

STATE OF MICHIGAN
COURT OF APPEALS

VINODKUMAR B. PATEL and
SHAILESHKUMAR R. PATEL,

UNPUBLISHED
December 18, 2003

Plaintiffs-Appellees,

v

AMERICAN FELLOWSHIP MUTUAL
INSURANCE COMPANY,

No. 242896
Genesee Circuit Court
LC No. 02-072781-NF

Defendant-Appellant.

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

PER CURIAM.

Defendant appeals as of right the trial court's order granting plaintiffs' motion to compel arbitration. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiffs sustained injuries when their vehicle was struck by an uninsured vehicle. Plaintiffs' vehicle was insured by defendant. The policy included uninsured motorist coverage. Plaintiffs filed separate actions against the uninsured motorist in the trial court, and obtained default judgments. Defendant denied plaintiffs' claims for uninsured motorist benefits on the ground that because plaintiffs obtained default judgments without consent, an exclusionary clause in the uninsured motorist endorsement relieved it of any obligation to pay uninsured motorist benefits.

Plaintiffs filed the instant action alleging that defendant breached its contract by failing to pay them uninsured motorist benefits. Plaintiffs obtained orders setting aside the default judgments, dismissed those cases without prejudice, and refiled separate cases against the uninsured motorist. Plaintiffs moved to compel arbitration pursuant to MCR 3.602(B) in the instant case. The trial court granted plaintiffs' motion to compel arbitration, concluding that because plaintiffs set aside the default judgments and dismissed the previous cases, the exclusionary clause did not apply.

An insurance contract should be read as a whole and meaning given to all terms. *Auto-Owners Ins Co v Churchman*, 440 Mich 560, 566; 489 NW2d 431 (1992). An insurance contract is clear and unambiguous if it fairly admits of but one interpretation. *Farm Bureau Mutual Ins Co v Nikkel*, 460 Mich 558, 566; 596 NW2d 915 (1999). If the language of an insurance contract

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). Exclusionary clauses are strictly construed in favor of the insured. *McKusick v Travelers Indemnity Co*, 246 Mich App 329, 333; 632 NW2d 525 (2001).

Defendant argues that the trial court erred by granting plaintiffs' motion to compel arbitration. We disagree and affirm. Defendant's reliance on *Linebaugh v Farm Bureau Mutual Ins Co*, 224 Mich App 494; 569 NW2d 648 (1997), is misplaced. In that case the plaintiff moved to compel arbitration of his claim for underinsured motorist benefits after he settled with the insurer of the underinsured motorist without the consent of the defendant. This Court affirmed the trial court's grant of summary disposition in favor of the defendant, finding that the plaintiff's failure to obtain the defendant's consent to settle his case against the underinsured motorist triggered the exclusionary clause in the defendant's policy and relieved the defendant of any obligation to pay underinsured motorist benefits. The *Linebaugh* Court found that the clear language of the defendant's policy did not require that the defendant's refusal to consent to a settlement had to be reasonable before the exclusionary clause could be invoked. *Id.* at 503-507.

In the instant case, the clear language of the exclusionary clause provides that if a "resulting cause of action" against an uninsured motorist is "settled or prosecuted to judgement [sic]" without defendant's consent, defendant is relieved of any liability to pay uninsured motorist benefits. No settlements had been reached in the pending cases against the uninsured motorist at the time plaintiffs moved to compel arbitration in this case. The cases pending at the time plaintiffs moved to compel arbitration were the cases "resulting" from the accident with the uninsured motorist. And, there was no action prosecuted to judgment, because the default judgments had been set aside and the cases dismissed. Contrary to defendant's assertion, the trial court did not apply a reasonableness test when finding that plaintiffs were entitled to arbitration. Rather, the trial court concluded that defendant's exclusionary clause did not apply because no settlements had been reached in the pending cases. The clear language of the exclusionary clause admits of no other interpretation. *Nikkel, supra*, 566. *Linebaugh, supra*, is distinguishable on its facts, and does not compel a decision in favor of defendant in the instant case. The trial court correctly granted plaintiffs' motion to compel arbitration.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Janet T. Neff

/s/ Helene N. White