No. 1-10-2972

FOURTH DIVISION
June 9, 2011

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

HICKORY PROPERTIES, INC.,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 08 CH 34980
	)	
AMERICAN ZURICH INSURANCE	)	
COMPANY,	)	The Honorable
	)	Bill Taylor,
Defendant-Appellee.	)	Judge Presiding.

PRESIDING JUSTICE LAVIN delivered the judgment of the court.
Justices Pucinski and Salone concurred in the judgment.

ORDER

Held: The trial court properly denied plaintiff's motion and granted defendant's motion for partial summary judgment, due to the fact that defendant already payed out the insurance policy coverage limit for the trees damaged in the October 2, 2006 windstorm.

The presence and architectural integrity of trees on golf courses is a subject that is not without controversy, with many contending that trees are an integral part of the golfing experience, particularly in the so-called parkland style of golf course architecture. Not

everybody, however, would greatly value trees on a golf course. Many would argue that trees more properly belong in an arboretum, not on a golf course. In fact, H.J. Whigham, a Scottish champion golfer and golf course architect of some international renown, once observed that "every single tree on the links should be ruthlessly cut down." Here, we are confronted with the appeal of a golf course owner who claims that he is entitled to millions of dollars from his insurance carrier as a result of the destruction of dozens of trees from a windstorm that hit Hickory Hills Golf Course (Golf Course) in the autumn of 2006. In the case *sub judice*, it was Mother Nature, and not chainsaws that unceremoniously felled the arboreal subjects of this litigation, but the aggrieved golf course owner, Hickory Properties, Inc. (Hickory), appeals from the circuit court's grant of partial summary judgment to his insurer, American Zurich Insurance Company (Zurich), while also claiming that the trial court should have granted its competing motion. For the reasons elucidated at some length below, we affirm the trial court's rulings.

I. BACKGROUND

Central to this appeal is a commercial property insurance policy (Policy) issued by Zurich to Hickory, effective from June 6, 2006 to June 2, 2007, which is applicable to a number of properties managed by Hickory. The insured property in question here is the Hickory Hills Country Club (Club) located in Hickory Hills, Illinois. The Club rests on property which contains a clubhouse, banquet hall and the Golf Course. Depending on the property, the Policy provides for general liability coverage, property coverage, inland marine coverage, business automobile coverage and/or equipment breakdown coverage. The relevant underlying event occurred on October 2, 2006, when a windstorm caused damage to several Hickory properties,

including the Club's property. The clubhouse, banquet hall and Golf Course all sustained damage and a subsequent investigation revealed that 64 trees on the golf course were damaged or destroyed by the windstorm which either required pruning or removal.

The Insurance Policy

The Policy identifies and describes each piece of property with the Schedule of Locations (Schedule) and the Commercial Property Supplemental Declarations (Declaration). The Schedule allocates each piece of property with a location and building number. It also identifies the insured premises by its commonly known address. Finally, it provides a description of the occupancy of the premises. The property at issue here is identified in the Schedule as Location 001 Building 001. The address given is "8201 W. 95th Street, Hickory Hills, Il 60457-0000"and the occupancy is described as a "Country Club."

The next document used for identification is the Declaration. The Declaration also identifies the property covered by the location and building number assigned to it by the Schedule. The Declaration also provides a description of the business, the type of coverage provided, and the coverage limit. The property at issue is described in the Declaration as a Public Golf Course. The Declaration then lists the three different types of insurance coverage associated with the property; Building, Business Personal Property and Business Income W/0 Rental. All three policies have different limits of insurance. However, all three different policies are identified as Location 001 Building 001.

The insurance policy that is at issue in this case is the Building and Personal Property Coverage Form (Building Form). This policy provides coverage up to $25,294,279 for "[D]irect

physical loss of or damage to "Covered Property" at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss." Covered property is defined in Section A.1 of the Building Form as:

"[T]he building or structure described in the Declarations, including:

(1) Completed additions;

(2) Fixtures, including outdoor fixtures:

(3) Permanently installed:

(a) Machinery and

(b) Equipment

(4) Personal property owned by you that is used to maintain or service the building or structure or its premises, including:

(a) Fire extinguishing equipment

(b) Outdoor furniture

(c) Floor coverings; and

(d) Appliances used for refrigerating, ventilating, cooking, dishwashing or laundering;

(5) If not covered by other insurance:

(a) Additions under construction, alterations and repairs to the building or structure;

(b) Materials, equipment, supplies and temporary structures, on or within 100 feet of the described premises, used for making additions, alterations or repairs to the

building or structure."

