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2013 IL App (4th) 120988-U

NO. 4-12-0988

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
July 3, 2013
Carla Bender
4th District Appellate
Court, IL

BONA FIDE PARTNERSHIP, an Illinois General Partnership,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Champaign County
REGENT INSURANCE COMPANY, a Corporation Domiciled in Wisconsin; and GENERAL CASUALTY INSURANCE COMPANY, a Corporation Domiciled in Wisconsin,)	No. 10L223
Defendants-Appellees.)	Honorable William Hugh Finson, Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Harris and Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err in granting defendants' motion for summary judgment where defendants paid plaintiff the policy limit plus \$10,000 toward plaintiff's debris removal costs under the plain language of the insurance policy.

¶ 2 In September 2012, the trial court awarded summary judgment to General Casualty Insurance Company and Regent Insurance Company (collectively, defendants), in a declaratory judgment action brought against them by plaintiff, Bona Fide Partnership, finding defendants had complied with the terms of the insurance policy and the policy was not ambiguous.

¶ 3 Plaintiff appeals, arguing the trial court erred in granting summary judgment where (1) defendants failed to comply with the plain language of the insurance policy and, in the alternative, (2) the policy is ambiguous and should be interpreted in plaintiff's favor. We affirm.

¶ 4 I. BACKGROUND

¶ 5 Plaintiff's building was insured by defendants pursuant to a Commercial Marketplace Policy (policy). The Declarations page of the policy shows the limit of insurance on the building was \$1,850,000. If the actual loss exceeded the \$1,850,000 policy limit, then the policy provides an additional amount for debris removal. At issue in this case is the correct amount for debris removal.

¶ 6 On November 7, 2008, a commercial building owned by plaintiff was damaged when a neighboring building caught fire.

¶ 7 On December 5, 2008, plaintiff's building was formally condemned.

¶ 8 In a December 10, 2008, letter, defendants notified plaintiff the building "has sustained fire damage to the extent that it requires complete demolition," acknowledged demolition bids were currently being obtained, and indicated once the bids had been reviewed and an agreement reached regarding the scope and cost, demolition could proceed.

¶ 9 Robinett Demolition submitted a successful bid and contracted with plaintiff to demolish and remove the building for \$246,180. Although the exact figure is not apparent from the record, the parties agree the physical damage to plaintiff's property (not counting the cost of debris removal) exceeded the \$1,850,00 policy limit. Defendants paid the policy limit of \$1,850,000 plus \$10,000 for demolition and debris removal.

¶ 10 On November 5, 2010, plaintiff filed a declaratory judgment action against defendants, seeking a finding defendants were required to pay the full cost of the demolition and debris removal. Plaintiff also claimed relief based on detrimental reliance and equitable estoppel, alleging "[d]efendants knew or should have known or expected that Plaintiff would rely upon the representations of the actual, apparent, or implied agents of [d]efendants in making

decisions regarding debris removal."

¶ 11 On December 8, 2010, defendants filed an answer denying plaintiff's allegations and stating under the terms of the policy, they owed no more than \$10,000 for demolition and debris removal. Defendants also stated any reliance by plaintiff on representations made by defendants' agents was unreasonable.

¶ 12 On September 12, 2011, defendants filed a motion for summary judgment, arguing "[p]laintiff's policy of insurance provides coverage for debris removal in the amount of \$10,000 because physical damage to [p]laintiff's building exhausted the policy limits." Defendants also argued plaintiff's estoppel claim "cannot be used to create or increase insurance coverage." Defendants concluded they were entitled to judgment as a matter of law where they complied with the terms of the policy.

¶ 13 On July 24, 2012, plaintiff responded, arguing it was entitled to \$246,180, *i.e.*, reimbursement for the full cost of demolition and debris removal. According to plaintiff, the policy required payment for expenses incurred due to debris removal and "does not limit the circumstances under which payment for these expenses is to be made." Plaintiff maintained, at the very least, the policy was ambiguous and should be interpreted in their favor.

¶ 14 At the September 10, 2012, hearing on defendants' motion for summary judgment, the parties agreed the matter was essentially before the court on cross-motions for summary judgment. At the conclusion of the hearing, the trial court granted defendants' motion for summary judgment. The court found the policy was not ambiguous. The court also found in instances where "the direct total loss to the covered property and the debris removal expenses exceeds the policy limit, the company will pay, as I read the policy, the company will pay the

policy limit plus \$10,000." Thus, the court found plaintiff was entitled to the \$1,850,00 policy limit for the property loss, and, because the physical damage exceeded the policy limit, plaintiff was also entitled to an additional \$10,000 towards debris removal.

¶ 15 This appeal followed.

