STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW DOCKET NO. AND-25-76

CATHERINE DUDLEY,
Plaintiff/Appellant

v.

HUDSON SPECIALTY INSURANCE COMPANY,
Defendant/Appellee

ON APPEAL FROM THE ANDROSCOGGIN SUPERIOR COURT

BRIEF OF THE DEFENDANT/APPELLEE HUDSON SPECIALTY INSURANCE COMPANY

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STATEMENT OF PROCEDURAL HISTORY AND FACTS

The Appellee, Hudson Specialty Insurance Company ("Hudson"), does not dispute the procedural history of this case as described on page 6 of the Appellant's Brief. Hudson contends that the pertinent facts of this case are as follows.

On September 17, 2017, Michel Kanyambo and Speciose Mahirwe purchased a 6-unit multi-family property located at 5-7 Howard Street, Lewiston, Maine (the "property"). (Record Appendix ["R.A."] 102, Statement No. 1.) They began working with co-defendant Champoux Insurance Group, Inc. d/b/a Champoux Insurance Agency ("Champoux") to obtain insurance for the property in the lead-up to their purchase. (R.A. 102, Statement 2.) In connection with this work, on September 13, 2017, Champoux's employee, Christopher Nagy, sent Mr. Kanyambo's insurance application via email to Ryan Darby of New England Excess Exchange, Ltd. ("NEEE"). (R.A. 103, Statement 3.)

Mr. Darby responded the next day, September 14, 2017, by sending a quotation for a Hudson Commercial General Liability ("CGL") policy via email to Mr. Nagy. (R.A. 103, Statement 4.) Mr. Darby was authorized to send this quote pursuant to a Producer Agreement between Hudson and NEEE. (R.A. 103, Statement 5.) Under this agreement, Hudson, a surplus lines insurer, appointed NEEE, "as its agent, for the purpose of producing, underwriting, issuance and delivery of insurance policies, including endorsements and riders thereto ("Policies")…," and gave NEEE, "the authority and responsibility to solicit, review, reject, accept, bind and underwrite applications for, and to issue Policies…" (R.A. 103, Statement 6.)

Mr. Nagy responded the same day, September 14, 2024, by asking Mr. Darby to, "[b]ind and issue." (R.A. 103, Statement 7.) To bind general liability coverage, Mr. Darby required that Mr. Kanyambo complete and sign an ACORD application and a Habitational Supplemental Application. (R.A. 103, Statement 8.) Mr. Kanyambo signed and returned both applications on September 14, 2017. (R.A. 103, Statement 9.) Hudson thereafter issued a general liability policy to Michel Kanyambo and Speciose Mahirwe: policy #HBD 10028800 for the period September 14, 2017 to September 14, 2018 applicable to location 5-7 Howard Street, Lewiston, Maine. (R.A. 104, Statement 10.) On October 17, 2017, Mr. Nagy mailed a copy of the Hudson policy to Mr. Kanyambo and Ms. Mahirwe with a cover letter asking them to review the policy. (R.A. 104, Statement 11.)

On July 31, 2018, Zachary Schmoll of NEEE sent an email to Mr. Nagy attaching a general liability renewal quote for Mr. Kanyambo and Ms. Mahirwe because the Hudson policy was set to expire on September 14, 2018. (R.A. 104, Statement 12.) The proposed dates of coverage were listed as September 14, 2018 to September 14, 2019, with same proposed named insureds, property location, and terms and conditions. (R.A. 104, Statement 13.) The general liability renewal quotation noted, "[t]o bind coverage we must receive written confirmation of the order of coverage, based on the terms and conditions outlined within the quotation." (R.A. 104, Statement 14.) Thus the renewal proposal could not be put into effect until NEEE received written confirmation from Champoux. (R.A. 104, Statement 15.)

After Mr. Schmoll sent the initial renewal quote, he followed up with Mr. Nagy and another Champoux employee, Michelle Augello, to confirm that he was offering a renewal of the expiring Hudson CGL policy for the policy period of September 14, 2018 to September 14, 2019. (R.A. 104, Statement 16.) Mr. Schmoll clarified with Mr. Nagy and Ms. Augello that the separate property policy with Lloyds was not renewed due to a failure to comply with the recommendations, so "we are able to offer GL terms only on this one [through Hudson]." (R.A. 105, Statement 17.) Plaintiff concedes that, "NEEE emailed Champoux [this] proposal to renew the [Hudson] policy before the policy lapsed…" (R.A. 105, Statement 18.)

