Affirmed and Memorandum Opinion filed August 17, 2023

In The

Fourteenth Court of Appeals

NO. 14-22-00680-CV

JEAN KAYIHURA, Appellant

V.

HOMEOWNERS OF AMERICA MGA, INC. AND HOMEOWNERS OF AMERICA INSURANCE COMPANY, INC., Appellees

On Appeal from the 281st District Court
Harris County, Texas
Trial Court Cause No. 2021-66403

MEMORANDUM OPINION

Appellant Jean Kayihura alleged breach of contract and extra-contractual causes of action against appellees, Homeowners of America MGA, Inc. and Homeowners of America Insurance Company ("Insurers"), in connection with a claim he made on his policy following Winter Storm Uri. Insurers sought declaratory judgment on coverage, then filed a traditional summary-judgment challenging Kayihura's breach of contract cause of action followed by a no-

evidence summary-judgment motion challenging Kayihura's extra-contractual causes of action.

The trial granted both motions. Kayihura now challenges the trial court's two orders that resulted in the final judgment dismissing all of his claims. We affirm.

I. Factual and Procedural Background

Kayihura's homeowner's policy generally provided coverage limits of $161,796 for dwelling ("Coverage A"), $16,180 for other structures ("Coverage B"), and $97,079 for personal property ("Coverage C"). Two features of the policy are pertinent to this appeal: limitation for water damage, and coverage for the peril of freezing.

Limitation on coverage for "water damage"

Under an endorsement that first became effective under the applicable version of the policy, a $10,000 special limit of liability was placed on coverage for water damage: "The total limit of liability for water damage to covered property is $10,000. This limit applies to all damaged covered property under Coverage A, B, C and E combined" including "direct physical damage caused by sudden and accidental discharge or overflow of water or steam from within a plumbing … system[.]"

Coverage for freezing

The policy's dwelling coverage provides "against risks of direct physical loss" unless expressly excluded. Conversely, the policy's coverage for personal property is specific to certain named perils.

For dwelling coverage, one of the express exclusions is "[f]reezing of a plumbing, heating, air conditioning or automatic fire protective sprinkler system or

of a household appliance, or by discharge, leakage or overflow from within the system or appliance caused by freezing."[1] But this express exclusion contains an exception to the exclusion (and thus provides dwelling coverage for freezing perils) if Kayihura uses reasonable care to keep the building heated or shuts off the water supply and drains all systems and appliances of water.

Similarly, for personal property coverage under "14. Freezing", the policy specifically *includes* freezing (of a plumbing, heating, air conditioning or automatic fire protective sprinkler system) but excludes that coverage only if Kayihura fails to use reasonable care keep the building heated or shut off the water supply and drain all systems and appliances of water. Another named peril applicable to personal property claims is "12. Accidental Discharge Or Overflow Of Water Or Steam", and by operation of a pair of exceptions under this provision includes loss "caused by or resulting from freezing" as described under "14. Freezing".

Kayihura's insurance claim and subsequent lawsuit

Shortly after Winter Storm Uri, Kayihura filed a claim with Insurers for damage to his home caused by the effects of the storm. The damage was extensive. Insurers' adjuster inspected the home and found that the freeze caused water pipes in the attic to burst which caused water damage to Kayihura's home. Insurers' adjuster's estimate of this damage exceeded the $10,000 limit of coverage for water damage under the policy's water damage endorsement. Insurers paid Kayihura $10,000 for the damage to his dwelling and personal property, based on the assertion that the water damage endorsement applied to his claim and

[1] With regard to certain express exclusions, including this provision for freezing, the policy provides that "any ensuing loss to a property described in Coverages A and B not precluded by any other provision in this policy is covered."

therefore limited coverage for the damage to $10,000.[2]

Kayihura disagreed, arguing that the damage was covered under the freeze provision of the policy and filed suit. His live petition alleges causes of action for breach of contract, violations of the Unfair Settlement Practices Act and Texas Prompt Payment of Claims Act under the Texas Insurance Code, breach of the common law duty of good and fair dealing, and fraud.

Traditional Motion for Summary Judgment

Insurers filed a motion for partial summary judgment on their request for declaratory judgment and on Kayihura's breach of contract claim. Insurers argued that the summary judgment evidence conclusively proved that Kayihura's property "suffered direct physical damage caused by sudden and accidental discharge of water from plumbing due to pipe breaks after freeze" and that his claim was therefore subject to the water damage endorsement's $10,000 coverage limit. Insurers argued that the plain language of the water damage endorsement made it applicable to his claim.

