of summary judgment in favor of Philadelphia Indemnity.

BACKGROUND

Deploy HR is a national staffing and human resources firm. Among the services it provides to clients are hiring and paying workers to work at other businesses. One of Deploy HR's clients is a subsidiary of Trader Joe's grocery stores that operates its warehouse distribution centers. PEI Staffing is another staffing and human resources firm.

In 2016, Deploy HR and PEI Staffing began negotiations on a subcontracting agreement, by which PEI Staffing would provide the payroll services for the Trader Joe's distribution warehouse in Nazareth, Pennsylvania. After months of negotiations, Deploy HR produced a draft contract. Among the provisions of this draft contract was one by which PEI Staffing agreed to maintain general liability insurance naming Deploy HR and its directors and employees as additional insureds.

Prior to its negotiations with Deploy HR, PEI Staffing had already obtained a general liability insurance policy through Philadelphia Indemnity. The policy had a provision to cover additional insureds if two conditions were met: (1) PEI Staffing entered

a separate, written contract with a third party that required PEI Staffing to include additional insureds, and (2) that separate contract was *executed* before a loss. Thus, consistent with PEI Staffing's plans with Deploy HR, Deploy HR could be covered as an additional insured by Philadelphia Indemnity if the requisite written contract was executed before a loss.

From May to August 2017, PEI Staffing and Deploy HR started performing their nascent contract while they continued negotiating it. By May 23, the parties had not agreed on when Deploy HR would remit payroll payments to PEI Staffing, nor the amount of PEI Staffing's administrative fee. Nonetheless, PEI Staffing became the employer of record for a group of Nazareth warehouse employees—previously employed by Deploy HR—on May 29, 2017. On June 10, Deploy HR sent PEI Staffing a draft contract with handwritten comments indicating necessary changes and updates. On July 27, PEI Staffing asked Deploy HR for a status update on the contract, explaining that it had disbursed payroll but still hadn't been paid its administrative fee for this work. On August 22, PEI Staffing once again asked Deploy HR for an update on the contract, stating: "[w]e are 10 weeks in and we still have not finalized the [contract]…. there is over [$20,000] in short paid invoices and they are putting pressure on me to get them cleared up."

On the morning of August 24, Deploy HR was working on calculating PEI Staffing's administrative fee. Deploy HR's former CFO explained that he and PEI Staffing had "a very clear understanding of what [PEI Staffing's] profit margin should be," but the parties had not agreed on the "reverse engineering with the timing of payment and that administrative fee."

Also on the morning of August 24, 2017, Miguel Almonte-Garcia was working in the Nazareth warehouse. While operating an electric forklift, Almonte-Garcia suffered a fatal head injury. At approximately 1:30PM EDT that day, Deploy HR called PEI Staffing with news of Almonte-Garcia's death. At 5:20PM EDT, Deploy HR emailed PEI Staffing, with contracts attached, and said, "[a]ttached are the final [contracts] for your review and signature. I will call you to see if you have any questions. We should have them fully executed, dated as of 7/1/17[,] and in our respective archives by EOB today."

A year and a half later, Almonte-Garcia's mother filed a complaint in the Court of Common Pleas for Philadelphia County, against, among others, Deploy HR and PEI Staffing. Following Almonte-Garcia's death and his mother's lawsuit, Deploy HR filed a claim with Philadelphia Indemnity as an additional insured under the policy issued to PEI Staffing.

Philadelphia Indemnity denied coverage to Deploy HR on the ground that its contract with PEI Staffing, requiring Deploy HR to be named as an additional insured, was not *executed* before Almonte-Garcia's death.

Philadelphia Indemnity then filed a declaratory judgment action in the Circuit Court for Baltimore County, seeking an order declaring that Philadelphia Indemnity has no duty to defend or indemnify Deploy HR because Deploy HR was not an additional insured under Philadelphia Indemnity's policy. The circuit court granted summary judgment for Philadelphia Indemnity, finding that Deploy HR "presented no evidence to demonstrate that any written contract between PEI [Staffing] and Deploy [HR] existed until hours after [Almonte-Garcia] suffered the fatal injury in the warehouse. Accordingly, there is no

genuine dispute as to any material fact and [Philadelphia Indemnity] is entitled to judgment as a matter of law." Deploy HR then noted this appeal.

