STATE OF MICHIGAN

COURT OF APPEALS

BITUMINOUS CASUALTY CORPORATION, an Illinois Corporation,

Plaintiff-Appellee,

v

R.J. TAYLOR CORPORATION, a Michigan Corporation, and MODULAR INSTALLATION SERVICES, a Michigan Corporation, jointly and severally,

Defendants-Appellants.

UNPUBLISHED
May 8, 1998

No. 203334
Branch Circuit Court
LC No. 96-009544-CK

Before: Hoekstra, P.J., and Jansen and Gage, JJ.

PER CURIAM.

Defendants appeal as of right from an order granting plaintiff's motion for summary disposition pursuant to MCR 2.116(C)(10) and denying defendants' cross motion for summary disposition pursuant to the same court rule. We affirm.

The facts material to this case are not in dispute. Defendants constructed a modular classroom building for a local school. Complaints from users of the new facility led to an investigation determining that the ventilation system in the structure was faulty as installed, allowing sewer gas and carbon dioxide to collect inside the building. Consequently, various parties brought an action against defendants and others, alleging injuries from the exposure to hazardous gases or other airborne pollutants. In effect at the time in question was a commercial general liability insurance policy issued by plaintiff and naming both defendants as insured parties. Accordingly, defendant Taylor requested that plaintiff defend and indemnify it under the contract's provision covering products/completed operations; however, plaintiff denied any obligation to provide those services, citing a pollution exclusion within the contract, and filed this suit for declaratory relief.

In granting plaintiff's motion for summary disposition, the lower court held that the absolute pollution exclusion within the contract was valid. We review de novo the lower court's decision on the

motions for summary disposition. *Miller v Farm Bureau Mut Ins Co*, 218 Mich App 221, 233; 553 NW2d 371 (1996). Summary disposition pursuant to MCR 2.116(C)(10) is appropriate when there is no genuine issue regarding any material fact, and the moving party is entitled to judgment as a matter of law. *Id.* We hold that the lower court properly granted summary disposition to plaintiff.

The parties agree that the general provisions of the insurance contract, on their own terms, extend coverage for negligence resulting in bodily injury arising from the insured's completed work. At issue is whether the specific terms of the pollution exclusion, included by special endorsement, relieve plaintiff of the general duty to defend and indemnify as otherwise provided. Defendants proffer two primary arguments on appeal: first, that either from its plain words or as the result of internal ambiguities, the contract should be construed in favor of coverage in the area under dispute; and second, that when viewed in light of other documents plaintiff issued, the contract created in defendants a reasonable expectation that the pollution exclusion did not apply to the facts giving rise to this controversy.

First, regarding the language of the pollution exclusion, defendants do not dispute that when considered alone, the specific exclusions enumerated within the pollution exclusion would relieve plaintiff of its duty to defend and indemnify in the area at issue in the underlying causes of action. Instead, defendants argue that a comparison between the pollution and asbestos exclusions indicates that the pollution exclusion does not apply to its coverage for products/completed operations liability. The endorsement for the pollution exclusion announces that it modifies coverage under the commercial general liability form, owners and contractors protective liability form, and railroad protective liability form. In contrast, the endorsement for the asbestos exclusion states that it is modifying coverage under two of those same forms, plus a products/completed operations liability form. Defendants argue that this comparison reveals that the pollution exclusion therefore does not apply to its products/completed operations liability coverage. Accordingly, defendants conclude that plaintiff is obligated to defend and indemnify pursuant to its coverage under the products/completed operations provision.

Exclusionary clauses in insurance contracts must be strictly construed against the insurer. *Fire Ins Exchange v Diehl*, 450 Mich 678, 687; 545 NW2d 602 (1996). Additionally, ambiguities must be strictly construed against the drafter. *State Farm Mut Automobile Ins Co v Enterprise Leasing Co*, 452 Mich 25, 38-39; 549 NW2d 345 (1996). However, defendants' attempt to render the pollution exclusion inapplicable to the provision for coverage for products/complete operations liability is without merit. As plaintiff points out, the policy in question does not include a separate form for products/completed operations coverage because that aspect of coverage comes under defendants' general liability coverage form, with the latter being explicitly subject to the pollution exclusion. Therefore, the comparison that defendants draw between the two endorsements is of no import to defendants' coverage. "[C]overage under a policy is lost if any exclusion within the policy applies to an insured's particular claims." *Auto-Owners Ins Co v Churchman*, 440 Mich 560, 567; 489 NW2d 431 (1992).