Mr. Nagy called Mr. Kanyambo after receiving Mr. Schmoll's email the same day, July 31, 2018, to tell him about the renewal quote and that Mr. Kanyambo would again need to complete additional documents to bind coverage. (R.A. 105, Statement 19.) Instead of agreeing to the renewal, Mr. Kanyambo asked

Mr. Nagy if he could shop out the policy. (R.A. 105, Statement 20.) Mr. Nagy stated he could not and recommended to Mr. Kanyambo that he contact other insurance agencies to explore this option. (R.A. 105, Statement 21.) Mr. Kanyambo told Mr. Nagy that he would do so. (R.A. 105, Statement 22.) At no time thereafter did Mr. Kanyambo and Ms. Mahirwe instruct Champoux to take steps to renew the general liability policy with Hudson. (R.A. 105, Statement 23.)

Because the offer to renew the general liability policy communicated by NEEE, on behalf of Hudson, was not accepted by Mr. Kanyambo and Ms. Mahirwe, it expired on September 14, 2018 according to its own terms. (R.A. 105, Statement 24.) Mr. Nagy mailed Mr. Kanyambo and Ms. Mahirwe a letter dated September 14, 2018 notifying them that they did not have coverage anymore under either the Hudson or Lloyds policies. (R.A. 106, Statement 25.) Although that letter mistakenly used the word "cancelled" as to both policies, the Hudson policy was in fact "expiring" because, "[t]he renewal offer had not been accepted." (R.A. 106, Statement 26.)

On September 23, 2018, Plaintiff asserts that she fell at the property and sustained personal injuries. (R.A. 106, Statement 27.) Plaintiff subsequently sued Mr. Kanyambo and Ms. Mahirwe in connection with the accident wherein she asked them to identify all applicable insurance for the property on the date of her accident. (R.A. 106, Statement 28.) Mr. Kanyambo and Ms. Mahirwe responded under oath that, “unfortunately, due to a clerical error, [they] inadvertently allowed the insurance to lapse in September 2018.” (R.A. 106, Statement 29.)

STATEMENT OF ISSUES PRESENTED FOR REVIEW

A. Whether Hudson issued an “offer to renew” its existing insurance policy?

B. Whether Maine’s notice requirements apply only when an insurance company decides to cancel or non-renew a policy, and do not apply when the insureds do not accept an insurer’s offer to renew?

SUMMARY OF LEGAL ARGUMENTS[1]

Insurance policies may terminate in one of three ways. First, the insurer may decide not to renew an existing policy when it expires by its terms. If the insurer makes that decision, it must give the insured notice as required by law and the terms of the existing policy so the insured has sufficient time to obtain insurance from another company without experiencing a gap or lapse in coverage.

The second type of policy termination is a cancellation, which involves the ending of the policy prior to its expiration date. Because a cancellation happens before the expiration of the existing policy and a non-renewal is effective when that policy expires by its terms, these are mutually exclusive options. In the present case, there was neither a non-renewal by Hudson nor a cancellation.

[1] Hudson does not dispute the Plaintiff’s Standard of Review section of her Brief.

The third option is that the insureds may decide not to renew the policy. In that situation, neither party is required to provide notice of the non-renewal. The insureds may simply let the existing policy expire by its terms and take no action to renew the policy. The insurer need not give notice to the insureds who choose not to renew, since it was not the insurer's decision to end the relationship, and the insureds know of their own decision. That is, the notice requirement applies when it is the insurer's decision to not renew the policy, not when the insured non-renews.

In the present case, the insureds decided to not renew with Hudson. Hudson offered to renew the policy at the same or essentially the same terms, but the insureds took no action to accept that offer. Rather, Mr. Kanyambo and Ms. Mahirwe let the Hudson policy expire by its terms. Thus, the insureds terminated the relationship, paid no premium for coverage beyond the existing policy period's expiration date, and thus had no coverage with Hudson at the time of the Plaintiff's accident. Because there is no coverage afforded by Hudson, the Plaintiff's reach-and-apply and related claims against it must fail as a matter of law.

