KENNETH M. ALLAN	*	**NO. 2017-CA-0474**
VERSUS	*	
		COURT OF APPEAL
AUTOMOBILE CLUB INTER-INSURANCE EXCHANGE, HUDSON SPECIALTY INSURANCE COMPANY, STATE FARM FIRE AND CASUALTY COMPANY AND SELISSA A. JAMES	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	* * * * * * *	
CONSOLIDATED WITH:		**CONSOLIDATED WITH:**
KENNETH M. ALLAN, ET AL		**NO. 2017-C-0073**
VERSUS		
BANKERS INSURANCE COMPANY, ET AL		

APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2015-04732, DIVISION "A"
Honorable Tiffany G. Chase, Judge
* * * * * *
Judge Edwin A. Lombard
* * * * * *

(Court composed of Chief Judge James F. McKay, III, Judge Edwin A. Lombard, Judge Roland L. Belsome)

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JUDGMENT AFFIRMED; WRIT DENIED

Before the court in this consolidated matter is (1) the appeal filed by Bankers Insurance Company (Bankers) from the trial court judgment signed on December 21, 2016, granting the plaintiff's partial motion for summary judgment regarding coverage on the defendant's excess general liability and property coverage policy issued to Chalmette Pet Wellness Clinic and Hospital, LLC; and (2) the writ application filed by Bankers seeking supervisory review of the trial court judgment signed on December 21, 2016, denying Bankers motion for summary judgment. After *de novo* review, we affirm the trial court judgments.

Relevant Facts and Procedural History

Dr. Kenneth Allan, a veterinarian, is the sole member of Chalmette Pet Wellness Clinic and Hospital, LLC (hereinafter Chalmette Pet Clinic). On September 4, 2014, while transporting a dog to his clinic, Chalmette Pet Clinic, Dr. Allan was rear-ended by a vehicle owned and operated by Selissa A. James. Dr. Allan, who was driving a vehicle titled in his wife's name, sustained injuries.

On May 19, 2015, Dr. Allan filed suit alleging that his injuries were severe and disabling. The following were named as defendants in the lawsuit: (1) Ms. James; (2) Ms. James' insurer, State Farm Fire and Casualty Company; (3) Dr. Allan's personal automobile liability insurer, Automobile Club Inter-Insurance Exchange; and (4) Dr. Allan's personal umbrella policy insurer, Hudson Specialty Insurance Company. By supplemental and amending petition filed on August 12, 2015, Christa B. Allan (the plaintiff's wife) was added as plaintiff. In a second supplemental and amending petition filed on December 15, 2015, Bankers was named as a defendant, based on the insurance policy issued to Chalmette Pet Clinic providing uninsured/underinsured (UM/UIM) motorist insurance coverage for vehicles not owned by Chalmette Pet Clinic.

Bankers answered the petition, denying that its policy provided UM/UIM coverage to Dr. Allan in this accident. Shortly thereafter, Bankers filed a motion for summary judgment seeking dismissal of the plaintiffs' claims, arguing that Dr. Allan as owner of the vehicle he was operating at the time of the accident was not a UM/UIM insured under the terms of the policy.

In response, the plaintiffs filed a motion for partial summary judgment on whether the policy issued by Bankers to Chalmette Pet Clinic provided UM/UIM coverage for the accident at issue in this matter. In their statement of uncontested material facts, the plaintiffs pointed out that at the time of the accident: (1) Dr. Allan was the sole owner of Chalmette Pet Clinic and was transporting a canine to the clinic for treatment in his wife's personal vehicle; (2) Dr. Allan, as sole owner and employee of the LLC (Chalmette Pet Clinic), paid the premiums for the Bankers' excess liability coverage; (3) Dr. Allan specifically purchased the Bankers policy for its non-owned auto coverage to provide coverage to Dr. Allan

as an employee of Chalmette Pet Clinic when he operated a vehicle not owned by Chalmette Pet Clinic; and (4) Bankers issued a policy to Chalmette Pet Clinic which provides non-owned liability coverage.

After a hearing on December 16, 2017, the trial court issued judgments on December 21, 2016, denying Bankers' motion for summary judgment and granting the plaintiffs motion for partial summary judgment as to coverage on the Bankers policy issued to Chalmette Pet Clinic. Bankers filed the instant consolidated appeal and writ application.

