

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA01-777

NORTH CAROLINA COURT OF APPEALS

Filed: 21 May 2002

NATURALLY KNITS, INC.,

Plaintiff,

v.

Gaston County
No. 00 CVS 1085

GREAT NORTHERN INSURANCE
COMPANY, t/a CHUBB GROUP; AON
RISK SERVICES, INC. OF THE
CAROLINAS; and AON ENTERPRISE
INSURANCE SERVICES, INC.,

Defendants.

Appeal by plaintiff Naturally Knits, Inc. and by defendants Aon Risk Services, Inc. of the Carolinas and Aon Enterprise Insurance Services, Inc. from order entered 19 March 2001 by Judge Richard D. Boner in Superior Court, Gaston County. Heard in the Court of Appeals 17 April 2002.

Robert Tally, P.C., by Robert Tally, for the plaintiff-appellant.

Everett, Gaskins, Hancock & Stevens, L.L.P., by Hugh Stevens and K. Matthew Vaughn, for defendants-appellants Aon Risk Services, Inc. of the Carolinas and Aon Enterprise Insurance Services, Inc.

Hedrick, Eatman, Gardner & Kincheloe, L.L.P., by Mel J. Garofalo and Shelley W. Coleman, for defendant-appellee Great Northern Insurance Company.

WYNN, Judge.

Plaintiff Naturally Knits, Inc. and defendants Aon Risk

Services, Inc. of the Carolinas and Aon Enterprise Insurance Services, Inc. (jointly, "Aon") appeal from the trial court's 19 March 2001 order granting defendant Great Northern Insurance Company's ("Great Northern") motion for summary judgment. We affirm.

The following facts are not disputed. Naturally Knits is a textile converter that contracts with other businesses for knitting, dyeing and finishing its goods. This appeal concerns one such contract processor, Specialty Shearing & Dyeing, Inc., located in Greenville, South Carolina. Specialty Shearing's office address in Greenville is 20 Odom Circle, at which its processing plant and other buildings are located. Specialty Shearing also used a nearby warehouse known as the Poe Mill warehouse to store goods that were not actively involved in the production process.

On 19 August 1999, a fire at the Poe Mill warehouse destroyed or damaged a large quantity of Naturally Knits' goods being stored therein by Specialty Shearing. Naturally Knits alleged that it lost goods in the fire worth \$199,714.04.

Before the fire, Great Northern had issued an insurance policy to Naturally Knits in 1998 for the period from 22 July 1998 to 22 July 1999 (the "1998 Policy"). Among other coverages, the 1998 Policy provided certain coverage for damage to Naturally Knits' personal property in the hands of other parties, while located somewhere other than Naturally Knits' offices in Gastonia, North Carolina. Specifically, the 1998 Policy indicated that the "Specialty Shearing Odom Circle" premises located in "Greenville,

South Carolina 29602" were included within the premises covered under the policy. The 1998 Policy specifically covered direct physical loss or damage to personal property as long as such loss or damage occurred at the premises shown in the policy declarations "or within 1,000 feet" thereof.

In 1999, Great Northern issued a renewal policy to Naturally Knits, effective from 22 July 1999 to 22 July 2000 (the "1999 Policy"). Similar to the 1998 Policy, the 1999 Policy listed "Specialty Shearing Odom Circle" located in "Greenville, South Carolina 29602" in its "Premises Summary." The "Premises Coverages" specified in the 1999 Policy for the Odom Circle Specialty Shearing location was \$500,000.00, with a \$5,000.00 deductible. The 1999 Policy's "Premises Coverages" also provided insurance coverage up to \$50,000.00 for personal property at "Any Other Location." Like the 1998 Policy, the coverage portion of the 1999 Policy stated that the policy insured "direct physical loss or damage" to personal property, up to the applicable insurance limit, so long as such loss or damage occurred at the premises shown in the policy declarations "or within 1,000 feet" thereof.

Following the fire at the Poe Mill warehouse on 19 August 1999, Naturally Knits made a claim under the 1999 Policy for insurance proceeds in the amount of \$194,714.04, the difference between the damage total to Naturally Knits' personal property resulting from the fire and the \$5,000.00 policy deductible. However, Great Northern determined that insurance coverage for personal property at the Poe Mill warehouse fell within the policy

provision covering "Any Other Location," as it was located more than 1,000 feet from Specialty Shearing's Odom Circle location listed in the policy's "Premises Summary." Great Northern therefore issued checks to Naturally Knits totaling \$50,000.00, the insurance limit under the 1999 Policy for personal property loss occurring at "Any Other Location."

Thereafter, Naturally Knits brought this action, asserting a claim against Great Northern for breach of implied contract and seeking a declaratory judgment that Naturally Knits' personal property loss was insured under the 1999 Policy up to the \$500,000.00 limit. Great Northern answered and subsequently moved for summary judgment; Naturally Knits and Aon also moved for summary judgment. On 19 March 2001, the trial court, per Superior Court Judge Richard D. Boner, entered an order granting Great Northern's summary judgment motion and denying Naturally Knits' and Aon's motions. Naturally Knits and Aon appeal.

Summary judgment is appropriate where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact" and that a party is entitled to judgment as a matter of law. N.C. Gen. Stat. § 1A-1, Rule 56 (2001). Furthermore, summary judgment may be appropriate in a declaratory judgment action, under the same rules applicable in other actions. See *Meachan v. Board of Education*, 47 N.C. App. 271, 267 S.E.2d 349 (1980). The only issue on appeal is whether

the trial court erred in granting Great Northern's summary judgment motion and denying the summary judgment motions of Naturally Knits and Aon. Naturally Knits and Aon do not assert that there are any disputed genuine issues of material fact; rather, each contends that summary judgment should have been entered against Great Northern and in its favor.

