2014 IL App (1st) 123430-U

FOURTH DIVISION
March 13, 2014

Nos. 1-12-3430 and 1-12-3457, Consolidated

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

OLD REPUBLIC INSURANCE COMPANY, Plaintiff-Appellee, v. GILBANE BUILDING COMPANY and AT&T SERVICES, INC., Defendants-Appellants, and JEFFREY GERASI, Defendant.	)	Appeal from the Circuit Court of Cook County. No. 11 CH 30685 Honorable Michael B. Hyman, Judge Presiding.

PRESIDING JUSTICE HOWSE delivered the judgment of the court. Justices Lavin and Epstein concurred in the judgment.

ORDER

¶ *1* *HELD*: The trial court's order granting summary judgment

in favor of Old Republic is affirmed because Gilbane was not an additional insured under the commercial general liability policy issued by Old Republic to Air Comfort.

¶ 2 On October 19, 2012, the trial court entered summary judgment in favor of plaintiff Old Republic Insurance Company (Old Republic) and against defendants Gilbane Building Company (Gilbane) and AT&T Services, Inc. (AT&T) making a finding that Old Republic had no duty to defend Gilbane or AT&T in an underlying personal injury lawsuit. Gilbane and AT&T appealed that ruling arguing that they were additional insureds on the Old Republic commercial general liability policy and, as a result, Old Republic had a duty to defend them in the underlying lawsuit. AT&T has since been dismissed from the appeal. For the reasons that follow, we find that the trial court did not err in granting summary judgment in favor of Old Republic and, accordingly, affirm the trial court's October 19, 2012 order.

¶ 3 BACKGROUND

¶ 4 Underlying Lawsuit

¶ 5 On December 5, 2006, Jeffrey Gerasi was injured while working as an electrician for Geary Electric Company on a construction project at the building located at 520 South Federal Street in Chicago which was owned by AT&T. Gilbane was the general contractor for the project, and Air Comfort was the

mechanical subcontractor on the site at the time Gerasi sustained injuries.

¶ 6 On July 3, 2008, Gerasi filed a personal injury lawsuit against Gilbane and AT&T. Air Comfort was never named as a defendant in the Gerasi lawsuit, never referenced in any of the Gerasi pleadings, and was never added as a third-party defendant in the matter. Air Comfort was insured under a commercial general liability (CGL) policy that was issued by Old Republic.

¶ 7 Declaratory Judgment & Summary Judgment

¶ 8 On May 27, 2010, Gilbane tendered its defense in the Gerasi lawsuit to Old Republic. On August 30, 2011, Old Republic filed a declaratory judgment action against Gilbane seeking a ruling that it had no duty to defend or indemnify Gilbane with respect to the Gerasi lawsuit.

¶ 9 On February 2, 2012 and March 21, 2012, Gilbane and AT&T (respectively) filed motions for summary judgment. They claimed that because they were named on the certificates of insurance issued by Air Comfort, Old Republic had a duty to defend them in the underlying Gerasi lawsuit. On April 18, 2012, Old Republic filed a cross-motion for summary judgment and response to the motions for summary judgment filed by Gilbane and AT&T claiming that Gilbane and AT&T were not additional insureds on the CGL policy it issued to Air Comfort. Old Republic argued that

although Gilbane and AT&T were listed as additional insureds on the certificate of insurance, there was language in the certificate which stated the certificate extended no rights to either party. As such, Old Republic argued that it had no duty to defend Gilbane or AT&T in the underlying Gerasi lawsuit.

¶ 10 Relevant Contractual Provisions

¶ 11 In Article 5.1 of the subcontract between Gilbane and Air Comfort it states:

> "The Subcontractor [Air Comfort] agrees to, at the time of execution of this Agreement, furnish the Contractor [Gilbane] with certificates of an insurance company (or other source). These certificates should certify that the Subcontractor is protected on the work with worker's compensation and employer's liability, public liability and bodily injury, property damage insurance, and any other insurance as required by the contract documents and in accordance with the attachment to this Agreement entitled 'Insurance Specifications'. The Subcontractor must maintain the insurance coverage for the duration of the project

> including the warranty period. The Subcontractor will not be permitted to start work at the site until these certificates are filed with the Contractor ***. Compliance by the Subcontractor with the foregoing requirements, as to carrying insurance and furnishing certificates, shall not relieve the Subcontractor of its liabilities and obligations."