Insurers also argued that the limit was properly applied to Kayihura's claim under the concurrent causation doctrine. Insurers contended that the limit under the water damage endorsement applied to Kayihura's claim because bursting of the pipes by freeze and the discharge of water from the burst pipes acted concurrently to cause all damage to Kayihura's dwelling and private property. Insurers therefore argued that the payment to Kayihura of the full limit of liability of $10,000 under the water damage endorsement established compliance with the contract as a matter of law even though their adjuster estimated the damage to Kayihura's dwelling and personal property exceeded the $10,000 limit of coverage under the

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[2] Insurers made "additional living expense" (ALE) benefits available for payment to Kayihura as incurred.

endorsement.

On June 2, 2022, the district court granted Insurers' traditional motion for partial summary judgment and ordered that Kayihura take nothing on his breach of contract claim. The district court "further ordered that [Insurers'] request for declaratory relief is granted" and declared "that [Kayihura's] dwelling and personal property losses are direct physical damage caused by sudden and accidental discharge of water from with a plumbing system, and are subject to the $10,000 special limit of liability" under the policy's water damage endorsement.

No Evidence Motion for Summary Judgment

Insurers filed a no-evidence motion for final summary judgment based on the district court's finding that there was no breach of contract and therefore no evidence of actual damages to support Insurers' extra-contractual claims of breach of common law duty of good faith and fair dealing, fraud, and claims for violations of the Unfair Claims Settlement Practices Act and Prompt Payment of Claims Act under the Texas Insurance Code. Kayihura filed a response to Insurers' motion for no-evidence summary judgment noting that he respectfully disagreed with the district court's order granting summary judgment on his contract cause of action and was therefore not waiving his argument that the $10,000 limit of liability under the water damage endorsement did not apply to his claim and that application of the limit breached the contract causing actual damages in the amount of unpaid benefits owed under the policy.

On August 31, 2022, the district court granted Insurers' no-evidence motion for final summary judgment on Kayihura's remaining extra-contractual claims because there was no evidence of one or more essential elements of "bad faith", violations of Texas Insurance Code Chapters 541, 542, and "fraud".

II. TRADITIONAL SUMMARY JUDGMENT ON BREACH OF CONTRACT CLAIMS

Kayihura's first issue is whether the trial court erred in granting Insurers' traditional summary judgment on Kayihura's contract cause of action and Insurers' declaratory judgment action. The issue turns on whether the plain language of the policy, including all its amendments and endorsements, limits coverage to $10,000 for water damage cause by freeze.

Standard of Review

We review a trial court's order granting a traditional motion for summary judgment de novo. *Mid–Century Ins. Co. v. Ademaj*, 243 S.W.3d 618, 621 (Tex. 2007). In reviewing a grant of summary judgment, we consider all of the evidence in the light most favorable to the nonmovant. *Goodyear Tire & Rubber Co. v. Mayes*, 236 S.W.3d 754, 756 (Tex. 2007). To prevail on a traditional motion for summary judgment, a movant must prove entitlement to judgment as a matter of law on the issues pled and set out in the motion for summary judgment. Tex. R. Civ. P. 166a(c); *Masterson v. Diocese of Nw. Texas*, 422 S.W.3d 594, 607 (Tex. 2013).

Interpreting the Insurance Contract

Applying the ordinary rules of contract construction to insurance policies, we ascertains the parties' intent by looking only to the four corners of the policy to see what is actually stated and do not consider what allegedly was meant. *Fiess v. State Farm Lloyds*, 202 S.W.3d 744, 747 (Tex. 2006); *Williams Consolidated I, Ltd./BSI Holdings, Inc. v. TIG Ins. Co.*, 230 S.W.3d 895, 902 (Tex. App.–Houston [14th Dist.] 2007, no pet). We examine the entire insurance policy, read all of its parts together, and seek to give effect to all of its provisions so that none will be meaningless. *See Gilbert Texas Const., L.P. v. Underwriters at Lloyd's London*,

327 S.W.3d 118, 126 (Tex. 2010).

If we determine that only one party's interpretation of the insurance policy is reasonable, then the policy is unambiguous and the reasonable interpretation should be adopted. *RSUI Indem. Co. v. The Lynd Co*., 466 S.W.3d 113, 118 (Tex. 2015) (citing *Grain Dealers Mut. Ins. Co. v. McKee*, 943 S.W.2d 455, 459 (Tex. 1997)). Alternatively, if we determine that both interpretations are reasonable, then the policy is ambiguous. *Id*. In that event, "we must resolve the uncertainty by adopting the construction that most favors the insured," and because we are construing a limitation on coverage, we must do so "even if the construction urged by the insurer appears to be more reasonable or a more accurate reflection of the parties' intent." *Id*. (quoting *Nat'l Union Fire Ins. Co. of Pittsburgh, Pa. v. Hudson Energy Co*., 811 S.W.2d 552, 555 (Tex. 1991)).