Standard of Review

Appellate courts review a judgment granting or denying a motion for summary judgment *de novo* using the same criteria governing the trial court's determination of whether summary judgment is appropriate; i.e. whether there is any genuine issue of material fact, and whether the movant is entitled to judgment as a matter of law. *Bernard v. Ellis,* 11-2377, p. 9 (La. 7/2/12), 111 So.3d 995, 1002 (citations omitted). .

Applicable Law

"An insurance policy is a conventional obligation that constitutes the law between the insured and the insurer, and the agreement governs the nature of their relationship." *Stewart Interior Contractors, L.L.C. ,* 07-0251, p. 6, 969 So.2d at 658. "The extent of coverage under an insurance contract is dependent on the common intent of the insured and insurer." *Succession of Fannaly v. Lafayette Ins. Co.* 01-1355, p. 3 (La. 1/15/02), 805 So.2d 1134, 1136 (citation omitted). Accordingly, basic legal principles are applicable in analyzing an insurance policy:

> . . . [A]n insurance policy is a contract between the parties and should be construed using the general rules of interpretation of contracts set forth in the Civil Code. According to those rules, **the responsibility**

> **of the judiciary in interpreting insurance contracts is to determine the parties' common intent**; this analysis is begun by reviewing the words of the insurance contract. When the words of an insurance contract are clear and explicit and **lead to no absurd consequences**, no further interpretation may be made in search of the parties' intent, and courts must enforce the contract as written. The determination of whether a contract is clear or ambiguous is a question of law

Green ex rel. Peterson v. Johnson, 14-0292, p. 4 (La. 10/15/14), 149 So.3d 766, 770-71 (emphasis added; citation omitted).

Further, "[a]n insurance contract is to be construed as a whole and each provision in the contract must be interpreted in light of the other provisions" and "[o]ne provision of the contract should not be construed separately at the expense of disregarding other provisions." *Green ex rel. Peterson,* 14-0292, p.12; 149 So.3d at 775 (citation omitted). However, "liability insurance policies should be interpreted to effect, rather than to deny coverage." *Stewart Interior Contractors, L.L.C.v. Metalpro Industries, L.L.C.,* 07-0251, p. 7 (La. App. 4 Cir. 10/10/07), 969 So.2d 653, 659 (citing *Yount v. Maisano,* 627 So.2d 148, 151 (La. 1993)). Thus, only when "the policy wording at issue is clear and **unambiguously expresses the parties' intent"** and it is clear, after taking the facts into account, that the provisions of the insurance policy do not provide coverage, should summary judgment be granted to deny coverage. *Bernard v. Ellis,* 11-2377, p. 9-10, 111 So.3d at 1002 (citations omitted; emphasis added). Accordingly, "if any doubt or ambiguity exists as to the meaning of a provision in an insurance policy, it must be construed in favor of the insured and against the insurer." *Stewart Interior Contractors, L.L.C. ,* 07-0251, p. 6, 969 So.2d at 658 (citing La. Civ. Code art. 2056). "When the ambiguity relates to an exclusionary clause, the law requires that the contract be interpreted liberally in favor of coverage." *Id.* (citations omitted); *see also Fannaly*, 01-1355, p. 4, 805 So.2d at 1138 ("if an ambiguity

remains after applying the general rules of contractual interpretation to an insurance contract, the ambiguous contractual provision is construed against the insurer who furnished the contract's text and in favor of the insured."). Therefore, "[a] summary judgment declaring a lack of coverage under an insurance policy may not be rendered unless no reasonable interpretation of the policy, when applied to the undisputed material facts shown by the evidence supporting the motion, exists under which coverage could be afforded." *Stewart Interior Contractors, L.L.C. ,* 07-0251, p. 6, 969 So.2d at 658.

Discussion

The $2 million policy was issued by Bankers to Chalmette Pet Wellness Clinic and Hospital, LLC. Dr. Allan was the sole member of the LLC. Bankers argues that Dr. Allan was not covered under the policy although it is undisputed that Dr. Allan was the owner/employee and sole member and executive officer of the insured Chalmette Pet Clinic, that he was transporting a dog to Chalmette Pet Clinic when the accident occurred, and that the vehicle at issue was not owned by Chalmette Pet Clinic.

The pertinent provision of the Bankers policy, annotated to clarify who "you"[1] and other terms refer to, provides:

> LOUISIANA-HIRED AUTO AND NON-OWNED AUTO LIABILITY
>
> A. Insurance is provided only for those coverages for which a specific premium charge is shown in the Declarations or in the Schedule.