DISCUSSION

There is no dispute that Deploy HR and PEI Staffing had begun performing their nascent contract at the time of Almonte-Garcia's death. Nor is there a dispute that Deploy HR and PEI Staffing had neither signed the nascent contract nor had both completed performance under it. Thus, the sole question is a legal question: did Deploy HR's and PEI Staffing's partial performance of their nascent contract satisfy the requirement that their contract was "executed" as that term is used in the insurance policy issued by Philadelphia Indemnity? Deploy HR argues that partial performance is sufficient, while Philadelphia Indemnity argues that nothing less than either a signed contract or full performance by both parties will do.

Maryland courts construe insurance policies according to contract principles and follow the objective law of contract interpretation. *Maryland Cas. Co. v. Blackstone Int'l Ltd.*, 442 Md. 685, 694 (2015). "In deciding an issue of coverage under an insurance policy, the foremost rule of construction is to apply the terms of the insurance contract itself." *Springer v. Erie Ins. Exch.*, 439 Md. 142, 158 (2014) (cleaned up). We construe the instrument as a whole to determine the intention of the parties. *Clendenin Bros., Inc. v. U.S. Fire Ins. Co.*, 390 Md. 449, 458 (2006). The interpretation of a contract is a question of law that we review *de novo*, that is, without deference to the court below. *Ocean Petroleum Co., Inc. v. Yanek*, 416 Md. 74, 86 (2010). "With regard to the standard of review used by this Court when considering a declaratory judgment entered in tandem with summary

judgment, we consider whether that declaration was correct as a matter of law." *Springer*, 439 Md. at 155 (cleaned up).

In a related context, our State's highest court has explained the meaning of the word "executed" as used to describe written contracts. In *Stern v. Board of Regents, University System of Maryland*, the Supreme Court of Maryland[1] held that, as used in a statute describing written contracts, the term "executed" means either signed or fully performed by both parties. 380 Md. 691 (2004). In that case, after the Board of Regents had authorized a mid-year tuition increase, students sued for, among other things, breach of contract. *Id.* at 694. The circuit court ruled that sovereign immunity barred the students' contract claim and then the Supreme Court of Maryland granted certiorari. *Id.* at 695-96. At issue was the interpretation of the governing statute, which provided that the State may not raise the defense of sovereign immunity in certain contract actions. *Id.* at 696-97, 719. The statute reads, in pertinent part:

> (a) Except as otherwise expressly provided by a law of the State, the State, its officers, and its units may not raise the defense of sovereign immunity in a contract action, in a court of the State, *based on a written contract that an official or employee executed for the State* or 1 of its units while the official or employee was acting within the scope of the authority of the official or employee.

MD. CODE, STATE GOV'T § 12-201(a) (emphasis added). A key question, therefore, was what constituted "executed" when discussing a written contract.

[1] At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022. *See also* MD. R. 1-101.1(a).

Our Supreme Court discussed the statute as follows:

> [T]he term "written contract," by itself, defines a completed agreement. As such, it was not necessary for the Legislature to use the word "executed" in the statute unless the term was a further limitation on the waiver of immunity. In the context of the statute, had "executed" not meant "signed," it would have been surplusage. Moreover, an "executed" contract is defined as a "contract that has been fully performed by both parties" or as a "signed contract." *Black's Law Dictionary* 321 (Bryan A. Garner ed., 7th ed., West 1999). The term, "executed" is defined as "(Of a document) that has been signed." *Id.* at 589. *Black's Law Dictionary* supplemented its definition of "executed" with the following:
>
> > "'[T]he term "executed" is a slippery word. Its use is to be avoided except when accompanied by explanation.... A contract is frequently said to be *executed* when the document has been signed, or has been signed, sealed, and delivered. Further, by executed contract is frequently meant one that has been fully performed by both parties.' William R. Anson, *Principles of the Law of Contract* 26 n.* (Arthur L. Corbin ed., 3d Am. ed.1919)."