Analysis

In this case, the trial court granted partial traditional summary judgment based on Insurers' motion asserting that Insurers neither owed nor breached a contractual obligation to Kayihura under the policy. The trial court also found in its declaratory judgment that the dwelling and personal property losses were "direct physical damage caused by sudden and accidental discharge of water from within a plumbing system, and [] subject to the $10,000 special limit of liability" under the policy's water damage endorsement. Kayihura contends that the trial court erred, because as he interprets the policy, the limitation does not apply because his dwelling and personal property losses are direct physical damages caused by the *freeze*.

The complete language of the endorsement at issue states as follows:

LIMITED WATER DAMAGE COVERAGE

The following is added under SECTION I- PROPERTY

COVERAGES:

1. WATER DAMAGE COVERAGE

a. The total limit of liability for water damage to covered property is $10,000. This limit applies to all damaged covered property under Coverage A, B, C and E combined.

b. This limit applies to direct physical damage caused by sudden and accidental discharge or overflow of water or steam from within a plumbing, heating, air conditioning or automatic fire protective sprinkler system or from within a household appliance.

c. This limit applies to Foundation coverage provided under E. Additional Coverages.

d. This limit includes the cost of tearing out and replacing any part of the building necessary to repair the system from which the discharge occurred.

e. We do not cover loss to the system from which the water escaped.

f. This coverage does not increase the limit of liability that applies to the damaged covered property.

Except as stated in this endorsement, we do not provide coverage for any loss precluded by another provision in this policy.

All other provisions of your policy apply.

Although in most of Kayihura's pre-suit correspondences and pleadings he describes the damage to the property as *freeze* damage, as Insurers note, in Kayihura's July 29, 2021 notice of claim letter, he acknowledge the unavoidable fact that the damage, even if prompted by the peril of the freeze, is "water" damage, stating "freeze caused the plumbing supply lines to burst in several areas of his family's home" and there was "water damage to the dwelling and personal property caused by the freeze." Neither party disputes the role that the freeze and water played in bringing about Kayihura's claimed losses.

The crux of Kayihura's argument is based on his interpretation that the endorsement applied to one type of peril—accidental discharge of water—but did not apply to a particular peril — freezing — that caused damage to his home. But

we read the endorsement as unambiguously applying to a particular type of *damage*—water damage—applicable to coverage for dwelling, other structures, and personal property. *See Kelley St. Associates, LLC v. United Fire & Cas. Co.*, No. 14-14-00755-CV, 2015 WL 7740450, at *5 (Tex. App.—Houston [14th Dist.] Nov. 30, 2015, no pet.) (explaining water exclusion depended on type of loss at issue not where the water loss originated). Whether or not the water damage is deemed to be caused by the peril of freezing or the sudden discharge of water from the plumbing system is not a material factor to the application of the limitation clause under the policy. The first clause of the endorsement plainly states, "[t]he total limit of liability for *water damage* to covered property is $10,000. This limit applies to all damaged covered property under Coverage A, B, C, and E combined". Although the second clause specifically includes direct physical damage caused by the peril of sudden and accidental discharge or overflow of water or steam from within a plumbing, heating, air conditioning or automatic fire protective sprinkler system or from within a household appliance, no part of the provision excludes water damage precipitated by a freeze.

Even if the endorsement is interpreted to focus on covered perils (as opposed to damage), we reach the same conclusion that the limitation applies. We do not read the endorsement, as Kayihura suggests, to exclude "direct physical damage caused by sudden and accidental discharge or overflow of water or steam from within a plumbing, heating, air conditioning or automatic fire protective sprinkler system or from within a household appliance" following from a freeze. That is, Kayihura's construction requires reading an exception into the endorsement for water damage from plumbing discharge due to freeze; the implicit request for the insertion of unstated words makes his construction unreasonable. *RSUI Indem. Co.*, 466 S.W.3d at 124 ("we cannot add words to the policy's language"). Nor do we,

as Kayihura suggests on appeal, read the water damage limitation to apply only with respect to “an ensuing loss”, only applicable to the policy’s dwelling coverage. This construction would render the endorsement meaningless for personal property coverage (Coverage C), contrary to policy construction rules. *See Nassar v. Liberty Mut. Ins. Co.*, 508 S.W.3d 254, 258 (Tex. 2017). Rather, the reading consistent with the plain language of the policy incorporates applicable covered “freezing” events within the meaning of “sudden and accidental discharge or overflow of water or steam from within a plumbing, heating, air conditioning or automatic fire protective sprinkler system or from within a household appliance.”