Section 2 of the Building Form lists "Property Not Covered." Notable to this controversy is Section A.2.q.(2), which states that property located outside of buildings including "trees, shrubs, or plants," are considered to be "Property Not Covered."

The Policy, and the Building Form in particular, is modified by a "Golf Course Endorsement" (Endorsement). The Endorsement modifies and expands the coverage that is originally described in the Building Form. Among other things, the Endorsement adds new subsections to the "Covered Property" provision. Section I.A.d.(1) adds coverage for "fairways, greens, tees, rough areas, out of bounds areas, sand traps, driving ranges." Section I.A.d.(7) extends coverage for "outdoor grounds including land, lawns, standing timbers, trees, shrubs, plants and sand specifically designed and maintained for the game of golf;"

This Endorsement is controlled by the Schedule of Limits, which lists a policy limit for each section where coverage has been expanded by the Endorsement. For example, the Schedule of Limits identifies "Covered Property" in Section I.A.d.(1) of the endorsement and places a policy limit on that "Covered Property" at $1,000,000. Notably, there is also a section in the Endorsement that includes specific limitations to provisions previously listed. Section II.A.6. of the Endorsement is particularly relevant, which states: "We will not pay more than $25,000 for loss or damage, including debris removal, caused by wind, hail or ice to the outdoor grounds, including land, standing timber, trees, shrubs, plants and sand specifically designed and maintained for the game of golf."

Insurance Claim and Litigation

Shortly after the windstorm of October 2, 2006, Zurich retained an independent insurance adjuster, Neil Hollister who investigated Hickory's claimed damages. Hollister inspected the Golf Course and Country Club on October 4, 2006, and reported that the Golf Course had "suffered extensive damage from wind blown debris and felled trees." He estimated debris removal from the wind damaged trees would cost $31,500. On October 30, 2006, Zurich made an advance payment to Hickory in the amount of $50,360, with $25,000 representing payment for the tree-related claims. Ultimately, Zurich paid a total of $170,547.37 on Hickory's damage claims stemming from the windstorm.

On September 4, 2008, Hickory sent Zurich a demand letter asserting it was entitled to $1,000,000 of coverage due its tree loss, citing Section I.A.d.(1) of the Endorsement. Shortly thereafter, Hickory filed its initial complaint, alleging that Zurich had breached their insurance policy by not paying out the full $1,000,000 policy limit stated on the Endorsement for the damaged and destroyed trees. Zurich answered that Hickory's claim was limited by Section II.A.6. which caps pay outs for damage due to wind to trees, shrubs, plants and sand specifically designed and maintained for the game of golf to $25,000.

Hickory and Zurich filed cross-motions for partial summary judgment directed solely to the tree claim. Early in the litigation, Hickory alleged that it was entitled to coverage up to the full $25,294,279 policy limit in the Building Form, as well as the $1,000,000 in coverage from the Endorsement. Hickory's argument centered around the definition of the term "Building" that was listed in the Policy as well as in the Schedule of Locations. Hickory contended that the entire Country Club, including the Golf Course, constituted the "building" and therefore was "Covered

Property." Based on this reasoning, Hickory suggested that Section A.2.q.(2) of the building form, which denies coverage for trees located outside of the "building," did not apply to their claim. According to Hickory's questionable logic, the Golf Course itself was the "building" and that the trees located on the Golf Course were in the building rather than outside.

The parties engaged in limited discovery, including a discrete analysis of the tree stock on the golf course as it related to the game of golf itself. Zurich's retained a registered landscape architect who opined that less than one-third of the affected trees had a golf-related "value," thus qualifying them as being "designed and maintained for the game of golf." Hickory retained an arborist who offered the general opinion that all of the affected trees contributed to the overall "aesthetics, safety and play difficulty" of the course. Remarkably enough, despite the fact that Hickory attempted to argue that the trees on the golf course were somehow covered under the policy provisions for a "building" (and therefore not subject to the limitation of $25,000), its owner testified in deposition that all of the damaged trees were specifically designed and maintained for the game of golf "because they were natural trees over there. It was trees over there in the golf course coming in." He went on to essentially agree that every tree on the course was designed and maintained for the game of golf, a position which was contrary to the legal argument that his counsel was utilizing in an unsuccessful effort to avoid the aforementioned policy limit.