"Schedule A-Insurance Specifications", which was attached to the subcontract, provides in paragraph 2 that Air Comfort was required to obtain a CGL policy protecting itself and naming its "Employees as additional insured." The "Insurance Specifications" further state, in relevant part:

> "Furnish certificates of insurance prior to on-site operations. Original certificates should be submitted with the execution of the trade contract. The coverage and amounts below are minimum requirements and do not establish limits to the contractor's liability. Other coverage and higher limits may be provided at the contractor's option and expense.

* * *

8. Each insurance certificate must contain the following conditions on the certificate.

A. Gilbane Building Company, [] and [AT&T] are each to be named as 'Additional Insured' on a primary, non-contributing basis on the General Liability, Automobile and Umbrella Policies."

¶ 12 Air Comfort issued a certificate of insurance to Gilbane prior to work commencing, which listed Air Comfort as the insured and Gilbane as the certificate holder. The certificate contains the following provisions:

"THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

* * *

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR

> CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES, AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS."

The certificate listed, among other policies, Air Comfort's CGL policy issued by Old Republic, which was effective on the date of Gerasi's injury. The certificate further stated:

> "Gilbane Building Corporation, AT&T Services, Inc. and Teng and Associates are included as additional insureds under the General Liability, Automobile Liability and Excess Liability (follows form) policies on a primary and non-contributory basis per the terms and conditions of the contract."

On the second page of the certificate of insurance, it states:

> "IMPORTANT
>
> If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on the certificate does not confer rights to the certificate

holder in lieu of such endorsement(s).

* * *

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon."

¶ 13 The CGL policy issued to Air Comfort by Old Republic, which was in effect on the date Gerasi was injured, states that additional insured endorsement extends additional insured status on the CGL to "all persons or organizations as required by contract or agreement." The policy further states that:

"Who is an insured is amended to include as an insured the person or organization shown in the Schedule[1], but only with respect to liability arising out of your

[1] The "Schedule" states that an additional insured includes "All persons or organizations as required by contract or agreement."

ongoing operations performed for that insured."

¶ 14 Trial Court's Ruling

¶ 15 On October 19, 2012, the trial court issued its memorandum and opinion order granting Old Republic's motion for summary judgment and denying AT&T and Gilbane's motions for summary judgment. Specifically, the trial court found that AT&T and Gilbane did not qualify as additional insureds under the CGL policy because the contract between Air Comfort and Gilbane only required that Gilbane and AT&T be listed as additional insureds on the certificate of insurance and did not require them to be listed as additional insureds on the CGL. The trial court further found that even if Gilbane and AT&T were to be listed as additional insureds on the CGL, Gilbane and AT&T's liability did not arise out of Air Comfort's operations because the Gerasi complaint was silent as to Air Comfort's involvement in the injuries sustained by Gerasi, and because the trial court could not look outside the complaint allegations and insurance contracts in determining whether liability arose out of Air Comfort's operations as "doing so might determine a crucial issue in the underlying lawsuit." Because the trial court's ruling disposed of the case in its entirety, the trial court did not address any of the arguments relating to notice or estoppel that

had been raised by the parties in their motions.

¶ 16 Appellate Proceedings

¶ 17 On November 15, 2012, Gilbane timely filed its notice of appeal. In its appeal, Gilbane claims that the trial court's interpretation of the subcontract between Gilbane and Air Comfort was too literal and that the parties intended Gilbane to be an additional insured on the CGL policy. On September 13, 2013, we entered an order allowing Gilbane to adopt AT&T's argument that Old Republic is estopped from denying coverage to Gilbane and AT&T due to Old Republic's alleged delay in filing its declaratory judgment action. On December 9, 2013, AT&T was dismissed from the appeal because it settled in the underlying matter and an insurance company other than Old Republic paid out on the claim. Because we find that the holding in *United Stationers Supply Co. v. Zurich American Insurance Co.*, 386 Ill. App. 3d 88 (2008) dictates the outcome of this appeal, and for the reasons stated below, we affirm the trial court's order granting summary judgment in favor of Old Republic.