"The meaning of specific language used in an insurance policy is a question of law." *N.C. Farm Bureau Mut. Ins. Co. v. Briley*, 127 N.C. App. 442, 445, 491 S.E.2d 656, 658 (1997), *disc. review denied*, 347 N.C. 577, 500 S.E.2d 82 (1998).

The construction and application of insurance policies to undisputed facts is a question of law for the court. If policy language is clear and unambiguous, the court's sole duty is to "determine the legal effect of the language used and to enforce the agreement as written." . . . The various clauses are to be harmoniously construed, if possible, and every provision given effect.

Kephart v. Pendergraph, 131 N.C. App. 559, 564-65, 507 S.E.2d 915, 919 (1998) (internal citations omitted). A court may not rewrite an insurance policy or impose additional liabilities on the parties that are not bargained for or found therein, under the guise of construing an ambiguous term. See *Gaston County Dyeing Machine Co. v. Northfield Ins. Co.*, 351 N.C. 293, 524 S.E.2d 558 (2000). An ambiguity exists only if the policy's language, in the court's opinion, is fairly and reasonably susceptible to either of the constructions asserted by the opposing parties. See *Trust Co. v. Insurance Co.*, 276 N.C. 348, 172 S.E.2d 518 (1970). Any such ambiguity must be resolved by the court in favor of the

policyholder, and against the insurance company. See *id.*

In the instant case, Aon acknowledges that the 1999 Policy is unambiguous; Naturally Knits acknowledges that "there is no ambiguity once all policy provisions are considered in light of the parties' intent." After carefully reviewing the 1999 Policy, we conclude that there are no ambiguities therein, and affirm the trial court's grant of summary judgment in Great Northern's favor.

As noted above, the "Declarations" portion of the 1999 Policy lists "Specialty Shearing Odom Circle" located in "Greenville, South Carolina 29602" in the "Premises Summary" section as part of the premises insured under the policy; underneath this address, the "Description of Operations" at Specialty Shearing states: "Off Premises Storage." In the "Premises Coverages" section of the "Declarations," the policy states that the limit of insurance at said premises is \$500,000.00, with a \$5,000.00 deductible. In the same "Premises Coverages" section, the policy states a separate personal property insurance limit of \$50,000.00 for such property at "Any Other Location" not listed in the "Premises Summary."

Subsequent sections of the policy begin with the statement that "Words and phrases that appear in **bold** print have special meanings and are defined in the Definitions section of the General Provisions form included in this policy." The Definitions section of the General Provisions form defines "**Off premises**" (in bold) to mean "in the custody of an armored motor vehicle company; or in the possession of any person authorized by you [the insured], but not while in the mail or in the custody of a carrier for hire other

than an armored motor vehicle company." The "Building and Personal Property" portion of the policy limits coverage to loss or damage occurring "at the premises shown in the Declarations, or within 1,000 feet of the premises shown in the Declarations, unless otherwise stated." The precise question before us is whether, as a matter of law, the 1999 Policy insured Naturally Knits' goods stored in the Poe Mill warehouse, as a result of the "Off Premises Storage" description of operations at the Specialty Shearing location in the policy's "Premises Summary" section. We conclude that it did not.

If an insurance policy "contains a definition of a term used in it, this is the meaning which must be given to that term wherever it appears in the policy, *unless the context clearly requires otherwise.*" *Trust Co.*, 276 N.C. at 354, 172 S.E.2d at 522 (emphasis added). Although the 1999 Policy defines "**Off Premises**" to include "in the possession of any person authorized by you," we disagree with Naturally Knits and Aon's argument that this can only mean that the policy insures Naturally Knits' goods in Specialty Shearing's possession, wherever such goods may be located. Indeed, the context in which the phrase "Off Premises Storage" is used indicates that it merely describes the nature of the business relationship between Naturally Knits and Specialty Shearing, i.e. that Specialty Shearing stores Naturally Knits' goods off of *Naturally Knits'* premises (rather than off of *Specialty Shearing's* premises). Additionally, the Definitions section in the General Provisions form states on every page thereof that the definitions

therein apply "when used with respect to insurance under this policy"; the phrase "Off Premises Storage" in the Declarations section is *not* used with respect to insurance, but rather to describe Specialty Shearing's business operations as they relate to Naturally Knits.

Furthermore, we note that the "Off Premises Storage" description of Specialty Shearing's operations in the Declarations section of the policy is not in **bold** typeface. Nor does the Declarations section refer to the Definitions section of the General Provisions form for definitions of the terms therein. Elsewhere in the policy, the phrase "off premises" is typically in **bold** typeface, indicating that the phrase has special meaning and referring the reader to the Definitions section (such as for insurance coverage of money and securities located "**off premises**"). The construction urged by Naturally Knits and Aon would contravene the policy's specific limitation of personal property insurance coverage to loss or damage occurring "at, or within 1,000 feet of, the premises shown in the Declarations[.]" Indeed, the policy could have just as easily covered any loss or damage occurring "at the premises shown in the Declarations or **off premises**" if the parties so intended.

We conclude as a matter of law that the 1999 Policy did not insure Naturally Knits' personal property in Specialty Shearing's possession, when that property was located more than 1,000 feet from Specialty Shearing's Odom Circle address as listed on the "Premises Summary" in the policy Declarations. Accordingly, the

trial court's 19 March 2001 order granting Great Northern's motion for summary judgment, and denying Naturally Knits' and Aon's summary judgment motions, is,

Affirmed.

Judges McCULLOUGH and BIGGS concur.

Report per Rule 30(e).