Under this interpretation of the policy, the trial court properly concluded that Insurers proved there was no genuine issue of material fact that a breach of the policy occurred. *RSUI Indem. Co,* 466 S.W.3d at 124; *See also Nassar*, 508 S.W.3d at 258. Under the applicable standard of review, the trial court did not err in finding that the motion and evidence provided in support Insurers’ summary-judgment motion established (i) the insurance policy made the basis of Kayihura suit was issued by Insurers; (ii) Insurers correctly paid the full $10,000 special limit of liability that applies for water damage to all damaged covered property under Coverage A (Dwelling), B (Other Structures), C (Personal Property), and E (Additional Coverages) combined; and (iii) Insurers correctly paid $10,792.91 for all “additional living expenses” (ALE) benefits incurred under the Coverage D (Loss of Use).

Accordingly, appellant’s first issue is overruled.

III. NO-EVIDENCE SUMMARY JUDGMENT ON EXTRA-CONTRACTUAL CLAIMS

Kayihura’s second issue pertains to the trial court’s order granting Insurers’ no-evidence summary-judgment motion on Kayihura’s extra-contractual claims of “bad faith”, violations of Texas Insurance Code Chapters 541, 542, and common

law “fraud”.[3]

We review a no-evidence summary judgment under a legal sufficiency standard. *King Ranch, Inc. v. Chapman*, 118 S.W.3d 742, 750–51 (Tex. 2003) (“A no-evidence summary judgment is essentially a pretrial directed verdict, and we apply the same legal sufficiency standard in reviewing a no-evidence summary judgment as we apply in reviewing a directed verdict.”). A no-evidence summary judgment will be sustained when: “(a) there is a complete absence of evidence of a vital fact; (b) the court is barred by rules of law or of evidence from giving weight to the only evidence offered to prove a vital fact; (c) the evidence offered to prove a vital fact is no more than a mere scintilla; or (d) the evidence establishes conclusively the opposite of a vital fact.” *King Ranch*, 118 S.W.3d at 751 (citing *Merrell Dow Pharms. v. Havner*, 953 S.W.2d 706, 711 (Tex. 1997)).

A grant of summary judgment to Insurers on coverage prevents recovery on Kayihura’s extra-contractual claims if there was no evidence of extreme conduct in violation of statute that resulted in an injury independent of loss of policy benefits. *See USAA Texas Lloyds Co. v. Menchaca*, 545 S.W.3d 479 (Tex. 2018) (insured must establish a loss of benefits or a statutory violation that results in an injury independent of loss of benefits); *Ortiz v. State Farm Lloyds*, 589 S.W.3d 127, 131 (Tex. 2019) (same). Kayihura’s alleged injury was predicated on loss of benefits, and upon our review of the record, we cannot find support, nor has he pointed us to any such evidence, showing any injury or damages independent of loss of benefits under the policy or in support of under any of the exceptions applicable to extra-

[3] In his brief, the sum of Kayihura’s argument devoted to this issue is stated as follows: “The erroneous granting of summary judgment on Plaintiff’s breach of contract claim was the sole basis for the district court’s granting Defendants’ motion for final no-evidence summary judgment.” Presuming the issue is sufficiently briefed, we address the complaint as stated, concisely.

contractual claims. *See Menchaca*, 545 S.W.3d 495-500. There is no support in the record for allegations that Insurers failed to properly investigate the claim or that Insurers failed to pay adequate compensation, that Insurers engaged in unfair settlement practices, misrepresentations or other conduct in violation of statute that was extreme and produced damages. *See id*.

Because Kayihura put on no evidence of a loss of benefits or a statutory violation that resulted in an independent injury, we cannot conclude under the applicable standard of review that the trial court erred in granting Insurers' no-evidence summary-judgment motion on Kayihura's extra-contractual claims of "bad faith", violations of Texas Insurance Code Chapters 541, 542, and common law "fraud".

IV. CONCLUSION

Having overruled both of Kayihura's two issues, and finding the trial court did not err in its two orders granting summary judgment which combined to dismiss all of Kayihura's claims, we affirm.

/s/ Randy Wilson
Justice

Panel consists of Justices Wise, Zimmerer, and Wilson.