***** NOT FOR PUBLICATION *****

NO. 24726

IN THE SUPREME COURT OF THE STATE OF HAWAIʻI

KENEKE ROOFING, INC., Plaintiff-Appellant,

vs.

ISLAND INSURANCE COMPANY, LIMITED and
TRADEWIND INSURANCE COMPANY, LIMITED,
Defendants-Appellees.

APPEAL FROM THE FIRST CIRCUIT COURT
(CIV. NO. 99-4571)

SUMMARY DISPOSITION ORDER
(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy JJ.)

Plaintiff-appellant Keneke Roofing, Inc. (Keneke) appeals from the first circuit court's October 30, 2001 final judgment in favor of defendants-appellees Island Insurance Company, Limited and Tradewind Insurance Company, Limited [hereinafter collectively, Island].[1] The circuit court granted summary judgment in favor of Island, concluding that Keneke's Comprehensive General Liability (CGL) insurance policy, issued by Island, did not cover property damage caused by Keneke. On appeal, Keneke argues that the circuit court erred in treating Keneke's claims for coverage as one large claim, rather than separately analyzing the different classes of damages for which Keneke seeks reimbursement; Keneke further argues that the plain

[1] The Honorable Eden Elizabeth Hifo presided over this matter.

language of the policy, as well as past dealings between Keneke and Island, requires Island to provide coverage to Keneke.

Upon carefully reviewing the record and the briefs submitted by the parties, and having given due consideration to the arguments advocated and the issues raised, we affirm the circuit court's grant of summary judgment in favor of Island. We agree with Keneke that the circuit court should have explicitly addressed each class of damages separately; however, even when viewing each class of damages separately, we hold that Keneke is not entitled to coverage. Specifically, we hold that: (1) the circuit court correctly concluded that the damages that occurred as a result of Keneke's abandonment of the roofing project were not compensable under the CGL policy. Water damage to an exposed building is the foreseeable result of a contractor's abandonment of a roofing contract, such that this class of damages did not arise from an "occurrence" as defined by the CGL policy. See Hawaiian Holiday Macadamia Nut Co., Inc. v. Indus. Indem. Co., 76 Hawai'i 166, 872 P.2d 230 (1994); see also Burlington Ins. Co. v. Oceanic Design & Constr., Inc., No. 02-17317, 2004 WL 1977657, at **4-11, 2004 U.S. App. LEXIS 18932, at **11-33 (9th Cir. Sept. 8, 2004). Furthermore, even though Island's own adjuster believed that Keneke was entitled to coverage, the subjective belief of an Island employee is not determinative of insurance coverage. Instead, the test is whether an insured had an objectively

reasonable expectation of coverage: "'[t]he objectively reasonable expectations of [policyholders] and intended beneficiaries regarding the terms of insurance contracts will be honored even though painstaking study of the policy provisions would have negated those expectations.'" Hawaiian Ins. & Guar. Co. v. Brooks, 67 Haw. 285, 290-91, 686 P.2d 23, 27 (1984) (quoting Robert E. Keeton, Insurance Law Rights at Variance With Policy Provisions, 83 Harv. L. Rev. 961, 967 (1970)) (alterations in original), overruled on other grounds, Dairy Rd. Partners v. Island Ins. Co., Ltd., 92 Hawai‘i 398, 992 P.2d 93 (2000); see also Hawaiian Ins. & Guar. Co., Ltd. v. Blanco, 72 Haw. 9, 804 P.2d 876 (1990), overruled on other grounds, Dairy Rd. Partners, 92 Hawai‘i 398, 992 P.2d 93; (2) Keneke is not entitled to coverage for damages to Building 859 that allegedly occurred after Keneke completed its work on Building 859. Keneke argues that it completed its work on Building 859, such that any damage that occurred to that building did not result from Keneke's abandonment of the roofing project. However, the CGL policy at issue provides coverage only for those damages that occur during the policy period. See Sentinel Ins. Co., Ltd. v. First Ins. Co. of Hawai‘i, Ltd., 76 Hawai‘i 277, 298, 875 P.2d 894, 915 (1994). Island argues that Keneke has not provided any proof that damage occurred to Building 859 during the policy period. Although we recognize that Island has the burden of establishing the absence

of a genuine issue of material fact, see Sprague v. California Pacific Bankers & Ins. Ltd., 102 Hawai'i 189, 202, 74 P.3d 12, 25 (2003), Island has satisfied this burden by noting that Keneke first learned of leaks to Building 859 in late 1996 -- after the expiration of the CGL policy. Keneke has presented no evidence suggesting that the damage to Building 859 occurred during the policy period. Consequently, Island is entitled to summary judgment on this issue; and (3) Keneke is not entitled to coverage for repairs it allegedly made before abandoning the roofing project. The CGL policy unambiguously presupposes some action -- a "claim" or a "suit" -- brought by the injured third party against the insured. In the instant case, there is no evidence that the injured third party or parties (i.e., the owner(s) of the damaged property) asserted any claim against Keneke or took any action to recover for the alleged damage. Keneke argues that the parties' course of dealing demonstrates that Island has a history of covering these types of "claims," such that summary judgment on this basis would be inappropriate. However, the record indicates that Island reimbursed Keneke when (a) the injured third party sought recovery or (b) Island instructed Keneke to undertake repairs after Keneke had informed Island of potential claims. There is no evidence suggesting that Island had a history of reimbursing Keneke for repairs where no one, other than Keneke, ever observed the alleged damages.

Because there is no evidence that a "claim" was ever made against Keneke, Keneke is not entitled to coverage. Therefore,

IT IS HEREBY ORDERED that the first circuit court's October 30, 2001 final judgment in favor of defendants-appellees Island Insurance Company, Limited and Tradewind Insurance Company, Limited, is affirmed.

DATED: Honolulu, Hawai'i, October 5, 2004.

On the briefs:

Warren Price, III
and John D. Zalewski
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