ARGUMENT

I. Hudson Offered to Renew The Relevant Insurance Policy

As an initial matter, Dudley contends that there is no evidence in the record that Hudson is a surplus lines insurer. (Appellant Brief, p. 14.) To the contrary, the evidence establishes that Mr. Kanyambo and Ms. Mahirwe went to Champoux Insurance Agency in Lewiston, Maine, to obtain insurance, and Champoux chose New England Excess Exchange, Ltd. ("NEEE"), to obtain a quote for such coverage. (R.A. 191-194.) The proposal for coverage submitted by NEEE to Champoux for coverage under a policy to be issued by Hudson included a surplus lines tax. (R.A. 192-194.) If Hudson were not a surplus lines insurer, there would have been no surplus lines tax. Thus, it is undisputed that Hudson was and is a surplus lines insurer. Under Maine law, surplus lines insurance and insurance companies are regulated under different statutes than other insurers. See 24-A M.R.S.A. secs. 2001, et seq. See also *Corinth Pellets, LLC v. Arch Specialty Insurance Co*., 246 A.3d 586, 589 and n. 1 (Me. 2021) (citing Maine's surplus lines law).

Moreover, it is clear that Hudson neither cancelled nor non-renewed coverage for Mr. Kanyambo and Ms. Mahirwe. Under Maine law, an insurance policy is cancelled when it is terminated other than on its expiration date. *Corinth Pellets, LLC v. Arch Specialty Ins. Co.*, 246 A.3d 586, 593 (Me. 2021). By contrast, "nonrenewal" means termination of a policy at its expiration date and is therefore mutually exclusive from a cancellation. *Id.* For this reason, statutes dealing with the cancellation of a policy do not govern a non-renewal. *Id.*

In this case, Maine law regarding either a cancellation or nonrenewal of an insurance policy is not relevant because Hudson did neither. Rather, it "offered to renew" Mr. Kanyambo's and Ms. Mahirwe's existing policy. (R.A. 191-196.) In this regard, 24-A M.R.S.A. sec. 2908(1)(E), defines the terms "renewal" or "to renew" to mean:

> the issuance of, or the offer to issue, by an insurer, a policy succeeding a policy previously issued and delivered by the same insurer or an affiliate of the insurer or the issuance of a certificate or notice extending the terms of an existing policy for a specified period beyond its expiration date. For the purposes of this section, the transfer of a policy from an insurer to an affiliate is considered a policy renewal.

Dudley quotes this same statute but then contends that "NEEE's email to Champoux did not offer 'to renew' the existing policy." (Appellant Brief, p. 16.) To the contrary, Dudley alleged in her Second Amended Complaint, in pertinent part, that "NEEE emailed Champoux a proposal to renew the policy before the policy lapsed." (R.A. 45, para. 44.) In addition, NEEE specifically advised Champoux that it was providing Hudson's "renewal quote" with its July 31, 2018 mail. (R.A. 191.) It is difficult to imagine how much more explicit terminology may be used to renew or offer to renew a policy than to provide a "renewal quote."

Furthermore, the coverage described in the quote provided by NEEE would be afforded under the same policy forms and endorsements as the existing policy and with the same limits of liability. (Compare R.A. 149 and R.A. 155 with

R.A. 191-R.A. 196.) Thus, the quote offered coverage based on "the terms of the existing policy for a specified period beyond its expiration date," consistent with 24-A M.R.S.A. sec. 2908(1)(E). Accordingly, this quote was an "offer to renew" the existing policy under Maine law.

Furthermore, pursuant to 24-A M.R.S.A. sec. 2908(4),

> If an insurer offers or purports to renew a contract, but on less favorable terms to the insured or at higher rates or a higher rating plan, the new terms or rates and rating plan may take effect on the renewal date, if the insurer has provided the insured 30 days notice. If the insurer has not so notified the contract holder, the contract holder may elect to cancel the renewal policy within the 30-day period after receipt of the notice or delivery.

Based on these two quoted statutory provisions, the "offer to renew" may be from an affiliate of the existing insurer and need not be from the insurer itself. In addition, the "offer to renew" may be on "less favorable terms or at higher rates" than the existing policy but still satisfy the statute if 30 days' notice is provided.