¶ 18 ANALYSIS

¶ 19 Mootness

¶ 20 Before we address the merits of this appeal, we must first address Old Republic's contention that Gilbane no longer has an interest in this appeal, thus making it moot. Old Republic has

indicated, and Gilbane has confirmed, that Gilbane's motion for summary judgment in the underlying Gerasi personal injury lawsuit was granted in Gilbane's favor. Old Republic indicated that Gilbane "target tendered" its defense to Nationwide, Geary Electric Company's insurance carrier, who accepted the tender under a reservation of rights. In its reply brief, Gilbane noted that Gerasi has appealed the order granting summary judgment in favor of Gilbane, and that appeal is still pending. Gilbane further noted that Nationwide's policy limits were exhausted in settling Gerasi's lawsuit against AT&T. We recognize that a decision here would impact the underlying lawsuit, if reversed on appeal, and affect who may ultimately pay the costs of Gilbane's defense. Accordingly, this issue is not moot as rendering an order will not amount to this court deciding a moot or hypothetical case, enabling the parties to secure an advisory opinion, or seek legal advice from the court with respect to anticipated future difficulties. See *Weber v. St. Paul Fire & Marine Insurance Co.*, 251 Ill. App. 3d 371, 373 (1993).

¶ 21 Summary Judgment

¶ 22 "The construction of an insurance policy and a determination of the rights and obligations thereunder are questions of law for the court which are appropriate subjects for disposition by way of summary judgment." *Crum & Forster Managers Corp. v.*

Resolution Trust Corp., 156 Ill. 2d 384, 391 (1993). "As in this case, where the parties file cross-motions for summary judgment, they invite the court to decide the issues presented as a matter of law." *Liberty Mutual Fire Insurance Co. v. St. Paul Fire & Marine Insurance Co.*, 363 Ill. App. 3d 335, 339 (2005). Summary judgment is appropriate only where the pleadings, depositions, admissions and affidavits, viewed in the light most favorable to the nonmovant, show that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. See 735 ILCS 5/2-1005(c) (West 2008). We review an order granting summary judgment *de novo.* See *Schultz v. Illinois Farmers Insurance Co.,* 237 Ill. 2d 391, 400 (2010).

¶ 23 Our primary duty in construing an insurance contract is "to ascertain and give effect to the intentions of the parties as expressed in the agreement. If insurance policy terms are clear and unambiguous, they must be enforced as written unless doing so would violate public policy." *Schultz,* 237 Ill. 2d at 400. However, "[a] policy provision is not rendered ambiguous simply because the parties disagree as to its meaning. [Citation.] Rather, an ambiguity will be found where the policy language is susceptible to more than one reasonable interpretation. [Citations.]" *Founders Insurance Co. v. Munoz,* 237 Ill. 2d 424, 433 (2010). "A contract term is not ambiguous [] if a court can

ascertain its meaning from the general contract language." *William Blair & Co., LLC v. FI Liquidation Corp.*, 358 Ill. App. 3d 324, 334 (2005).

¶ 24 The Subcontract Between Gilbane and Air Comfort Did Not Require Air Comfort to List Gilbane as an Additional Insured on the CGL.

