

FIRST DIVISION  
December 27, 2011

Nos. 1-10-0918 to 1-10-0923, 1-10-0925 and 1-10-0926 Cons.

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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|---|---|--------------------|
| ROSIE JOHNSON, Individually and on behalf | ) | Appeal from the    |
| of a class of similarly situated persons, | ) | ) Circuit Court of |
|   | ) | Cook County        |
| Plaintiff-Appellant,                      | ) |                    |
|   | ) | No. 08 CH 29598    |
| v.  | ) | No. 08 CH 29600    |
|   | ) | No. 08 CH 29601    |
| UNIVERSAL CASUALTY COMPANY,               | ) | No. 08 CH 29604    |
| an Illinois domiciled insurance company,  | ) | No. 08 CH 29605    |
|   | ) | No. 08 CH 29606    |
| Defendant-Appellee,                       | ) | No. 08 CH 34421    |
|   | ) | No. 08 CH 35796    |
|   | ) | No. 09 CH 17523    |
|   | ) |                    |
|   | ) | Honorable          |
|   | ) | Martin Agran,      |
|   | ) | Judge Presiding.   |

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JUSTICE HALL delivered the judgment of the court.  
Justices Karnezis and Rochford concurred in the judgment.

**ORDER**

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**Held:** The physical damages the stolen automobiles sustained during the time they were in possession of the thieves constituted losses due to the thefts even though the vehicles were eventually recovered, and therefore, the theft exclusions applied to bar coverage. If an exclusion uses terms that make it plain that coverage is unrelated to any causal link, it will be applied as written. And, the reasonable expectations doctrine was inapplicable.

In these consolidated appeals, plaintiff Rosie Johnson, individually and on behalf of other similarly situated persons (plaintiffs), appeal from orders of the circuit court dismissing their complaints for breach of contract brought against their respective auto insurers<sup>1</sup>. The complaints were dismissed pursuant to sections 2-615 and 2-619 of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-615, 5/2-619 (West 2002)). Plaintiffs alleged that their insurance policies were breached when the insurers denied coverage for physical damage to their automobiles based on theft exclusions contained in the policies.

When a trial court rules upon a motion to dismiss for failure to state a cause of action (2-615) or because a claim is barred by other affirmative matter that avoids the legal effect of or defeats the claim (2-619(a)(9)), the court must interpret all of the pleadings and supporting documents in the light most favorable to the nonmoving party. *In re Chicago Flood litigation*, 176 Ill. 2d 179, 189, 680 N.E.2d 265 (1997). Such motions should be granted only if the plaintiff can prove no set of facts that would support a cause of action. *In re Chicago Flood*

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<sup>1</sup> The defendant-insurers are: American Access Casualty Co., American Heartland Insurance Co., American Service Insurance Co., Apollo Casualty Co., Direct Auto Insurance Co., Founders Insurance Co., Interstate Bankers Casualty Co., United Automobile Insurance Co., and Universal Casualty Co.

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*litigation*, 176 Ill. 2d at 189. A trial court's grant of a motion to dismiss under either section 2-615 or section 2-619 of the Code is subject to *de novo* review. *In re Chicago Flood litigation*, 176 Ill. 2d at 189.

We also apply a *de novo* standard of review when interpreting an insurance policy. *Whiting v. Prestige Casualty Co.*, 238 Ill. App. 3d 376, 377, 606 N.E.2d 397 (1992). An insurance policy is a contract and therefore our primary objective is to ascertain and give effect to the intent of the parties as expressed in the language of the policy. *Hobbs v. Hartford Insurance Company of the Midwest*, 214 Ill. 2d 11, 17, 823 N.E.2d 561 (2005). To ascertain the intent of the parties the court must construe the policy as a whole taking into account the type of insurance for which the parties have contracted, the risks undertaken and purchased, the subject matter that is insured and the purposes of the policy. *Crum and Forster Managers Corporation v. Resolution Trust Corporation*, 156 Ill. 2d 384, 391, 620 N.E.2d 1073 (1993). If the policy language is unambiguous the policy will be applied as written unless it contravenes public policy. *Hobbs*, 214 Ill. 2d at 17.

Exclusionary clauses will be enforced if their terms are clear and free from doubt. See, *e.g.*, *Gillen v. State Farm Mutual Automobile Insurance Co.*, 215 Ill. 2d 381, 393, 830 N.E.2d 575 (2005) (when an exclusionary clause is relied upon to deny or limit coverage, it will be read narrowly and will be applied only where its terms are clear, definite, specific and free from doubt). Policy terms that limit an insurer's liability are generally liberally construed in favor of coverage; however, this rule of construction comes into play only when the policy is ambiguous. *Hobbs*, 214 Ill. 2d at 17. An ambiguity exists only if a term is subject to more than one

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reasonable interpretation. *Hobbs*, 214 Ill. 2d at 17.

