STATE OF MICHIGAN

COURT OF APPEALS

HARRY KIEF,

Plaintiff-Appellee,

v

UNIVERSAL UNDERWRITERS INSURANCE COMPANY,

Defendant-Appellant.

UNPUBLISHED
November 19, 2002

No. 236260
Wayne Circuit Court
LC No. 00-034570-CK

Before: Talbot, P.J., and Neff and Fitzgerald, JJ.

PER CURIAM.

Defendant Universal Underwriters Insurance Company appeals as of right the order granting plaintiff Harry Kief's motion for partial summary disposition and denying defendant's counter-motion for summary disposition.[1] We affirm.

Plaintiff is the president, sole shareholder, and employee of Dearborn Total Automotive, Inc., ("DTA") a closely held corporation. DTA's primary business is automotive and truck repairs. In March 1998 plaintiff purchased an insurance policy from defendant that was entitled, "Unicover." Among others coverages, the policy included uninsured and underinsured motorists coverage. The original policy covered several of plaintiff's personal vehicles.

When the policy was renewed in March 2000, the only personal vehicles covered by the policy were plaintiff's 1998 Lincoln Navigator and employee Jerry Asciones's 1998 Lincoln Continental. These vehicles were used for both personal and business purposes. Plaintiff alleged that defendant's agent assured him that he was fully covered for personal and business automotive insurance, including uninsured motorist coverage.

James Scott, a customer of DTA, brought his wrecker truck in for repair. On May 10, 2000, he returned to pick up his vehicle with a co-worker, William Patterson. The wrecker was situated in a work-bay facing in toward the wall. Plaintiff was standing between the wall and the front end of the vehicle as Patterson attempted to start the vehicle's engine. The standard transmission had been left in gear, and when Patterson turned the ignition key the vehicle lurched

[1] The trial court thereafter ruled that the remainder of plaintiff's complaint was moot, thus rendering the order a final order.

forward and pinned plaintiff against the wall, resulting in injuries that give rise to this suit. It is undisputed that plaintiff was acting in the course of his employment. It is also undisputed that Scott had no insurance policy in place with respect to the wrecker truck.

Because the wrecker truck was uninsured, plaintiff claimed uninsured motorist and PIP benefits under defendant's policy. On August 2, 2000, defendant denied plaintiff's PIP claim, stating in pertinent part:

> [O]ur policy is issued to Dearborn Total Automotive, Inc. Mr. Kief is named in the policy strictly for his ownership interest in the building located at 28818 Ford Road, Garden City, MI 48135. The vehicles owned by or leased to Mr. Kief were removed from the policy on April 5, 2000.

Plaintiff thereafter submitted a PIP claim to the Michigan Assigned Claims Facility. The Facility determined that no other insurance was available, see MCL 500.3172, and assigned plaintiff's claim to Amerisure Insurance Company. Amerisure denied plaintiff's claim, asserting that defendant was obligated to provide plaintiff PIP coverage for this accident.

On October 20, 2000, plaintiff filed a complaint against defendant requesting a declaratory judgment that defendant's policy provided uninsured motorist and no-fault personal injury protection (PIP) coverage for the accident. Plaintiff also pled claims for breach of contract, violation of the no-fault act, fraud, and misrepresentation, and violation of the Consumer Protection Act. This case was assigned to Judge Susan Borman.

After Amerisure denied plaintiff's claims for PIP benefits, plaintiff filed a complaint against Amerisure. This case was also assigned to Judge Borman. Amerisure moved for summary disposition on the ground that defendant was liable to plaintiff for no-fault PIP benefits under both MCL 500.3114 and defendant's insurance policy.

The declaration sheet for the 2000-2001 lists plaintiff as a named insured for "individual" insurance and lists the 1998 Lincoln Navigator as a covered vehicle.[2] Plaintiff moved for partial summary disposition seeking a declaration that the policy covered plaintiff for both uninsured motorist and PIP benefits. Defendant answered and filed a counter-motion for summary disposition. Following a hearing on the motions, the trial court found that clause 2 of the uninsured motorist endorsement was ambiguous and must be construed in favor of coverage. The court, noting that it found the "175 page policy with 30 pages of declarations" unintelligible and incomprehensible," also found that the garage policy did not provide coverage for the wrecker truck and that the wrecker truck was not insured. When the court asked the parties if the truck was covered by any other possible insurance, plaintiff responded, "we have not seen any," and defendant did not challenge this statement. Defendant did not present any other arguments regarding the issue of uninsured motorist coverage.

With regard to PIP coverage, Amerisure argued that the declaration sheet of the policy listed four named insureds, including plaintiff. Defendant argued that the only named insured for

[2] Although there is no dispute that plaintiff owned the 1998 Lincoln Navigator, the policy mistakenly lists Jerry and Michelle Ascione under the column entitled, "Insureds."

the purpose of PIP coverage was the corporation. Plaintiff maintained that, with his $30,000 annual premium and the representations of his agent, he was under the belief that the policy provided him with complete automobile and PIP coverage. The court noted that, "I'm sure he didn't know that there was no coverage for first party benefits." The court also noted that, "You would have to be some kind of genius to be able to figure out from reading this policy that you're not covered." In response to defendant's characterization of the policy as "separate policies" that must be read piecemeal, the court stated:

> They are not separate policies. They are one policy that you have tried to make into separate policies. You didn't sign them separately. It's one policy that is incredibly confusing.