The trial court denied Hickory's motion and granted Zurich's motion for partial summary judgment. This timely appeal followed.

II. Analysis

Plaintiff contends that the circuit court erred in denying their motion for summary judgment, while granting defendant's motion for summary judgment. This court reviews the circuit court's ruling on a motion for summary judgment *de novo*. *Home Insurance Co. v. Cincinnati Insurance Co.*, 213 Ill. 2d 307, 315 (2004). Determining the obligations and rights under an insurance policy is a question of law, and therefore is an appropriate subject to be disposed of by summary judgment. *Liberty Mutual Fire Insurance Co. v. St. Paul Fire & Marine Insurance Co.*, 363 Ill. App. 3d 335, 338 (2005).

Summary judgment is proper when there is no genuine issue of material fact when examining the pleadings, depositions, and affidavits in a light most favorable to the non-moving party. 735 ILCS 5/2-1005(c) (West 2008); *Wilkerson v. Paul H. Schwendener Inc.*, 379 Ill. App. 3d 491, 494,(2008). In a case where parties file simultaneous cross-motions for summary judgment, the litigants ask the court to decide the presented issues as a matter of law. *Liberty Mutual Fire Insurance Co.*, 363 Ill. App. 3d at 338.

Building Form

The first issue to be decided is Hickory's claim that the damaged trees were covered under the Policy's Building Form. Plaintiff contends that the trees that were damaged in the October 2, 2006 windstorm are "Covered Property" as stated in the Building Form, and therefore should be covered under the Policy.

An insurance policy is a contract, and the rules that govern the interpretation of other types of contracts also govern insurance policies. *Hobbs v. Hartford Insurance Co. of the Midwest*, 214 Ill. 2d 11, 17 (2005). The principal objective when analyzing the language in a contract is to

examine the intent of the parties at the time they entered into the agreement. *Board of Managers of Hidden Lake Townhome Owners Ass'n v. Green Trails Improvement Ass'n*, 404 Ill. App. 3d 184, 190 (2010). The contract must be interpreted in its entirety, if possible, meaning and effect must be given to every provision and term. *River Plaza Homeowners Ass'n v Healey*, 389 Ill. App. 3d 268, 277 (2009); *Board of Managers of Hidden Lake Townhome Owners Ass'n*, 404 Ill. App. 3d at 190. It is presumed that every clause in the contract serves a purpose, therefore the court will not interpret the agreement in a manner that will find that language was employed idly. *Board of Managers of Hidden Lake Townhome Owners Ass'n*, 404 Ill.App.3d at 190; *River Plaza Homeowners Ass'n*, 389 Ill.App.3d at 277.

Central to Hickory's argument is its definition of the term "building" as it appears in the Building Form. It is Hickory's belief that the entire golf course is part of the "building," which is listed as "Covered Property" under the Building Form. Thus, an initial determination must be made on the definition of the term "building" in the Building Form. When the contract terms are unambiguous and clear, the court will interpret them with their plain, ordinary meaning. *Crum and Forster Managers Corp. v. Resolution Trust Corp.*, 156 Ill. 2d 384, 391 (1993). The word "building" as defined by Merriam-Webster is "a usually roofed and walled structure built for permanent use." When the language of the contract is clear, the intent of the parties must be derived singularly from the document. *Quake Construction Inc. v. American Airlines, Inc.*, 141 Ill. 2d 281, 288 (1990). Accordingly our analysis must begin by looking at the terms of the contract as stated in the Building Form.

The Building Form sets out to define what type of coverage Zurich will provide for

Hickory. Section A of the Building Form states: "We will pay for any direct physical loss or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss." The next step in our analysis is to look at what the Building Form defines as "covered property." Section A.1. of the Building Form states that "Covered Property, as used in this Coverage Part, means the type of property described in this Section, A.1., and limited in A.2." Section A.1.a. provides coverage for:

"[A] Building, meaning the building or structure described in the Declarations including

(1) Completed additions;

(2) Fixtures, including outdoor fixtures:

(3) Permanently installed:

(a) Machinery and

(b) Equipment

(4) Personal property owned by you that is used to maintain or service the building or structure or its premises, including:

(a) Fire extinguishing equipment

(b) Outdoor furniture

(c) Floor coverings; and

(d) Appliances used for refrigerating, ventilating, cooking, dishwashing or laundering;

(5) If not covered by other insurance:

(a) Additions under construction, alterations and repairs to the building or

structure;

(b) Materials, equipment, supplies and temporary structures, on or within 100 feet of the described premises, used for making additions, alterations or repairs to the building or structure."