In the present case, notice of the offer to renew was sent by NEEE on July 31, 2018 for coverage to begin on September 14, 2018. Since the proposed coverage would have the same forms, endorsements, and limits, the offer to renew was based on the same policy terms. Even if Dudley contends the offer was for less favorable terms (which is denied), 30-days' notice of those terms was provided by NEEE. Accordingly, either way, Hudson satisfied these statutory provisions concerning a renewal or an offer to renew.

The Plaintiff contends that the quote issued by Hudson through NEEE fails to qualify as an "offer to renew" under Maine law since it could have resulted in a new, not renewed, policy. However, this contention fails factually because the relevant quote was for the same or essentially the same terms as the existing policy, except that the coverage would be for the following year. Secondly, any renewal policy is a "new" policy in the sense that the coverage afforded under the existing policy expires at the end of its term, and the renewal policy affords coverage for a subsequent term. For losses occurring in the prior policy, the renewal would not apply, and the existing policy would not apply to losses occurring during the renewal policy period. The two policies are separate and distinct in that sense, even though the scope and limits of the coverage is the same.

Legally, the Plaintiff's contentions should also fail. As noted above, the renewal policy may be issued by an affiliated insurer, on less favorable terms, or at higher rates than the existing policy but still qualify as a "renewal" as defined by statute. Thus, the terms of the offer to renew need not be precisely the same as the existing policy to qualify as an "offer to renew" under the law.

Dudley also contends that Hudson did not "offer to renew" the policy because NEEE's email required the completion of an application. (Appellant's Brief, p. 16.) However, the last sentence of 24-A M.R.S.A. sec. 2908(4) provides that "[t]his section does not apply if the change is a rate, form or plan filed with the superintendent and applicable to the entire class of business to which the policy belongs or to a premium increase based on the altered nature or extent of the risk insured against."

An insurer would learn about "the altered nature or extent of the risk insured against" by requesting an application, among other means, which seeks information from the insured about the nature of the risk. Accordingly, a request that an application be completed does not render Hudson's offer to renew not such an offer under the law.

In addition, Hudson's quote, which detailed the policy terms being offered as being materially the same as the existing policy, was offered at the same time as the request for additional information. (R.A. 191-R.A. 196.) Hudson was not proposing an entirely "new" policy, as Dudley claims, but rather essentially the same policy covering a subsequent policy period, assuming the risks to be insured had not changed. Stated another way, Hudson committed to providing coverage with the same material policy terms, subject only to the application not identifying any "altered nature or extent of the risk insured against," consistent with the Maine law cited above. In fact, the quote provided by NEEE to Champoux expressly provides, "When coverage is requested bound, this quotation becomes a binding contract." (R.A. 192.) In sum, Hudson issued a definitive, detailed offer to renew.

Considering the relevant statutes in another way, 24-A M.R.S.A. § 2908(1)(E) applies by its terms when the insurer decides to renew or offer to renew an insurance policy prior to its expiration date. By contrast, a different Maine statute applies when an insurer decides to cancel or non-renew a policy, and that statute requires notice of such cancellation or non-renewal to enable "a policyholder to act to avoid any lapses in insurance coverage." *Corinth Pellets, LLC*, 246 A.3d at 594.

In the present case, Hudson offered to issue a policy with the same terms for the following year as the policy previously issued and delivered by it—a "renewal." Hudson did not "nonrenew" the policy it had issued to Mr. Kanyambo and Ms. Mahirwe. Rather, they did not accept Hudson's offer. Because its offer was rejected or ignored by the insureds, Hudson had no obligation under Maine law to issue a nonrenewal notice. (R.A. 16.) Hudson cannot be obligated to issue a notice of non-renewal when the insureds were the parties who chose not to, or failed to, accept the offer of renewal.

The Trial Court correctly analyzed these issues and properly granted summary judgment in Hudson's favor for the reasons stated above and in the Court's Order. (R.A. 11-17.) Accordingly, Hudson respectfully requests that this Court affirm the Trial Court's grant of summary judgment in Hudson's favor and denial of the Plaintiff's motion.

