IN THE SUPREME COURT OF THE STATE OF DELAWARE

MASONIC HOME OF DELAWARE, INC.,	§	No. 361, 2013
Plaintiff Below-Appellant,	§	Court Below: Superior Court of the State of Delaware in and for New Castle County
v.	§	
CERTAIN UNDERWRITERS AT LLOYD'S LONDON, SUBSCRIBING TO CERTIFICATE NOS. CRCLTC1217A AND CRCLTC1217AXS,	§	C.A. No. N12C-08-184
Defendant Below-Appellee.	§	

Submitted: October 7, 2013
Decided: October 30, 2013

Before **HOLLAND**, **BERGER**, and **RIDGELY**, Justices.

O R D E R

On this 30th day of October 2013, it appears to the Court that:

(1) Plaintiff-Below/Appellant Masonic Home of Delaware, Inc. ("Masonic") appeals from a Superior Court's grant of a Motion to Dismiss a declaratory judgment against Certain Underwriters at Lloyd's London ("Underwriters"). Masonic raises one claim on appeal. Masonic argues that the Superior Court erred in finding that its insurance policy does not cover a personal injury claim brought by the employee of an independent contractor. We find no merit to Masonic's appeal and affirm.

(2) Masonic operates a nursing home facility in Wilmington. In 2006, Masonic entered into a dining service contract with Unidine Corporation ("Unidine"). Under this agreement, Unidine was responsible for managing Masonic's dining services, which included all food preparation and hiring employees to fulfill its contractual obligations. In 2009, one of Unidine's employees, Abdelhak Moumen, was involved in a workplace accident resulting in severe and permanent injuries. Thereafter, Moumen filed a complaint against Masonic in the Superior Court seeking recovery for damages sustained as a result of the accident. Moumen also submitted a Worker's Compensation claim. The Worker's Compensation claim was approved, and Moumen received benefits either from Unidine or Unidine's insurance provider.

(3) Masonic thereafter submitted a claim to its insurance provider, Underwriters. After conducting a review of the facts, Underwriters denied the claim because Moumen was an employee of an independent contractor and thus not covered under Masonic's insurance policy (the "Policy"). Masonic then filed an action for a declaratory judgment and damages for breach of contract against Underwriters in Superior Court. Underwriters filed a Motion to Dismiss. Following briefing and oral arguments, the trial court granted Underwriter's Motion to Dismiss. Masonic filed a Motion for Reargument, which was denied. This appeal followed.

(4) Masonic argues that the Superior Court improperly interpreted the policy agreement between it and Underwriters when it dismissed Masonic's claim for declaratory relief. Masonic further contends that the trial court improperly applied New York law when it should have applied Delaware law. We review the Superior Court's dismissal under Rule 12(b)(6) *de novo*.[1] Because a trial court's decision to honor a contractually-designated choice of law provision is an issue of law, it is also subject to *de novo* review.[2]

(5) The Policy specifically provides that it shall be interpreted under New York law: "It is hereby understood and agreed by both [Masonic] and Underwriters that any dispute concerning the interpretation of this Policy shall be governed by the laws of New York, United States of America."[3] "Delaware courts will recognize a choice of law provision if the jurisdiction selected bears some material relationship to the transaction."[4] Masonic nonetheless urges this Court to apply Delaware law because New York's body of law would defer to Delaware. We do not have to decide these choice of law issues because the substantive rule

[1] *Furman v. Delaware Dep't of Transp.*, 30 A.3d 771, 773 (Del. 2011) (quoting *Ramirez v. Murdick*, 948 A.2d 395, 399 (Del. 2008)).
[2] See *J.S. Alberici Const. Co., Inc. v. Mid-W. Conveyor Co., Inc.*, 750 A.2d 518, 520 n.2 (Del. 2000).
[3] Appellant's Opening Br. Appendix at A32.
[4] *Annan v. Wilmington Trust Co.*, 559 A.2d 1289, 1293 (Del. 1989) (citing *Wilmington Trust Co. v. Wilmington Trust Co.*, 24 A.2d 309, 313 (Del. 1942)).

under either New York or Delaware law is the same.[5] That is, courts will interpret a contract according to the plain meaning of the text and will not consider any extrinsic evidence unless the terms are ambiguous.[6] Further, a contract is ambiguous only when it is susceptible to more than one reasonable interpretation.[7]

(6) The language of the Policy limits the type of claims Underwriters are required to pay. In relevant part, subsection 7 of the Policy lists the exclusions to Underwriters' coverage as follows:

> [Underwriters] are not obligated to defend or pay any damages, judgments, settlements or Medical Payments on account of any Claim:
>
> . . . .