¶ 16 II. ANALYSIS

¶ 17 On appeal, plaintiff argues the trial court erred in granting summary judgment for defendants where (1) the plain language of the policy requires payment to plaintiff of up to 25% of the amount paid by defendants for loss or damage to the covered property, plus \$10,000 in additional coverage for debris removal because the loss exceeded the policy limit and, in the alternative, (2) the policy is ambiguous and should be interpreted in plaintiff's favor.

¶ 18 A. Standard of Review

¶ 19 Summary judgment is proper only where the pleadings, depositions, admissions, and affidavits on file, when viewed in the light most favorable to the nonmoving party, show there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Lazenby v. Mark's Construction, Inc.*, 236 Ill. 2d 83, 93, 923 N.E.2d 735, 742 (2010). When parties file cross-motions for summary judgment, they agree only a question of law is involved and the court should decide the issue based on the record. *Millennium Park Joint Venture, LLC v. Houlihan*, 241 Ill. 2d 281, 309, 948 N.E.2d 1, 18 (2010). We review the grant of a motion for summary judgment under a *de novo* standard of review. *Coole v. Central Area Recycling*, 384 Ill. App. 3d 390, 395, 893 N.E.2d 303, 308 (2008). The construction of an insurance policy is also a question of law, which we review *de novo*. *Pekin Insurance Co. v. Wilson*, 237 Ill. 2d 446, 455, 930 N.E.2d 1011, 1016 (2010).

¶ 20

B. Rules of Construction

¶ 21 In construing an insurance policy, the primary objective is to ascertain and give effect to the intentions of the parties as expressed in the policy language. *Illinois Farmers Insurance Co. v. Hall*, 363 Ill. App. 3d 989, 993, 844 N.E.2d 973, 976 (2006). When policy language is unambiguous, it will be applied as written, unless it violates public policy. *Illinois Farmers Insurance Co.*, 363 Ill. App. 3d at 993, 844 N.E.2d at 976. If the words of an insurance policy are reasonably susceptible to more than one meaning, they are considered ambiguous and will be construed strictly against the insurer who drafted the policy. *Central Illinois Light Co. v. Home Insurance Co.*, 213 Ill. 2d 141, 153, 821 N.E.2d 206, 213 (2004). This is especially true with regard to provisions that limit or exclude coverage. *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 119, 607 N.E.2d 1204, 1217 (1992). However, "[a] contract is not rendered ambiguous merely because the parties disagree on its meaning." *Central Illinois Light Co.*, 213 Ill. 2d at 153, 821 N.E.2d at 214. "Although policy terms that limit an insurer's liability will be liberally construed in favor of coverage, this rule of construction only comes into play when the policy is ambiguous." *Hobbs v. Hartford Insurance Company of the Midwest*, 214 Ill. 2d 11, 17, 823 N.E.2d 561, 564 (2005). This court will not strain to find an ambiguity where none exists. See *Illinois Farmers Insurance Co.*, 363 Ill. App. 3d at 994, 844 N.E.2d at 976.

¶ 22

C. Language of the Policy

¶ 23 The relevant portions of the policy are as follows:

"A. COVERAGES

We will pay for direct 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.

1. Covered Property

Covered Property, as used in this policy, means the type of property as described in this section, **A.1.** *** if a Limit of Insurance is shown in the Declarations for that type of property.

- a.** Buildings, meaning the buildings and structures at the premises described in the Declarations ***

5. Additional Coverages

a. Debris Removal

(1) We will pay your expense to remove debris of Covered Property caused by or resulting from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid within 180 days of the earlier of:

- (a)** The date of direct physical loss or damage; or
- (b)** The end of the policy period.

(2) The most we will pay under this Additional

Coverage is 25% of:

- (a) The amount we pay for the direct physical loss of or damage to Covered Property; plus
- (b) The deductible in this policy applicable to that loss or damage.

But this limitation does not apply to any additional debris removal limit provided in paragraph (4) below.

- (3) This Additional Coverage does not apply to costs to:

- (a) Extract 'pollutants' from land or water; or
- (b) Remove, restore or replace polluted land or water.

- (4) If:

- (a) The sum of direct physical loss or damage and debris removal expense exceeds the Limit of Insurance; or
- (b) The debris removal expense exceeds the amount payable under the 25% Debris Removal coverage limitation

in paragraph (2) above.

We will pay up to an additional \$10,000 for each location in any one occurrence under the Debris Removal Additional Coverage.

If an increased limit of insurance is purchased, the above \$10,000 Limit of Insurance is replaced by the Debris Removal Limit of Insurance shown in the Declarations."

The "Limits of Insurance" section provides the following:

"C. LIMITS OF INSURANCE

1. The most we will pay for loss or damage in any one occurrence is the applicable Limit of Insurance shown in the Declarations.
2. The limits applicable to the Coverage Extensions and Pollutant Clean Up and Removal Additional Coverage are in addition to the **LIMITS OF INSURANCE.**"

The "Declarations" page shows the "Limits of Insurance" in this case is \$1,850,000.