II. Case Law Upon Which Dudley Relies Is Not Relevant

Dudley contends that Champoux was not the agent of Mr. Kanyambo and Ms. Mahirwe for purposes of receiving the offer to renew and thus notice to that agency was not notice to the insureds. (Appellant Brief, pp. 18-24.) The first case decided under Maine law cited by the Plaintiff is *Ghiz v. Richard S. Bradford, Inc.*, 573 A.2d 379 (Me. 1990), which the Plaintiff contends stands for the proposition that an insurance agent's duties end with the initial procurement of the policy. (*Id.* p. 18.)

To the contrary, the issue in that case was whether the insurance agent could be found liable to a customer for alleged inadequacies in the policy that was procured. *Id.* at 381. Thus, *Ghiz* dealt with the agent's duties regarding the procurement of the policy, contrary to Dudley's contention.

More importantly, *Ghiz* did not concern the issue in this case: whether notice from NEEE to Champoux was notice to Mr. Kanyambo and Ms. Mahirwe. (*Id.* p. 18.) Rather, the communications in *Ghiz* were directly between the agent and his customer. Accordingly, it has no relevance to this case.

Similarly, Dudley relies on *Sunset Enterprises v. Webster & Goddard, Inc.*, 556 A.2d 213, 215 (Me. 1989), and *Yankee Pride Trans. & Logistics, Inc. v. UIG, Inc.*, 264 A.3d 1248, 1250 n. 1 (Me. 2021), for the propositions that an agent has no duty to notify the insured when it receives a notice of a cancellation or nonrenewal, respectively. (Appellant's Brief, pp. 18-19.) In *Sunset*, the insurance agent was deemed to be the agent of the insurer, not the insured. *Id*. The Court's conclusion in that case makes perfect sense, as the agent of the insurer should have no duty to provide notice to the insured of a cancellation by the insurer. In *Yankee Pride*, judgment entered for the agency on the grounds that it did not cause the customer's loss. *Id*. at 1251-1253. Thus, it is not relevant precedent in support of Dudley's claims.

Moreover, *Sunset Enterprises* and *Yankee Pride* dealt with notice of a policy cancellation or nonrenewal, and thus the termination of coverage. By contrast, the present case concerned Hudson's offer to renew coverage for Mr. Kanyambo and Ms. Mahirwe through Champoux. Therefore, Champoux was involved in the procurement of coverage for the renewal of the policy.

Furthermore, even if it could reasonably be argued that Champoux had no duty concerning the renewal the policy (which Hudson denies), the evidence is that the agency assumed a role in that process. Dudley asserted claims against Champoux for allegedly failing to procure, and failing to exercise reasonable care in advising Mr. Kanyambo and Ms. Mahirwe concerning, the renewal of the policy. (R.A. 46, para. 48.) In addition, on July 31, 2018, NEEE emailed Champoux the offer to renew the expiring Hudson policy for the period of September 14, 2018 to September 14, 2019. (R.A. 12, 45, 191-196.) The same day, Champoux informed

Mr. Kanyambo that the agency had received a renewal quote for the Hudson policy. (R.A. 12 at n. 2.) Plaintiff concedes that NEEE emailed Champoux after receiving the quote and Champoux informed Mr. Kanyambo of Hudson's quote on the same day (July 31, 2018). (*Id.*; see also Appellant's Brief, pp. 20-21.) Despite knowing of the Hudson quote, the insureds took no action to accept it. (R.A. 12, 16.)

Because the offer to renew the general liability policy communicated by NEEE, on behalf of Hudson, was not accepted by Mr. Kanyambo and Ms. Mahirwe, the existing policy expired on September 14, 2018 according to its own terms. Accordingly, the Trial Court correctly concluded that the Hudson policy was not in effect at the time of Ms. Dudley's alleged accident. (R.A. 16.)

