4

IN THE COURT OF APPEALS OF IOWA

BOB ERICKSON INCORPORATED,	)	
Appellant,	)	Filed October 7, 1977
v.	)	
THE AETNA CASUALTY and SURETY COMPANY,	)	230 / 2-59143
Appellee.	)	

Appeal from Polk District Court - Harry Perkins, Judge.

Plaintiff appeals from summary judgment. Affirmed.

Tamra Phipps and J. Blaine Phipps, of Des Moines, for appellant.

Glenn L. Smith, of Des Moines, for appellee.

Heard by Allbee, C.J., and Donielson, Snell, Oxberger and Carter, JJ.

5

ALLBEE, C.J.

Plaintiff Bob Erickson Incorporated appeals from summary judgment. The effect of that judgment was to declare that liability which may be imposed as a result of certain warranty actions pending against Erickson is not covered by a comprehensive liability insurance policy. As a further consequence the defendant insurer, The Aetna Casualty and Surety Company, had no duty to defend the warranty actions.

The propriety of trial court's ruling depends upon whether genuine issues of fact exist. We confine our examination to the pleadings, the policy in issue, answers to interrogatories, uncontroverted exhibits, and affidavits. Schulte v. Mauer, 219 N.W.2d 496, 499-500 (Iowa 1974); rule 237, Rules of Civil Procedure. These sources disclose the following material facts which are not subject to dispute: Erickson and Aetna entered into a written contract for comprehensive general liability insurance, Aetna's policy number 20 AL 800143 CCA(Y); Erickson purchased certain lots for home building sites; Erickson constructed houses on the building sites, backfilled the foundations, and graded the lots; Erickson sold the houses; four of Erickson's purchasers have brought actions against Erickson alleging that the homes they purchased developed cracked and heaved basements and that the lots have cracked, sunk and eroded; each homeowner alleges Erickson's breach of an implied warranty of fitness.

From these indisputable facts, this conclusion is inevitable: the homes and lots of the complaining homeowners were the completed work and product of Erickson. Therefore, Aetna contends, because there is no material fact in dispute, and because the policy exclusions preclude coverage for any liability which may be imposed against Erickson as a result of the implied warranty actions, summary judgment was properly entered in its favor.

Trial court was correct in finding no factual dispute existed. The fighting issue in this case is how to construe the policy exclusions. Where no fact issue remains, construction of the policy is a question of law. Brammer v. Allied Mutual Ins. Co., 182 N.W.2d 169, 172-73 (Iowa 1970). Exclusions such as those in Aetna's policy have been uniformly held to exclude coverage for damage to the insured's work or product. Hartford Accident & Indemnity Co. v. Olson Bros., Inc., 187 Neb. 179, 188 N.W.2d 699 (1971) and extensive citation of cases at 188 N.W.2d 704; see Biebel Bros., Inc., v. United States Fid. & Guar. Co., 522 F.2d 1207 (8th Cir. 1975); Haugan v. Home Indemnity, Co., 197 N.W.2d 18 (S.D. 1972). These authorities are dispositive. Accordingly, the claims of the homeowners for which Erickson may ultimately be found responsible do not impose a liability for which Aetna affords coverage under the policy in issue. It follows that if the claims are outside the coverage there is no duty on the part of Aetna to defend Erickson. Haugan v. Home Indemnity Co., supra at 23.

In brief and argument Erickson also contends its "reasonable expectations" were that the liability coverage procured from Aetna would afford protection for the kind of actions brought by the homeowners. Only conclusory statements were advanced in support of this contention, however. Erickson offered nothing factual regarding negotiations or representations surrounding the purchase of the policy. Erickson advanced only an affidavit incorporating by reference unsubstantiated assertions contained in the brief in support of its resistance. No evidence was adduced, by affidavit or other means, to suggest either reasons why Erickson misunderstood the policy coverage provisions or circumstances attributable to Aetna which fostered coverage expectations. See Rodman v. State Farm Mutual Automobile Ins. Co., 208 N.W.2d 903, 905-908 (Iowa 1973). The record is void of evidence which would permit a venture into Erickson's "reasonable expectations." Nor did Erickson at any point, either pending or at the hearing on Aetna's motion for summary judgment, request time for more discovery or an opportunity to further resist the motion with additional affidavits. See Carter v. Jernigan, 227 N.W.2d 131 (Iowa 1975).

Because under this record the only conflict concerns legal consequences flowing from settled facts, trial court's entry of summary judgment was proper. Jacobs v. Stover, 243 N.W.2d 642, 643 (Iowa 1976).

AFFIRMED.