We next look at the Declarations to determine if any structures are described therein, as directed by the Building Form. The Declaration for the Building Form describes the business that is being insured as a Public Golf Course, but it does not describe any structures on this Public Golf Course. The Declaration then points us to the Schedule of Locations for a description of the premises. The Schedule of Locations lists the property as Location 001, Building 001, it lists the designated location as 8201 W. 95th Street Hickory Hills, IL 60457-0000, and the occupancy of that premise as "County Club."

Hickory's argument alleges that by analyzing the Building Form, Declaration, and the Schedule of Locations, that the definition of "building" includes the Golf Course. Hickory maintains it is clear that the intent of the contract is to insure the entire Country Club as well as the Golf Course. Recognizing the obvious by acknowledging that a golf course typically does not fall under the definition of a building, Hickory nevertheless attempts to strengthen their argument by highlighting the fact that Zurich uses the term "building" even when describing vacant land throughout the Schedule. Hickory cites to Zurich underwriter Rodney Davis' deposition in which he testifies that when using the term building in the Schedule "doesn't necessarily mean that there's a building. This is just a way of identifying what is being covered."

Zurich counters Hickory's argument by stating that Hickory's definition of the term

"building" completely ignores the definition of the term "building" as described in the Building Form. Zurich further debunks Hickory's definition by pointing to the "outdoor" language used in the definition of the "building" in the Building Form. Listed under Covered Property are "outdoor fixture" and "outdoor furniture." Furthermore, the Building Form identifies property that is not covered, under section A.2.q. It lists "property while outside of buildings." Zurich argues that if we were to read the contract through the plaintiff's glasses, this section of the Building Form would literally be describing the rest of the world. If that were the case, this language and in fact that entire section of the contract would be completely erroneous. This court will not interpret a contract in such a manner that would render any provision meaningless. *Wolfensberger v. Eastwood*, 382 Ill. App. 3d 924, 934 (2008).

The language in the Endorsement explicitly states "the following is *added* to paragraph 1. Covered Property as found in Section A." (Emphasis added..) At this point the Endorsement then lists areas which are now to be considered Covered Property, included in this list are: fairways, greens, tees, rough areas, out of bounds areas, sand traps, driving ranges, cart or foot bridges, golf course roadways, ball washers, cups, flags, directional signage, land, lawns, trees, shrubs, plants and sand specifically designed and maintained for the game of golf. This, naturally, is a neat listing of the basic elements of a typical golf course. It is abundantly clear from a plain reading of the contract that the golf course itself was not covered under the original building form, but rather in the Endorsement. It is, therefore, this court's opinion that the golf course is not considered part of the "building" as defined in the Building Form, but rather covered under the Policy's Endorsement.

Golf Course Endorsement

Hickory next argues that the Policy's Endorsement provides for $1,000,000 in coverage for the loss of the trees, averring that the tree loss falls within the scope of coverage listed in Section I.A.d.(1) of the Endorsement, and is not limited by Section II.A.6.

The meaning of the provisions within an insurance policy is a question of law. *Outboard Marine Corp.*, 154 Ill. 2d at 108-09. To determine the intent of the parties as well as the meaning of the words used in the insurance policy, the court must look at the entirety of the policy, taking into consideration the type of insurance the parties have contracted, the risks undertaken and purchased, the subject matter that it insured and the purpose of the contract as a whole. *Crum and Forster Managers Corp.*, 156 Ill. 2d at 391. When the language of the contract is clear, its interpretation is a question of law to be determined only from the terms of the contract. *Platt v. Gateway International Motorsports Corp.*, 351 Ill. App. 3d 326, 329-30 (2004). The rights of the parties to a contract are limited by the terms expressed therein. *Hicks v. Airborne Express, Inc.*, 367 Ill. App. 3d 1005, 1010 (2006). Nonetheless, when words in a policy are susceptible to multiple reasonable interpretations, they will be considered ambiguous and construed in the insured's favor and against the insurer who drafted the policy. *Outboard Marine Corp.*, 154 Ill. 2d at 108-09. Courts are required to interpret contracts as written. *Genesco, Inc. v. 33 North LaSalle Partners, L.P.*, 383 Ill. App. 3d 115, 119 (2008). A contract's conditions and terms, which control the rights of the parties, will be enforced as they appear. *Korte & Luitjohan Contractors, Inc. v. Thiems Construction Co., Inc*., 381 Ill. App. 3d 1110, 1115 (2008). Contracting parties must be allowed to enforce the terms of their contract as it is written. *Gore v.*

Indiana Insurance. Co. 376 Ill. App. 3d 282, 293 (2007).