Ultimately, the court ruled that the policy was ambiguous and, therefore, that PIP coverage was provided. The court entered an order granting plaintiff's partial motion for summary disposition and denying defendant's motion for summary disposition.

The interpretation of contractual language is an issue of law that is reviewed de novo on appeal. *Morley v Automobile Club of Michigan*, 458 Mich 459, 465; 581 NW2d 237 (1998).

The declaration page of the policy states, under Item 2, Named Insured and Type:

01	Dearborn Total Automotive, Inc	Corporation
02	Dearborn Total Automotive DBA: Total Motor Sales	Corporation
03	Jerry & Michelle Ascions	Individual
04	Harry Kief	Individual

The critical provision at issue in this case is the "Who is An Insured" provision of the policy within the uninsured motorist coverage. This section provides:

> WHO IS AN INSURED - With respect to this Coverage Part:
>
> (1) YOU;
>
> (2) any of YOUR partners, paid employees, directors, stockholders, executive officers, or any FAMILY MEMBER while OCCUPYING A COVERED AUTO;
>
> (3) any other person while OCCUPYING a COVERED AUTO;
>
> (4) anyone for DAMAGES they are entitled to recover because of BODILY INJURY sustained by another INSURED.

"YOU" and "YOUR" are defined in the policy as "the person or organization shown in the declarations as the Named Insured".

Plaintiff argued below that, as the president and sole shareholder of DTA, he qualified for coverage under clause 1 as a named insured without regard to whether he was occupying a covered auto. Plaintiff also argued that he was covered under clause 2, contending that while "any family member" needed to be occupying a covered auto, the other persons listed in clause 2 did not. The trial court decided this issue on the basis of clause 2, finding that the language was ambiguous and therefore was to be construed against defendant and in favor of coverage. The trial court did not decide this case on the issue of clause 1 because it found the policy to be so unintelligible that it could not determine who the term "you" encompassed.

With regard to clause 2, the court determined that plaintiff was a stockholder and paid employee and, therefore, was an insured for uninsured motorist coverage. Defendant argues that because plaintiff was not occupying the vehicle at the time of the accident, plaintiff is not an insured. Defendant interprets the language of clause 2 to require that partners, paid employees, directors, stockholders, and executive officers, as well as any family member, must occupy the auto to be afforded uninsured motorist coverage. Thus, defendant interprets clause 2 to provide coverage for (1) partners, paid employees, directors, stockholders, and executive officers while occupying a covered auto, and (2) any family member while occupying a covered auto. Plaintiff, on the other hand, interprets clause 2 to provide coverage for (1) partners, paid employees, directors, stockholders, and executive officers, and (2) any family member while occupying a covered auto. Clearly, the difference in the interpretation is the result of the placement of the word "or" in clause 2.

An insurance policy is an agreement between the parties. *Auto Owners Ins Co v Churchman*, 440 Mich 560, 566; 489 NW2d 431 (1992). When presented with a dispute, a court must determine what the parties' agreement is and enforce it. *Engle v Zurich-American Ins Group (On Remand)*, 230 Mich App 105, 107; 583 NW2d 484 (1998). If an insurance contract's language is clear, its construction is a question of law for the court. *Henderson v State Farm Fire & Casualty Co*, 460 Mich 348, 353; 596 NW2d 190 (1999). An insurance contract is ambiguous if, after reading the entire contract, its language can be reasonably understood in differing ways. *Farm Bureau Mutual Ins Co v Nikkel*, 460 Mich 558, 566-567; 596 NW2d 915 (1999). Ambiguities are to be construed against the insurer, who is the drafter of the contract. *State Farm Mutual Automobile Ins Co v Enterprise Leasing Co*, 452 Mich 25, 38; 549 NW2d 345 (1996), on remand 233 Mich App 281; 590 NW2d 617 (1998).

The word "or" is not normally interchangeable with the word "and." Separate meanings should be given to clauses that are separated by the disjunctive term "or" unless the context of the contract indicates otherwise. *Baker v General Motors (After Remand)*, 420 Mich 463, 496; 363 NW2d 602 (1984). Here, the parties' differing interpretations indicate that clause 2 could reasonably be understood in differing ways. Indeed, plaintiff's expert linguist concludes in an affidavit that "the clause is at least ambiguous with respect to the coverage of partners, employees, directors, etc., who are not occupying a covered auto. It is my opinion that the most natural interpretation is that family members have to occupy a covered auto in order to be insured, whereas the enumerated business persons do not."

Given that clause 3 insures "any other person" occupying a covered auto, the use of the word "or" in clause 2 indicates that the term is a disjunctive separation of the two clauses. Otherwise, clause 2 would not be necessary and would be redundant. An interpretation that renders other provisions redundant supports the opposing interpretation. See *Stoddard v Citizens*

Ins Co of America, 249 Mich App 457, 464-465; 643 NW2d 265 (2002). Interpreting the term "or" in the disjunctive in this case renders only the words "family members" in clause 2 redundant; it does not render an entire clause redundant as would occur under defendant's interpretation. See *Michigan Twp Participating Plan v Pavolich*, 232 Mich App 378, 383-384; 591 NW2d 325 (1998). Thus, we conclude that the language in clause 2 is ambiguous and therefore must be construed against defendant and in favor of coverage. *State Farm, supra* at 38.

Defendant next argues that the trial court erroneously granted summary disposition in favor of plaintiff because the wrecker truck was not an uninsured vehicle at the time of the accident. Defendant contends that the truck was insured under defendant's own insurance policy under an coverage entitled, "Garage Operations and Auto Hazard."

With regard to uninsured motorist coverage, the policy defines an uninsured motorist in pertinent part as "a land motor vehicle or trailer":

> (3) which, at the time of the ACCIDENT, was not insured or bonded in at least the amount required by the applicable law where a COVERED AUTO is principally garaged;
>
> (4) which, at the time of the ACCIDENT, was insured or bonded but the insuring or bonding company either denied coverage, is or becomes insolvent.

The undisputed evidence presented showed that the wrecker truck satisfied both of these definitions.

Defendant relies, however, on the provision in the policy that provides "garage" coverage, which stated:

> Insuring Agreement – We will pay all sums the INSURED legally must pay as DAMAGES (including punitive DAMAGES where insurable by law) because of INJURY to which this insurance applies caused by an OCCURRENCE arising out of GARAGE OPERATIONS or AUTO HAZARD.

"Garage Operations" is defined as "the ownership, maintenance or use of that portion of any premises where YOU conduct YOUR AUTO business and all other operations necessary or incidental thereto." "Auto Hazard" is defined as "the ownership, maintenance, or use of any auto you own or which is in your care, custody or control and:

> (1) used for the purpose of GARAGE OPERATIONS;
>
> (2) used principally in GARAGE OPERATIONS with occasional use for other business or nonbusiness purposes;
>
> (3) furnished for the use of any person or organization.

The declaration sheet for the "garage operations and auto hazard" coverage does not list any covered vehicles. Under the plain language of the policy, the garage operations and auto hazard coverage did not insure vehicles. Rather, a review of the policy reveals that the garage

operations and auto hazard coverage provides third-party liability coverage for DTA's business operations.

Further, under "Who is an Insured," the policy provision with regard to garage coverage (with respect to the Auto Hazard portion of the policy on which defendant relies) refers only to:

> (1) YOU;
>
> (2) Any of YOUR partners, paid employees, directors, stockholders, executive officers, a member of their household or a member of YOUR household, while using an AUTO covered by this Coverage Part, or when legally responsible for its use. The actual use of the AUTO must be by YOU or within the scope of YOUR permission;
>
> (3) Any CONTRACT DRIVER;
>
> (4) Any other person or organization required by law to be an INSURED while using an AUTO covered by this Coverage Part within the scope of YOUR permission.

Scott and Patterson were customers of DTA. Patterson was occupying Scott's wrecker truck at the time of the accident and was not using a vehicle insured under the policy. Scott and Patterson clearly do not fall within the definition of "Who is an Insured" under auto hazard coverage. Thus, the garage coverage does not apply.[3]

Last, defendant contends that the declaration page of the policy lists only Dearborn Total Automotive d/b/a Total Motor Sales as a named insured and, therefore, plaintiff is not covered for PIP benefits. We disagree.

Defendant concedes that a PIP policy applies "to the person named in the policy." See MCL 500.3114(1). The statutory term "the person named in the policy" means those persons that the policy specifically designates as the "named insured." *Cvengros v Farm Bureau Ins*, 216 Mich App 261, 264-265; 548 NW2d 698 (1996). Thus, pursuant to statute and case law, PIP coverage is provided to those listed on the declaration page as "named insured."

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[3] Defendant's argument that there is a question of fact with regard to "potential" insurance that Patterson may have had is misplaced. Defendant failed to present any evidence to present an issue of fact with regard to whether Patterson was insured.

Here, plaintiff is unmistakably a "named insured" on the declarations page. Thus, under Michigan law plaintiff is covered for PIP benefits. At best, defendant's reliance on code numbers listed under a later heading of "insureds" with regard to each coverage renders the policy ambiguous and requires the policy to be construed against defendant and in favor of coverage.[4]

Affirmed.

/s/ Michael J. Talbot
/s/ Janet T. Neff
/s/ E. Thomas Fitzgerald

[4] Defendant's argument that the only insured for purposes of PIP benefits is the business makes neither legal nor common sense.