In the alternative, defendants argue that any conflict between the products/completed operations provision and the pollution exclusion should be resolved in favor of coverage under the products/completed operations provision. Defendants assert that because exclusionary clauses in

insurance contracts are to be strictly construed against the insurer, the inclusionary language providing coverage generally should prevail over the pollution exclusion. Similarly, defendants argue that the inconsistency between the provision for coverage for products/completed operations and the pollution exclusion creates an ambiguity that should be resolved in favor of coverage.

As defendants conceded in the lower court, the pollution exclusion itself is not ambiguous; thus, it is unnecessary to construe that exclusion at all. Instead, the question is whether to give effect to its plain words in light of other contractual provisions. While it is true that the provision for products/completed operations hazards by itself suggests that coverage exists generally for negligence resulting in bodily injury arising from defendants' completed work, and that the pollution exclusion announces an exception to that coverage, this creates no ambiguity. To observe that an exclusionary provision in some way runs counter to a general provision is only to observe that an exclusionary provision is doing its job—carving out an exception to a contractual obligation that would otherwise exist. "Clear and specific exclusions must be given effect." *Auto-Owners Ins Co, supra* at 567. Because the pollution exclusion is itself clear and limits plaintiff's obligations as expressed generally in the contract, we conclude that the circuit court properly gave effect to the exclusion in granting plaintiff summary disposition.

Second, regarding their reasonable expectations, defendants argue that the lower court's determination of plaintiff's contractual obligations should have been influenced by language in plaintiff's "Important Notice." The notice, which was sent in proximity of the policy in effect between the parties in order to provide general advice, contains language implying that coverage exists in the area in question. Defendants assert that plaintiff should not be allowed to state in its "Important Notice" that coverage exists and then deny the significance of that statement.

Defendants' reliance on the "Important Notice" to establish a reasonable expectation of coverage is misguided because the statements in the notice include emphatic indications that the policy alone determines an insured's coverage. The notice repeatedly announces itself as no substitute for the policy in effect and admonishes the insured to consult the actual policy to determine the scope of coverage. For example, an announcement on the first page printed in capital case letters admonishes the reader to carefully read the policy, adding that the policy alone determines the scope of coverage. An announcement on the third page of the document provides a similar cautionary statement.

These disclaimers avoid any resulting duty to expand the coverage within existing policies. "[U]nder the rule of reasonable expectation, the court grants coverage under the policy if 'the policyholder, upon reading *the contract language* is led to a reasonable expectation of coverage.'" *Fire Ins Exchange, supra* at 687 (quoting *Powers v DAIIE*, 427 Mich 602, 632; 398 NW2d 411 (1986) (emphasis added)). It would be poor public policy to force an insurer to broaden coverage provided in its contracts—especially where in direct contradiction of specific and prominently announced provisions of those contracts—as an incidental consequence of that insurer's attempt to provide information through general notices to its policyholders. Therefore, the lower court properly found that defendants had no reasonable expectation of the coverage defendants sought and properly granted summary disposition to plaintiff.

Last, trying to equate this "Important Notice" with the contract at issue, defendants point out that the form of the notice closely resembles part of the policy itself. However, defendants cite no authority for the proposition that a separate, though seemingly related, document may join a contract if it is similar in form to parts of the contract; therefore, this Court will not credit that argument. *Speaker-Hines & Thomas, Inc v Dep't of Treasury,* 207 Mich App 84, 90-91; 523 NW2d 826 (1994). The circuit court properly found that the "Important Notice" was not part of the contract.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Kathleen Jansen
/s/ Hilda R. Gage