Stern, 380 Md. at 721-22.

Stern provides useful guidance about the general meaning of the word "executed." *Stern*, however, is not a binding precedent here because the parties to a contract are, of course, free to define the terms of their contract differently. In this case, however, the parties to the contract have not provided a definition of the term "executed." The only evidence we have is the insurance policy itself, which uses the term "executed" (or a minor variation of that term) six times. We review all six instances to consider whether those usages are compatible with the *Stern* definition or are instead compatible with a broader definition that includes partial performance. *See Clendenin Bros.*, 390 Md. at 458 (holding that we construe the insurance policy as a whole to determine the intention of the parties).

In the first instance, the policy provides:

> IN WITNESS WHEREOF, we have caused this policy to be *executed* and attested, and, if required by state law, this policy shall not be valid unless signed by our authorized representatives

{E. 378} (emphasis added). Accompanying this text, the policy has signatures from both Philadelphia Indemnity's President & CEO and its Secretary. The word "executed" here is therefore consistent with the word "signed." [2]

In instances two through six, the policy uses the words "executed" and "execution" to refer to separate contracts that may or may not exist. In either case, the execution of such separate contracts is an express condition precedent to coverage through the policy. In the second instance, the policy provides:

> You may extend the insurance provided by this Coverage Form to apply to your Covered Property while it is away from the described premises, if it is:
>
> > In storage at a location you lease, provided the lease was *executed* after the beginning of the current policy term…

{E. 421} (emphasis added). In the third instance, the policy provides:

> …this exclusion [of coverage] does not apply to a written lease agreement in which you have assumed liability for building damage resulting from an actual or attempted burglary or robbery, provided that:
>
> > Your assumption of liability was *executed* prior to the accident…

[2] Deploy HR argues that this provision demonstrates that the term "executed" has a distinct meaning from "signed" because both words appear in a single sentence. We disagree. As illustrated in *Stern*, "executed" can mean "signed." 380 Md. at 721-22. Moreover, the fact that the provision addresses state law requirements that the policy be "signed" does not mean that "executed" cannot also mean "signed." In fact, the provision is accompanied by signatures of authorized representatives for Philadelphia Indemnity. Therefore, consistent with the text of the provision, the policy has been both "executed" by being signed and is valid under applicable state law by virtue of being signed.

{E. 446} (emphasis added). In the fourth instance, the policy provides:

> You may extend the insurance provided by this Coverage Form to apply to your Covered Property while it is away from the described premises, if it is:
>
> > In storage at a location you lease, provided the lease was *executed* after the beginning of the current policy term; or…

{E. 472} (emphasis added). In the fifth instance, the policy provides:

> This insurance does not apply to … "bodily injury" or "property damage"… This exclusion does not apply to liability for damages:
>
> > Assumed in a contract or agreement that is an "insured contract," provided the "bodily injury or "property damage" occurs subsequent to the *execution* of the contract or agreement.

{E. 490} (emphasis added). In the provision in dispute, the sixth and final instance, the policy provides:

> Each of the following is also an insured:
>
> > ***
> >
> > b. Blanket Additional Insureds When Required by Contract – Any person or organization where required by a written contract *executed* prior to the occurrence of a loss.

{E. 527} (emphasis added).

Thus, in instances two through six, each time the policy uses the word "executed,"—and "execution"—the term is consistent with "fully performed" or "signed" because each instance refers to a discrete event that must occur before coverage will be provided under the policy. In contrast, the policy's use of "executed" and "execution" is inconsistent with "partial performance," or "in the process of being executed," because these terms do not indicate definite, discrete events.

As noted above, the nascent contract between Deploy HR and PEI Staffing was neither signed nor fully performed by both parties when Almonte-Garcia died. Deploy HR's and PEI Staffing's partial performance, therefore, did not render their contract "executed."

We hold that Deploy HR and PEI Staffing did not execute a written contract, as contemplated by Philadelphia Indemnity's policy, before Almonte-Garcia's death. We, therefore, affirm the judgment of the circuit court.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY IS AFFIRMED. COSTS TO BE PAID BY APPELLANT.