In addition, *Corinth Pellets, LLC v. Arch Specialty Insurance Co*., 246 A.3d 586, 589 (Me. 2021), is not relevant because the insurer in that case decided to non-renew the policy. In the present case, Hudson did not decide to non-renew. Similarly, *Joseph Skilken & Co. v. Berkley Aviation LLC*, 2017 WL 1025728 (D. Me. 2017), p. 14, involved the non-renewal of a policy. Furthermore, *Joseph Skilken* is an unreported decision, apparently not cited by any other court, and not binding precedent. That case also involved two relevant communications. The first sought information so the insurer could make a determination about whether to renew the policy or not, and the insurer indicated that it would review and determine its renewal position. *Id.* at 15. Thus, the letter was not a notice of non-renewal. *Id*. A second, subsequent letter made clear that the insurer was non-renewing the policy, but that non-renewal was not effective until the expiration of the required 30-day period, which occurred after the loss. *Id.* at 14.

By contrast, Hudson did not cancel or non-renew the policy, and it specifically offered to renew with the same forms and endorsements as the existing policy. Hudson's offer to renew the policy was not accepted by Mr. Kanyambo and Ms. Mahirwe. The cancellation and non-renewal statutes apply by their terms when the insurer decides not to renew the coverage. By contrast, it was the insureds' decision not to non-renew in this case. It cannot be Hudson's obligation to issue a notice of non-renewal to the insureds who chose not to renew.[2]

III. Adopting Plaintiff's interpretations of the policy and statutes would produce incongruous results.

Mr. Kanyambo and Ms. Mahirwe never paid Hudson for insurance coverage after the expiration of their policy. Yet if Plaintiff's argument is accepted, the law will treat the Hudson policy as having been in force when the accident occurred, thus giving them an undeserved windfall. They should not be given something for nothing. Further, the remedy Plaintiff seeks—maintaining insurance for a customer

[2] Dudley asserts that Hudson's policy mirrors Maine statutory law regarding notice of non-renewals but then confines her argument to the statutes. (Appellant's Brief, pp. 25-26.) For the same reasons that Dudley's statutory arguments fail (this case does not involve a decision to non-renew by the insurer), any argument she may make pursuant to the policy terms also fails.

that has not paid for it—is a harsh result for an insurer. Extending full coverage after the expiration of the policy would be punitive to Hudson.

In addition, it is unclear when the Plaintiff contends that an insurer should issue a notice of non-renewal when the insureds decide not to accept a renewal offer. In this case, Hudson's quote was effective for 30 days from the date quoted, which was July 26, 2018. (R.A. 194.) Where, as here, the insureds take no action to accept the quote, Hudson would not know that the insureds were not agreeing to renew the policy until at least August 25. If the insurer then had to give 30 days' notice to the insureds of the insureds' own decision not to renew, coverage would remain in effect until at least September 24. In this way, the insureds would have obtained free coverage for at least ten days (including potentially for Ms. Dudley's September 25, 2018 accident) simply by not acting on the insurer's offer to renew.

A finding for the Plaintiff in the present case would permit other insureds to decline or ignore an insurer's offer to renew a policy, claim that the policy remains in effect until the insurer issues a notice of non-renewal, and obtain the insurance coverage free of charge when the insureds failed to purchase the offered renewal. It makes no sense that an insured can properly decline an offer to buy a product (insurance) and yet get the same benefit at no cost as if the purchase had been made, on the grounds that the offeror did not provide a notice to the offeree of the offeree's rejection of the offer.

CONCLUSION

The absence of coverage is a complete defense for an insurer in claims brought under Maine's reach and apply statute. *Knight v. Me. Mut. Fire Ins. Co.*, 651 A.2d 838, 839 (Me. 1994) ("The reach and apply statute requires both a notice and coverage in order for a judgment creditor to have insurance money applied to satisfy a judgment."); *see also Hunnewell v. Liberty Mut. Fire Ins. Co.,* 588 A.2d 300, 302 (Me. 1991). Because Mr. Kanyambo and Ms. Mahirwe were not insured by Hudson at the time of the accident, Plaintiff cannot sustain a claim under this statute. Similarly, the absence of coverage precludes Plaintiff from proving the essential element of her breach of contract claim; that is, that there was a contract between the relevant parties when her accident occurred. Thus, based on the foregoing, Hudson respectfully requests that this Court affirm the grant of summary judgment in its favor and the denial of the Plaintiff's motion for summary judgment.

Dated: July 18, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Christian H. Hinrichsen, Esq., hereby certify that one paper copy of the Brief of the Defendant/Appellee was served on the following at the address set forth below by pre-paid first-class mail on July __, 2025:

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