[5] *See Deuley v. DynCorp Int'l, Inc.*, 8 A.3d 1156, 1161 (Del. 2010) (holding that "the Court should avoid the choice-of-law analysis altogether" where the result would be the same under both jurisdictions (quoting *Berg Chilling Sys., Inc. v. Hull Corp.*, 435 F.3d 455, 462 (3d Cir. 2006))).

[6] *See Osborn ex rel. Osborn v. Kemp*, 991 A.2d 1153, 1159–60 (Del. 2010) ("When the contract is clear and unambiguous, we will give effect to the plain-meaning of the contract's terms and provisions." (citing *Rhone-Poulenc Basic Chem. Co. v. Am. Motorists Ins. Co.*, 616 A.2d 1192, 1195 (Del. 1992))); *Greenfield v. Philles Records, Inc.*, 780 N.E.2d 166, 170 (N.Y. 2002) (holding that where an agreement is "complete, clear and unambiguous on its face," it should "be enforced according to the plain meaning of its terms" and that extrinsic evidence "may be considered only if the agreement is ambiguous"); *Slamow v. Del Col*, 594 N.E.2d 918, 919 (N.Y. 1992) ("The best evidence of what parties to a written agreement intend is what they say in their writing.").

[7] *See Twin City Fire Ins. Co. v. Del. Racing Ass'n*, 840 A.2d 624, 628 (Del. 2003) ("Contract language is ambiguous if it is 'reasonably susceptible of two or more interpretations or may have two or more different meanings.'" (quoting *Kaiser Alum. Corp. v. Matheson*, 681 A.2d 392, 395 (Del. 1996))); *Breed v. Ins. Co. of N. Am.*, 385 N.E.2d 1280, 1283 (N.Y. 1978) ("It is, however, for this court to say, as matter of law, whether reasonable men may reasonably differ as to such meaning [of a contract]. . . ." (quoting *Hartigan v. Cas. Co. of Am.*, 124 N.E. 789, 790 (N.Y. 1919))).

> (k) for any damage sustained by or injury to:
>
> > (1) An Employee or an independent contractor working for you . . . arising out of and in the course of employment by the Insured or performing duties related to the conduct of the Insured's business . . . ; or
> >
> > (2) The spouse, child, parent, brother or sister of that Employee or independent contractor . . . ;
> >
> > This exclusion applies whether the Insured may be liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury or damage.[8]

(7) Underwriters argue that this plain language means that the Policy bars claims brought against Masonic by independent contractors and their employees for injuries sustained during the normal course of business. Masonic, however, argues that the exclusion is ambiguous. Masonic explains that only actual people and not corporate entities are excluded from coverage because such entities cannot have a spouse, child, parent, or sibling. But even if the exclusion does apply to a corporate independent contractor, Masonic suggests that the language is absurd due to the reference to family members of a corporate entity. Regardless, Masonic argues that under no reasonable interpretation does the employee of an independent contractor fall within the exclusion.

(8) Even though Underwriters and Masonic interpret the Policy differently, we conclude that only Underwriters' interpretation is reasonable. Both parties

[8] Appellant's Opening Br. Appendix at A39–40.

concede that the Policy excludes claims by independent contractors. The plain meaning of independent contractor is not so circumscribed to only include actual people or to preclude the agents and employees of an independent corporate contractor. Rather, the reasonable interpretation of the exclusion extends to any damage or injury sustained by the employees or agents of any independent contractor hired by Masonic to perform work related to its business. Although the Policy does not include the specific words "or the employees of an independent contractor," Masonic's interpretation limiting the exclusion only to persons and not employees of a corporate entity is contrary to the plain meaning of independent contractor.

(9) Having determined the plain meaning of the Policy excludes recovery for damage and injuries sustained by the employees of independent contractors, we now turn to the facts of this case. It is undisputed that Unidine is an independent contractor of Masonic. It is also undisputed that Moumen was an employee of Unidine at the time of the accident. Therefore, the injuries sustained by Moumen do not fall within the coverage of the Policy as the Superior Court correctly found.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be, and the same hereby is, **AFFIRMED**.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice