STATE OF MICHIGAN

COURT OF APPEALS

CITIZENS INSURANCE COMPANY OF AMERICA,

Plaintiff-Counter-Defendant-Appellee,

v

FRANCIS LADI, LAURA WILSON, MARK SOKOLOWSKI, LISA SOKOLOWSKI, CHARLES CHADDUCK, DIANA CHADDUCK, DEBORAH YAGER, MARK YAGER ESTATE, MEGAN YAGER, MARK YAGER, KATIE YAGER, EMILY YAGER, MARCELLA YAGER, TADEUSZ DOBROWOLSKI, JANET DOBROWOLSKI, CHRISTOPHER DOBROWOLSKI, ADAM DOBROWOLSKI, KYLE DOBROWOLSKI, RICHARD DAVIS, SECOND CHANCE, FIREWORKS NORTH, INC, MICHAEL JAY, GLENN CRAWFORD, LAWRENCE GRISE AND DENNIS HALVERSON,

Defendants,

and

AUTO OWNERS INSURANCE CO,

Intervening-Counter-Plaintiff-Appellant.

UNPUBLISHED
July 21, 2009

No. 283557
Charlevoix Circuit Court
LC No. 99-184718-CK

Before: Sawyer, P.J., and Murray and Stephens, JJ

PER CURIAM.

Intervening counter-plaintiff, Auto Owners Insurance Company, appeals as of right the trial court's grant of summary disposition in favor of Citizens Insurance Company. We affirm.

This litigation arises out of a 1997 accident that occurred at a fireworks show in Charlevoix. Richard Davis, who was the president of Fireworks North, Inc., a non-profit corporation that conducted municipal fireworks shows, performed the show. In addition to being the president of Fireworks North, Davis was also a partial owner of Second Chance Body Armor, which was a for-profit corporation. Prior to conducting the show in Charlevoix, Davis did not obtain liability insurance for Fireworks North. However, Davis personally had a homeowner's insurance policy through Citizens and had an umbrella policy through Auto Owners.

Following the accident, numerous individuals sued Davis for their resulting injuries. Consequently, Davis contacted Citizens and Auto Owners and asserted that each company had a duty to defend him under the terms of the respective insurance policies. Each company initially denied Davis's response for a defense, citing various exemptions in the insurance policies. However, Auto Owners eventually granted Davis's request and provided him with a defense. Meanwhile, Citizens filed a declaratory action in which it sought a declaration that it had no duty to defend. Auto Owners intervened in the declaratory action, arguing that Citizens was required to defend Davis and to reimburse Auto Owners for the cost of the defense that had already been provided. After each party filed a motion of summary disposition pursuant to MCR 2.116(C)(10), the trial court granted summary disposition in favor of Citizens, finding that Citizens had no duty to defend Davis under the homeowner's insurance policy.

On appeal, Auto Owners first argues that the trial court improperly granted summary disposition where it did not limit its inquiry to whether the underlying complaints created a question regarding insurance coverage. We disagree. This Court reviews a trial court's decision regarding summary disposition pursuant to MCR 2.116(C)(10) de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). Summary disposition is proper pursuant to MCR 2.116(C)(10) when, upon examining the affidavits, depositions, pleadings, admissions and other documentary evidence, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004).

An insurance company has a broad duty to defend its insured. *Citizens Ins Co v Secura Ins*, 279 Mich App 69, 74; 755 NW2d 563 (2008). An insurer's duty to defend "is not limited to meritorious suits and may even extend to actions which are groundless, false, or fraudulent, so long as the allegations against the insured even arguably come within the policy coverage." *Detroit Edison v Michigan Mut Ins Co*, 102 Mich App 136, 142; 301 NW2d 832 (1980). "The duty to defend cannot be limited by the precise language of the pleadings." *Id*. Rather, the insurer has to look to the essence of the pleadings to determine whether coverage is possibly available. *Id*. If there is any doubt regarding whether the coverage is available for the alleged liability, the question should be resolved in the favor of the insured. *Id*.

Auto Owners alleges that the trial court improperly went beyond the faces of the underlying complaints when determining whether there was any question regarding the availability of coverage. We find it unnecessary to address the issue. This Court generally refrains from reversing a trial court's order "when the right result was reached for the wrong reason." *Taylor v Laban*, 241 Mich App 449, 458; 616 NW2d 229 (2000). We find that based on the face of the illustrative underlying complaint, there was no question that Davis was not entitled to coverage. Therefore, regardless of whether the trial court improperly considered other

documentary evidence, the trial court's grant of summary disposition in favor of Citizens was proper.

Under the homeowner's insurance policy at issue, Citizens properly relied on two distinct exemptions in denying that there was any coverage or duty to defend. The first exemption is the "business engaged in" exemption. That exemption provides that coverage is not available for personal injury or property damage in the following circumstance:

> b. [injuries] arising out of or in connection with a 'business' engaged in by an 'insured'. This exclusion applies but is not limited to an act or omission, regardless of its nature or circumstances, involving a service or duty rendered, promised, owed or implied to be provided because of the nature of the 'business'.

Elsewhere, the policy states that, "business includes trade, profession or occupation." Among the definitions of "trade" found in Random House Webster's College Dictionary is the following: "some line of skilled manual or mechanical work; craft." *Random House Webster's College Dictionary* (1995).

We find that the underlying complaint that the parties relied upon during the summary disposition phase of this litigation sets forth a number of allegations that demonstrate that the "business engaged in" exemption applied to Davis's conduct. Among the allegations in the underlying complaint are the following:

> 4. Defendant Fireworks North, Inc. is a duly incorporated entity having its principal place of business in Antrim County.
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> 5. Defendant Second Chance Body Armor is a corporation duly licensed under the laws of the State of Michigan, and having its principal place of business in the City of Central Lake, Antrim County.
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> 6. Defendant Second Chance, Inc. is a Michigan corporation duly licensed under the laws of the State of Michigan, which does business in Charlevoix County, Michigan.
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> 7. At all pertinent times, Defendant Richard Davis was an owner, officer, employee, and agent of Defendants Fireworks North, Inc., Second Chance, Inc. and Second Chance Body Armor and upon information and belief is a resident of Antrim County and the State of Michigan.
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> 26. On or about the 26th day of July, 1997, the Defendants conducted a fireworks display which had been advertised to the public, and to which the public had been invited.
>
> 27. The Chamber of Commerce Venetian Festival, with the aid of the other Defendants, planned, promoted and carried out the activities of the festival, including but not limited to the July 26 fireworks display.

28. In the days or weeks preceding the fireworks display, the City of Charlevoix, acting through the above-identified individual City employee Defendants, the Charlevoix Chamber of Commerce through its President Jacqueline Merta and Venetian Festival Chairman John Taylor, retained the services of Richard Davis (hereinafter "Davis"), Fireworks North, Inc. and/or Second Chance, Inc. and/or Second Chance Body Armor to conduct the display.

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74. That defendants Davis, Merta, Crawford, Jaye, Grise, Carver, City of Charlevoix, Charlevoix Chamber of Commerce, Second Chance, Inc., Second Chance Body Armor and Fireworks North jointly undertook the common enterprise of planning, implementing, promoting and conducting of the 1997 Venetian Fireworks display.

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77. Defendants, City of Charlevoix, Charlevoix Chamber of Commerce, Fireworks North, Second Chance and/or Davis entered into various agreements and contracts regarding this fireworks display . . .

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86. That the products sold/transferred by Defendant Wolverine to Defendant David [sic], Second Chance, and Fireworks North constituted dangerous commodities.

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90. The makeshift launching apparatus that exploded and fragmented during the July 26, 1997 Charlevoix Venetian Festival, was constructed, in whole or in part by Second Chance Body Armor on Second Chance property, using Second Chance material, resources and equipment, by Second Chance employees, namely, Defendants Davis, Crawford, Grise and Jaye, during Second Chance working hours.

91. At all times relevant hereto, and during the construction of the subject launching apparatus, Defendants Davis, Crawford, Grise and Jaye were acting in the course and scope of their employment and/or agency with Defendant, Second Chance.

Auto Owners contends that Citizens was not entitled to apply the "business engaged in" exception where it arguably did not apply because Fireworks North was a non-profit entity. First, Fireworks North's status as a non-profit is not evident on the face of the underlying complaint. Similarly, the allegations clearly set forth that Davis was also utilizing Second Chance's resources in furtherance of Fireworks North's objectives. The parties agree that Second Chance was a for-profit venture and was Davis's primary source of income. Furthermore, even if Citizens was aware that Fireworks North was a non-profit, the insurance

policy's definition of "business" is not dependant on profit motive. Auto Owners contends that this Court has previously stated that in order to qualify as a "business pursuit," two elements must be present: a profit motive and continuity. *State Mut Cyclone Ins Co v Abbott*, 52 Mich App 103, 108; 216 NW2d 606 (1974). However, the policy in the present case used the term "business engaged in" and not the term "business pursuit." As our Supreme Court has previously explained, a contractual provision must be given its contextual meaning. *Henderson v State Farm Fire and Cas Co*, 460 Mich 348, 356-357; 596 NW2d 190 (1999). The context of the phrase "business engaged in" indicates that the term is to be broadly applied and gives no indication that profit motive is relevant. Citizens was justified in concluding that, on the basis of the underlying complaint, coverage was not available to Davis because the alleged injuries were the result of Davis engaging in business through Fireworks North and Second Chance Body Armor. The underlying complaints clearly allege that Davis, through Fireworks North, planned a large-scale fireworks show, entered into agreements in furtherance of his objectives and built a launching apparatus to execute the show. Such behavior is certainly consistent with the definition of "business engaged in" found in the policy. Citizens was properly granted summary disposition on this basis.