¶ 25 Here, we agree with the trial court in that the language of the subcontract between Air Comfort and Gilbane is clear and unambiguous. The subcontract only requires that Air Comfort list Gilbane as an additional insured on its certificate of insurance, which Air Comfort did, and does not require Gilbane be added as an additional insured on the CGL policy. The subcontract does, however, require that the employees of Air Comfort be named as additional insureds on the CGL policy, implying that the parties knew how to ensure that certain parties were included as additional insureds on the CGL policy. Moreover, our interpretation of the contract language at issue here is not novel as this court has already construed nearly identical contract language in *United Stationers Supply Co. v. Zurich American Insurance*, 386 Ill App. 3d 88 (2008). The relevant contract language in *United Stationers* states that D.C. Taylor was to obtain certificates of insurance and that "[s]uch Certificates shall name [United Stationers] as an additional insured on a primary and noncontributory basis." Based on this

language, the court found that because "the construction contract requiring D.C. Taylor to purchase insurance on behalf of United Stationers did not specifically require the purchase of a commercial general liability policy" there was no coverage under the CGL policy. *United Stationers*, 386 Ill App. 3d at 89, 105-06.

¶ 26 Furthermore, Gilbane essentially concedes that the language in the subcontract between itself and Air Comfort[2] only required Gilbane be listed as an additional insured on the certificate of insurance and not the CGL policy. Gilbane not only argues that the trial court erred because it read to the language of the subcontract too literally ("[t]he court's overly literal interpretation of the subcontract's requirements"), but on appeal Gilbane requests that we "enlarge[] the language in the subcontract beyond the literal meaning" in order to find that Gilbane was an additional insured on the CGL policy. We cannot do this.

¶ 27 It is well-settled law in Illinois that a court cannot alter, change or modify existing terms of a contract, or add new terms or conditions to which the parties have not expressly assented. *Thompson v. Gordon*, 241 Ill. 2d 428, 449 (2011).

[2] The subcontract is on Gilbane stationary.

"Illinois follows the 'four corners rule' for contract interpretation, in that, an agreement, when reduced to writing, must be presumed to speak the intention of the parties who signed it. It speaks for itself, and the intention which it was executed must be determined from the language used. It is not to be changed by extrinsic evidence." (Internal quotation marks omitted.) *Air Safety, Inc. v. Teachers Realty Corp.*, 185 Ill. 2d 457, 462 (1999). As such, despite Gilbane's argument that the trial court's literal interpretation of the contract terms results in an absurd outcome, we cannot change or modify the clearly expressed language in the contract, which only requires Gilbane be placed as an additional insured on the certificate of insurance.

¶ 28 Further, there is a strong presumption against provisions that could have easily been included in the contract, but were not. *Thompson*, 241 Ill. 2d at 449; *Clarendon America Insurance Co. v. 69 West Washington Management, LLC*, 374 Ill. App. 3d 580, 589 (2007). Here, as stated earlier, the subcontract clearly required that Air Comfort list its employees as additional insureds on the CGL policy. However, not only did it not require Gilbane to be listed as an additional insured on the CGL policy, but it required only that Gilbane be listed as an additional insured on the certificate of insurance--a certificate that

specifically stated it did not confer any addition rights upon Gilbane beyond those found in the subcontract. As such, Gilbane could have easily contracted to have it listed as an additional insured on the CGL policy, but it did not do so. Instead, it specifically contracted to have Gilbane listed on the certificate of insurance, which does not give Gilbane additional insured status on the CGL policy.

¶ 29 The Statement of Gilbane's Name on the Certificate of Insurance Does Not Make it an Additional Insured on the CGL Policy.

¶ 30 The certificate of insurance that Air Comfort delivered to Gilbane specifically states that the certificate does not confer any additional rights on the certificate holder outside of those contained in the subcontract.[3] Illinois courts have previously examined certificates of insurance with disclaimers like the one at issue here, and the effect that such a certificate has on the interpretation of insurance clauses is governed by two lines of cases. See *United Stationers Supply Co.,* 386 Ill. App. 3d at 102 (discussing the divergent lines of precedent). If the certificate does not mention the policy and the terms of the two conflict, then the certificate generally controls coverage.

[3] Of note, throughout the briefs, Gilbane repeatedly states that the certificate of insurance at issue here does not grant Gilbane any actual rights.

