STATE OF MICHIGAN

COURT OF APPEALS

MICHIGAN PROPERTY AND CASUALTY GUARANTY ASSOCIATION, Plaintiff/Counterdefendant-Appellee,	UNPUBLISHED January 22, 2002
v	No. 224601 Oakland Circuit Court
ROBERT JAMES SCHMIDT, Defendant/Counterplaintiff-Appellant.	LC No. 97-544473-CZ

Before: Cooper, P.J., and Griffin and Saad, JJ.

PER CURIAM.

Defendant appeals as of right an order granting summary disposition, pursuant to MCR 2.116(C)(10), in favor of plaintiff, and denying defendant's cross-motion for summary disposition in this automobile insurance case. We affirm.

On appeal, defendant claims that plaintiff was bound, pursuant to MCL 500.7931(2), by United Commercial Insurance Company's (UCIC) commitment to cover defendant's claim.[1] Defendant further asserts that a verbal insurance binder provided temporary uninsured motorist coverage for defendant. We disagree.

A trial court's grant or denial of summary disposition is subject to de novo review on appeal. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Summary disposition is only appropriate when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10); *Auto-Owners Ins Co v Allied Adjusters & Appraisers, Inc*, 238 Mich App 394, 397; 605 NW2d 685 (1999). On appeal, this Court must review the entire record and construe all reasonable inferences arising from the evidence in the light most favorable to the nonmoving party. *Morales v Auto-Owners Ins Co*, 458 Mich 288, 294; 582 NW2d 776 (1998). The moving party has the initial burden of supporting its position with affidavits, depositions, admissions, or other documentary evidence. *Smith v Global Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999). After such evidence is

[1] UCIC is the liquidated insurer in the instant case.

presented the burden shifts to the opposing party to establish that a genuine issue of material fact exists. *Id*. "If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted." *Id*., quoting *Quinto v Cross & Peters Co*, 451 Mich 358, 363; 547 NW2d 314 (1996).

The Property and Casualty Guaranty Association Act, MCL 500.7901 *et seq.*, exists to protect the public against financial losses to either policyholders or claimants due to the insolvency of insurers. "The act accomplishes this purpose by imposing a statutory duty on the [Michigan Property and Casualty Guaranty Association] to pay the obligations of insolvent insurers that constitute 'covered claims' as defined by [MCL 500.7925]." *Yetzke v Fausak*, 194 Mich App 414, 418; 488 NW2d 222 (1992). MCL 500.7925(1)(a) defines "covered claims" in pertinent part as "obligations of an insolvent insurer" that "[a]rise out of the insurance policy contracts of the insolvent insurer issued to residents of this state or are payable to residents of this state on behalf of insureds of the insolvent insurer." Thus, contrary to defendant's argument, plaintiff does not step into the shoes of UCIC until the Act's provisions are met. *Yetzke, supra* at 422, n 1.

It is undisputed that UCIC became insolvent and that plaintiff subsequently became obligated to pay UCIC's "covered claims." However, upon UCIC's insolvency, plaintiff determined that defendant's claim for uninsured motorist coverage was not covered under the subject policy. In this regard, plaintiff noted that defendant's claim did not arise out of the insurance policy contract that UCIC had issued to Bazley and Junedale Markets. Thus, we must determine whether defendant's claim for uninsured motorist coverage was covered under the terms of the policy, thereby entitling defendant to arbitration of his claim.

"Uninsured motorist coverage is not required by statute; thus, the contract of insurance determines under what circumstances the benefits will be awarded." *Wills v State Farm Ins Co*, 222 Mich App 110, 114; 564 NW2d 488 (1997). Accordingly, the policy definitions control and, where the language is clear and unambiguous, the policy must be enforced as written. *Berry v State Farm Mut Auto Ins Co*, 219 Mich App 340, 346; 556 NW2d 207 (1996); *Auto-Owners Ins Co v Harvey*, 219 Mich App 466, 469; 556 NW2d 517 (1996). Any ambiguous terms are construed against the insurer and in favor of the insured. *Berry, supra* at 347.

The policy UCIC issued to Bazley and Junedale Markets provided uninsured motorist coverage for "only those autos" owned by the named insured. The named insured of the 1993 Ford truck was Bazley and Junedale Markets. Thus, because Robert Leroy Schmidt[2] owned the truck defendant was driving, as opposed to Bazley and Junedale Markets, the truck was not a "covered auto" under the policy terms. Consequently, there was no uninsured motorist coverage available to defendant under the terms of the policy.

Defendant next maintains that Schmidt received a verbal binder after he called his grocery wholesaler, Super Value Foods, to request insurance for the subject truck. Schmidt claimed that this binder included uninsured motorist coverage. "An insurance binder is 'a

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[2] Robert Leroy Schmidt is the father of defendant. Any references in this opinion to "Schmidt" will refer to defendant's father.

contract of temporary insurance pending issuance of a formal policy or proper rejection by [the insurer].'" *Universal Underwriters Group v Allstate Ins Co*, 246 Mich App 713, 721; 635 NW2d 52 (2001); quoting *Blekkenk v Allstate Ins Co*, 152 Mich App 65, 68; 393 NW2d 833 (1986). A binder "issued by a duly authorized agent of an insurance company constitutes a temporary contract of insurance under which the [insurance] company is liable for any loss . . . during the period covered . . . ." *Id.* at 722, quoting 43 Am Jur 2d, Insurance, § 222, p 310. A valid binder acknowledges an insured's reasonable expectation of coverage. *Jackson v Transamerica Ins Corp of America*, 207 Mich App 460, 463; 526 NW2d 31 (1994).

In the instant case, plaintiff denies the existence or validity of any verbal binder given by Super Value. Rather, plaintiff claims that Super Value was a grocery wholesaler and not an authorized agent with the authority to bind UCIC to provide uninsured motorist coverage for defendant. We agree with plaintiff based on the record evidence. The evidence shows that Super Value was not an authorized insurance company, agency, or agent of UCIC. Instead, Super Value merely offered a service of placing insurance coverage through its wholly owned subsidiary, Risk Planners, Inc., a multiple line insurance agency, for its participating retailers. Plaintiff has failed to provide any evidence to the contrary.

We further note that even if Super Value was an independent insurance agent, with the power to place insurance with various companies, a verbal binder would still fail to bind UCIC. As this Court discussed in *Mate v Wolverine Mut Ins Co*, 233 Mich App 14, 20-21; 592 NW2d 379 (1998), an independent agent is an agent of the insured and not the insurer. Without evidence of a written or verbal insurance binder from an authorized agent of UCIC, a temporary binder providing uninsured motorist coverage to Schmidt, as the owner of the vehicle, did not exist at the time of the accident. Accordingly, there is no genuine issue of material fact regarding defendant's claim for uninsured motorist coverage and the trial court properly granted plaintiff's motion for summary disposition.

Affirmed.

/s/ Jessica R. Cooper
/s/ Richard Allen Griffin
/s/ Henry William Saad