The Endorsement adds "Covered Property" to the coverage that had already been listed in the Building Form. The sections of the Endorsement that are pertinent to this appeal are I.A.d.(1), I.A.d.(7) and II.A.6. Section I.A.d.(1) adds coverage for "fairways, greens, tees, rough areas, out of bounds areas, sand traps, driving ranges." Section I.A.d.(7) adds coverage for "outdoor grounds including land, lawns, standing timber, trees, shrubs, plants and sand specifically designed maintained for the game of golf," but this is limited by Section II.A.6. which states a discrete limit of "$25,000 for loss or damage, including debris removal, caused by wind, hail or ice to the outdoor grounds, including land, standing timber, trees, shrubs, plants and sand specifically designed and maintained for the game of golf." This limitation clearly applies to the facts of this claim.

Hickory maintains that despite the fact that trees are not specifically listed in Section I.A.d.(1) that they should be covered because the trees are located within the bounds of the areas described. Hickory supports this argument by again referring to Zurich underwriter Rodney Davis' deposition. Davis testified that section I.A.d.(1) is intentionally general, because golf courses vary, making it is impossible to explicitly state exactly what is going to be in a particular area.

Zurich argues that because trees are not expressly listed under section I.A.d.(1) they are not covered under that section. Zurich notes that the only trees that are covered under the entirety of the Policy are those listed and named under Section I.A.d.(7), which, again, is the same section which limits Zurich's liability to $25,000 for trees damaged that are "designed and maintained for

the game of golf." Hickory attempts to avoid this result by speciously suggesting that the damaged trees were not "designed and maintained" for the game of golf.

Zurich and Hickory entered into the Endorsement with the intent of supplementing the Building Form. The Endorsement specifically deals with golf course property that was not previously covered by the Building Form. Section I.A.d.(1) expands coverage for "fairways, greens, tees, rough areas, out of bounds areas, sand traps, driving ranges." This court will not look for ambiguity within the contract, when there is none. *Crum and Forster Managers Corp.,* 156 Ill. 2d at 391. There is no ambiguity in this statement, which clearly lists every aspect of the Golf Course that the Endorsement insures. Therefore, this court must enforce the Endorsement through a plain reading of the contract's language. Where the language of the contract is clear, it must be enforced according to its language. *McLean County Bank v. Brokaw*, 199 Ill. 2d 405, 412 (1988).

Both parties retained expert witnesses to opine about the function and purpose of each of the 64 trees that were damaged or destroyed during the windstorm. Defendant's expert opined that of the 64 trees that were lost, 23 trees "could be considered" "designed and maintained for the game of golf," buy virtue of their placement on a given golf hole. Hickory's expert, meanwhile, found that the location of the trees added "positive aesthetics and strategic play for the country club." The court finds that although there may be a discrepancy with regard to the actual number, it is immaterial. Zurich has previously issued a check to Hickory in the amount of its policy limit for the damage done to the trees. Therefore, the court appropriately granted partial summary judgment to Zurich, as no issue of material fact remained to be decided.

III. CONCLUSION

The owner of the Hickory Hills Golf Course would appear to have placed some considerable value in the trees that occupy its hilly landscape. Whether they are as valuable as plaintiff claims is fodder for debate, but it is abundantly clear that plaintiff did not properly insure for the potential loss of his arboreal stock should a predictable natural event like a windstorm or tornado occur. The plaintiff's tortuous logic of attempting to argue that the trees were not designed or maintained for the game of golf, but were rather part of a "building" that would provide coverage is singularly unpersuasive. The plain language of the insurance contract in question compels us to agree with the circuit court that Zurich was entitled to partial summary judgment, since the damaged trees were subject to the aforementioned policy limit. Hickory's several attempts to legally convert golf course trees into buildings that would not be subject to the $25,000 limit must be summarily denied as being specious and devoid of merit.

For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

Affirmed.