[1] The Declarations Page of the policy specifically states that the insured is Chalmette Pet Wellness Clinic and Hospital. Under the "Policy Limits Coverage" section of the Declarations Page the "Hired Auto Liability and Non-Owned Auto Liability" is indicated as "INCLUDED." The declarations page specifically state that "[t]he words 'you' and 'your' refer to the Named Insured shown in the Declarations." Thus, "you" refers to Chalmette Pet Clinic, not Dr. Allan personally.

2. Non-Owned Auto Liability

The insurance provided under Paragraph A.1. Business Liability, applies to "bodily injury" or "property damage" arising out of the use of any "non-owned auto" by any person other than you [*Chalmette Pet Clinic]* in the course of your [*Chalmette Pet Clinic*] business.

* * * *

B.

2 Paragraph C.

1. **Each of the following is an insured under this endorsement to the extent set forth below**:

a. You [*Chalmette Pet Clinic*] ;
b. Any other person using a "hired auto" with your expressed or implied permission;
c. For a "non-owned auto":

(1**) Any partner or "executive officer" [Dr. Allan] of yours [*Chalmette Pet Clinic*];** or

(2**) Any "employee" [Dr. Allan] of yours [*Chalmette Pet Clinic*] but only while such "non-owned auto" is being used in your [*Chalmette Pet Clinic*] business**; and
d. Any other person or organization, but only for their liability because of acts or omissions of an insured under a., b. or c. above.

2. **None of the following is an insured**:

a. Any person engaged in the business of his or her employer for "bodily injury" to any co-"employee" of such person injured in the course of employment, or to the spouse, child, parent, brother or sister of that co-"employee" as a consequence of such "bodily injury", or for any obligation to share damages with or repay someone else who must pay damages because of the injury;
b**. Any partner or "executive officer" [Dr. Allan] for any "auto" owned by such partner or officer for member of his or her household**.

C. The following additional definitions apply:

3. "**Non-Owned Auto"** means any "auto" you [*Chalmette Pet Clinic*] do not own, lease, hire, rent or borrow which is used in connection with your [*Chalmette Pet Clinic*] business. **This includes "autos" owned by your "employees",** your partners **or your "executive**

officers", or members of their households, but only while used in your business or your personal affairs.

After review of the policy in light of the applicable law, the trial court found that the policy was neither clear nor unambiguous and, accordingly, must be interpreted in favor of the insured. Therefore, based on the ambiguity of the contract, the trial court granted the plaintiff's partial motion for summary as to coverage for Dr. Allan's accident under the Bankers' policy. In a separate judgment but for the same reasons, the trial court denied Bankers' motion for summary judgment seeking dismissal of the plaintiffs' claim for lack of coverage under its policy.

We agree with the trial court's interpretation of the coverage provisions taken as a whole. The named insured is an L.L.C., Dr. Allan's veterinary clinic. The accident occurred while Dr. Allan was transporting a dog to the clinic for treatment. The policy issued by Bankers included coverage for bodily injury and property damage sustained by an employee or executive officer of the L.L.C. while using a non-owned automobile in the course of its business. Dr. Allan stated that it was his intention in purchasing the insurance (and paying the premiums) to provide coverage in such instances. Reading the insurance provisions together reveals a potential ambiguity and confusion over coverage for the use of non-owned vehicles by the insurer if the vehicle is owned by an executive officer. In the present case, Dr. Allan is the only member of the insured and the only potential insured executive officer under Sections A(2), B.2.c.(1) and 2(C). As such, if Section B.2.2.b. is read to take away coverage, then there would be no purpose for the Hired Auto Liability and Non-Owned Auto Liability endorsement, and Allan would not have insurance even though he paid premiums for such insurance. Such

an interpretation leads to an absurd result and is, at the very least, confusing. Alternatively, the policy provision was sold to Dr. Allan for a purpose for which is not applicable. In either event, the policy should be read against Bankers and in favor of the plaintiffs to provide coverage for the accident.

Conclusion

After *de novo* review in light of the applicable law, we affirm the trial court judgments granting the plaintiff's partial motion for summary judgment and denying Bankers' motion for summary judgment. Therefore, the judgment on appeal (granting the plaintiffs' motion for partial summary judgment) is affirmed; Bankers' writ application seeking review of the judgment denying its motion for summary judgment is denied.

JUDGMENT AFFIRMED; WRIT DENIED.