Additionally, the trial court properly concluded that the underlying complaint established that Davis was engaged in "professional services" at the time the injuries occurred. The insurance policy clearly excludes any injuries from coverage where those injuries are the result of professional services. We find that several allegations in the underlying complaint are relevant to this policy exemption, including:

> 4. Defendant Fireworks North, Inc. is a duly incorporated entity having its principal place of business in Antrim County.
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> 7. At all pertinent times, Defendant Richard Davis was an owner, officer, employee, and agent of Defendants Fireworks North, Inc., Second Chance, Inc. and Second Chance Body Armor and upon information and belief is a resident of Antrim County and the State of Michigan.
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> 26. On or about the 26th day of July, 1997, the Defendants conducted a fireworks display which had been advertised to the public, and to which the public had been invited.
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> 27. The Chamber of Commerce Venetian Festival, with the aid of the other Defendants, planned, promote and carried out the activities of the festival, including but not limited to the July 26 fireworks display.
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> 30. On or about the day of the event, Defendants Richard Davis, Michael Jaye, Glen Crawford and Lawrence Grise, loaded three makeshift trailers with a large number of 6-12 inch pyrotechnic devices and transported the trailers to

downtown Charlevoix where they were to be launched as part of, and in connection with, Charlevoix's annual "Venetian Festival." The trailers were parked and the fireworks were launched from a location less than seventy-five feet from the nearest assembled spectators.

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41. Defendants violated the above obligation in several respects, including, but not limited to, all of the following:

a. Designing and constructing a trailer and launching system which was unsafe and not fit for its intended purposes

b. Loading and transporting the fireworks in a manner which was illegal and not reasonably safe.

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58. The handling and launching of fireworks of the size utilized in Charlevoix on July 26, 1997, constitutes an ultra-hazardous or inherently dangerous activity.

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86. That the products sold/transferred by Defendant Wolverine to Defendant David [sic], Second Chance, and Fireworks North constituted dangerous commodities.

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90. The makeshift launching apparatus that exploded and fragmented during the July 26, 1997 Charlevoix Venetian Festival, was constructed, in whole or in part by Second Chance Body Armor on Second Chance property, using Second Chance material, resources and equipment, by Second Chance employees, namely, Defendants Davis, Crawford, Grise and Jaye, during Second Chance working hours.

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92. Defendant, Second Chance, is directly and vicariously liable for the negligent acts and/or omissions committed by its agents, employees and servants, specifically, Defendants Davis, Crawford, Grise and Jaye, during the course and scope of their employment with Second Chance, to wit:

a. Negligently and improperly designing, constructing and utilizing a fireworks launching apparatus in violation and derogation of federal, local and state laws, statutes, regulations and standards as well as applicable standards, regulations and customs.

While the insurance policy itself does not define professional services, we are provided some guidance by the common dictionary. The term "professional" can be defined as "a person who is expert at his or her work." *Random House Webster's College Dictionary* (1995). It can also be defined as "pertaining to a profession," while "profession" is defined as "a vocation requiring extensive education in science or the liberal arts and often specialized training." *Random House Webster's College Dictionary* (1995).

Auto Owners contends that the "professional services" exemption should not have been applied because Davis cannot properly be classified as a professional. We acknowledge that based on the face of the complaint, Citizens could not have properly concluded whether or not Davis was a professional. However, it is illogical to argue that, under the policy, whether a service qualifies as a "professional service" depends on whether it is actually performed by a professional. The language of the policy does not state that an activity is exempt from coverage if it is performed by a professional. Rather, it states that injuries arising from the rendering of "professional services" are not covered. Under Auto Owners argument, an individual who has extensive training in pyrotechnics would not receive coverage under the homeowner's policy if he injured multiple people during the course of performing a municipal fireworks display. In contrast, an individual who has no training whatsoever would be entitled to coverage for causing the exact same injuries as a result of providing the exact same service. Based on the above quoted definitions, the term "professional services" should be understood as meaning a service that is reserved for individuals with extensive training in the relevant field. Surely, purchasing large-scale fireworks, designing a launch system, transporting the fireworks and launch system and igniting the fireworks at the request of a municipality constitutes services that are reserved for professionals. Whether or not Davis was sufficiently skilled to engage in those services is irrelevant. The fact that he chose to engage in a service reserved for a professional rendered the resulting injuries exempt from coverage. Therefore, because it was clear from the face of the complaint that the service involved were "professional services," Citizens properly concluded that the exemption applied and refrained from defending Davis.

Based on the allegations presented in the underlying complaints, Citizens was justified in concluding that the business and professional services exemptions applied. Citizens was not required to provide Davis with a defense and the trial court's grant of summary disposition was proper.

Affirmed.

/s/ David H. Sawyer
/s/ Christopher M. Murray
/s/ Cynthia Diane Stephens