An examination of the exclusionary clauses at issue reveal no ambiguities. The exclusions provide that the insurers will not cover losses due to theft: if evidence exists that forcible entry was not used to gain access to the automobile, or if evidence exists that the keys to the automobile were left in or within the automobile, or if evidence indicates that the ignition wiring was not altered or changed to allow operation of the automobile without the keys. The reasons for such exclusions is to encourage the insured to exercise due diligence in securing the insured property. See, e.g., *Safeway Insurance Company of Alabama, Inc. v. Herrera*, 912 So.2d 1140, 1145 (Ala. 2005).

Plaintiffs contend that the exclusions should not apply to bar coverage for stolen automobiles that were subsequently recovered suffering from physical damage sustained during the time the automobiles were in possession of the thieves. Plaintiffs argue that once their stolen vehicles were recovered, they were no longer harmed by the thefts. Rather, they argue they were harmed by the actions of the thieves in damaging their vehicles while the vehicles were in the possession of the thieves.

Plaintiffs contend that once their vehicles were recovered, their losses were no longer attributable to the thefts, and as a result, they argue that their claims were for physical damage rather than theft claims. Plaintiffs maintain that where an insured's automobile is stolen and subsequently returned in a damaged condition, the damage or loss does not result from the theft itself because the vehicle was recovered. Plaintiffs reason that the theft exclusions at issue should not be applied in circumstances where something is recovered. We must disagree.

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Where, as here, the term "theft" is not defined in an insurance policy, we use the Criminal Code definition in construing a theft provision. *Kelly v. State Farm Mutual Automobile Insurance Co.*, 34 Ill. App. 3d 290, 292, 339 N.E.2d 467 (1975); *Bohnen International, Inc. v. Liberty Mutual Insurance Co., Inc.*, 120 Ill. App. 3d 657, 664, 458 N.E.2d 644 (1983).

The Criminal Code of 1961 provides that a theft occurs when a person obtains or exerts unauthorized control over property. 720 ILCS 5/16-1(a)(1) (West 2002). "The fact that the owner of stolen property recovers it, does not extinguish the offense of theft." *People v. Gant*, 121 Ill. App. 2d 222, 225, 257 N.E.2d 181 (1970).

When property is stolen, the rightful owner necessarily suffers a loss because he is no longer able to use that property. Thus, he suffers a "loss due to theft," in the plain and ordinary sense of those words, even if the stolen property is eventually recovered. In this case, the physical damages the stolen automobiles sustained during the time they were in possession of the thieves constituted losses due to the thefts even though the vehicles were eventually recovered and therefore, the theft exclusions applied to bar coverage.

Plaintiffs nevertheless argue that in order for the theft exclusions to apply, there must be a direct causal link between the "thefts" and the "losses." Plaintiffs contend that the phrase "due to," as in "loss due to theft," requires a direct causative link between the "thefts" and the "losses." Again, we must disagree.

Courts have determined that if an exclusion uses terms that make it plain that coverage is unrelated to any causal link, it will be applied as written. See *Flomerfelt v. Cardiello*, 202 N.J. 432, 443, 997 A.2d 991, 997 (2010). Moreover, even assuming, *arguendo*, that Illinois authority

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required such a causal link, the losses at issue were directly linked to the thefts where Illinois criminal law provides that a vehicle taken without authorization and later recovered is considered a theft. Here, whether a property owner has suffered a "loss due to theft" as that phrase is used in the theft exclusions is a determination made in reference to Illinois criminal law.

Finally, we reject plaintiffs' assertions that their construction of the auto insurance policies is consistent with the reasonable expectations of consumers. The "reasonable expectations" doctrine provides that:

"The objectively reasonable expectations of all applicants and intended beneficiaries regarding the terms of insurance contracts will be honored even though painstaking study of the policy provisions would have negated those expectations."

*Smagala v. Owen*, 307 Ill. App. 3d 213, 219, 717 N.E.2d 491 (1999), quoting R. Keeton, *Basic Text on Insurance Law* § 6.3, at 351 (1971).

The reasonable expectations doctrine has been rejected by Illinois courts. See *Smagala*, 307 Ill. App. 3d at 219. Moreover, even though the doctrine may be used as a tool of construction in assessing the intent of the parties when a contract is ambiguous, the doctrine is inapplicable, when, as here, the terms of the insurance policy are unambiguous. *Smagala*, 307 Ill. App. 3d at 219.

Accordingly, we affirm the orders of the circuit court dismissing plaintiffs' complaints for breach of contract brought against their respective auto insurers.

Affirmed.