¶ 24 Reading the policy as a whole, we agree with the trial court the language of the policy is not ambiguous. Section A, "Coverages," subsection 5, "Additional Coverages," part a., "Debris Removal," provides plaintiff can recover an additional amount for debris removal. The amount plaintiff can recover is limited by paragraph 2. Under paragraph 2, "Debris Removal,"

the most defendants will pay for debris removal is 25% of the "direct physical loss of or damage to the covered property" plus the applicable deductible. For example, if the policy limit was \$500,000 and plaintiff's direct physical loss was \$100,000, the *most* defendants would have to pay for debris removal would be 25% of the loss (or \$25,000) plus the deductible (here, \$1,000) or \$26,000 total, assuming the cost of debris removal was at least \$26,000.

¶ 25 Paragraph 4(a) under "Debris Removal" provides where the sum of the "direct physical loss or damage" to the covered property, plus the cost of debris removal expense exceeds the policy limit, then defendant will pay up to an additional \$10,000. Under paragraph 4(b), where the debris removal expense *exceeds* the amount payable under the 25% debris removal coverage limitation, defendant will pay up to an additional \$10,000. Using our example above, assuming a policy limit of \$500,000, a direct physical loss of \$100,000 and debris removal of \$30,000, defendants would pay \$26,000 under paragraph A.5.a.(2) plus an additional \$4,000 under paragraph A.5.a.(4)(b) for a total debris removal expense of \$30,000. If instead of \$30,000, the debris removal expense was \$37,000, defendants would pay \$26,000 under paragraph A.5.a.(2) and \$10,000 under paragraph A.5.a.(4)(b) for a total of \$36,000.

¶ 26 We are dealing here with paragraph 4(a). The plain language of the policy shows the limits of the policy to be \$1,850,000. The parties agree plaintiff's total loss of the building exceeded the \$1,850,000 policy limit. While reading the "Debris Removal" section in isolation might lead to the conclusion defendants are required to pay at least 25% of the total loss for debris removal in every case, reading the policy as a whole shows an overall limit exists to cap defendants' total amount of exposure. Paragraphs 2 and 4(a), read together with the overall limits provided in section "C" of the policy, limit the amount of debris removal coverage available

under the policy.

¶ 27 The plain language of the policy provides an overall limit of \$1,850,000 found in section "C. Limits of Insurance" and the declarations page. While the policy provides for additional coverages, those additional coverages are subject to the "Limits of Insurance" unless the policy states otherwise. For example, the loss of business income (A.5.f), extra expense (A.5.g), and civil authority (A.5.i) additional coverage provisions expressly state "This Additional Coverage is not subject to the Limits of Insurance." In addition, section C(2), "Limits of Insurance," specifically provides "the limits applicable to the coverage extensions and pollutant cleanup and removal additional coverages are in addition to the LIMITS OF INSURANCE." Additional coverage for debris removal does not contain this language, nor does section C., "Limits of Insurance," provide for additional limits for debris removal. Thus, debris removal remains subject to the overall "Limits of Insurance" with the only exception being a maximum additional \$10,000 provided for in paragraph 4.

¶ 28 Here, the total loss exceeded policy limits, so the 25% payment for debris removal is not available because it would further exceed the insurance limit under the policy. Instead, plaintiff is entitled to just the \$10,000 defendants paid for debris removal. We recognize this additional \$10,000 amount, when added to the amount paid for direct physical loss, will result in payments in excess of the \$1,850,000 policy limit. However, the plain language of paragraph 4(a) expressly states if the policy limit is exceeded, then defendants will pay an additional \$10,000. Thus, the \$10,000 is intended to be an exception to the "Limits of Insurance." No such similar language exists with regard to the 25% payout, which for the reasons stated, is conditioned on not exceeding the overall policy limit. See *Whitt Mach., Inc. v. Essex Ins. Co.*,

377 F. Appx. 492, 498 (6th Cir. 2010) (interpreting similar policy provisions to find "subsection A.4.a" does not limit or eliminate the overall policy limit provided in "section C").

¶ 29 We note paragraph 4 also provides the insured an option to purchase an increased debris removal coverage limit with the following language: "If an increased limit of insurance is purchased, the above \$10,000 Limit of Insurance is replaced by the Debris Removal Limit of Insurance shown in the Declarations." Such language strengthens defendants' position. Indeed, the insured would have little incentive to purchase additional debris removal coverage if the policy language allowed the potential to receive coverage in excess of the policy limit.

¶ 30 In sum, because the policy limit in this case was \$1,850,000 and plaintiff's loss exceeded that policy limit, defendants correctly paid the additional \$10,000 for debris removal required by the policy.

¶ 31 **III. CONCLUSION**

¶ 32 For the reasons stated, we affirm the trial court's judgment.

¶ 33 Affirmed.