Westfield Insurance Co. v. FCL Builders, Inc., 407 Ill. App. 3d 730, 736-37 (2011). However, where the certificate refers to the policy and expressly disclaims any coverage other than that contained in the policy itself, the policy controls. *Id.* This case falls into the latter and, thus, the policy language, which does not require Gilbane to be added as an additional insured on the CGL policy, governs.

¶ 31 Moreover, this case is analogous to *United Stationers*, which addresses policy language that is nearly identical to the policy language at issue here. See *United Stationers Supply Co.*, 386 Ill. App. 3d at 88[4]. In *United Stationers,* Zurich issued a CGL policy to D.C. Taylor, a company that was performing roofing services at a building owned by United Stationers. *Id.* at 90. One of United Stationer's employees was injured while using D.C. Taylor's equipment. *Id.* That employee filed a lawsuit against D.C. Taylor, and D.C. Taylor in turn filed third-party

[4] Specifically, in *United Stationers*, the Zurich CGL policy states, in relevant part: "A. WHO IS AN INSURED (Section II) is amended to include as an insured any person or organization whom you are required to add as an additional insured on this policy under a written contract or written agreement." The certificate of insurance that was issued by D.C. Talyor listing United Stationers as an additional insured (as required by the construction contract) states that the certificate "is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policies below."

contribution claims against United Stationers. *Id.* United Stationers sought coverage under the CGL policy issued to D.C. Taylor by Zurich for the allegations. *Id.* Zurich filed a motion for summary judgment claiming that it did not have a duty to defend United Stationers because United Stationers was not an additional insured on the CGL policy. *Id.* at 88. The circuit court granted summary judgment in favor of Zurich, and the appellate court affirmed finding that United Stationers was not an additional insured under the CGL policy issued to D.C. Taylor by Zurich. *Id.*

¶ 32 In coming to its holding, the *United Stationers* court emphasized that the certificate of insurance contained a disclaimer that the coverage was governed by the policy itself and that the construction contract required that United Stationers be named as an additional insured on different types of insurance, but not on the CGL insurance. *Id.* at 104. Based upon those facts, the court found that, as a matter of law, "United Stationers is not an additional insured under the CGL policy because: (1) United Stationers is not specifically listed as an additional insured in the policy; (2) the construction contract requiring D.C. Taylor to purchase insurance on behalf of United Stationers did not specifically require the purchase of a commercial general liability policy; (3) there is no evidence of

intent by the parties that United Stationers was to be added as an additional insured; and (4) the disclaimer language in the certificate of insurance put United Stationers on notice that the CGL policy language governed coverage of additional insureds." *Id.* at 105.

¶ 33 Here, like in *United Stationers*, Gilbane was not listed as an additional insured on the CGL policy; the policy stated that additional insureds would be added under the CGL policy where required by contract and the subcontract between Air Comfort and Gilbane did not require Gilbane be added as an additional insured on the CGL policy; there was no evidence that the parties intended Gilbane to be an additional insured on the CGL policy[5] because the clear and unambiguous language of the subcontract did not make such a requirement; and the certificate of insurance contained a disclaimer that no additional rights were conferred within it, thus putting Gilbane on notice that the CGL policy, where it was not named as an additional insured, controlled. See *Westfield Insurance*, 407 Ill. App. 3d at 736-37 (finding no duty defend where the general contractor was listed as an additional

[5] While Gilbane now argues that it was Gilbane's intention that it be named as an additional insured on the CGL policy, there was no evidence presented that this was the intention of the parties when they drafted the subcontract or at any time prior to the Gerasi incident.

insured on the subcontractor's certificate of insurance and the certificate contained a disclaimer of rights.).

¶ 34 Gilbane cites to *Mid-Am Builders, Inc. v. Federated Mutual Insurance Co.*, 194 F. Supp. 2d 822 (C.D. Ill. 2002) and *Town of Fort Ann v. Liberty Mutual Insurance Company*, 893 N.Y.S.2d 682 (2010) for the proposition that being listed as an additional insured on the certificate of insurance is the functional equivalent of being listed as an additional insured on the CGL policy; however, neither case is controlling here. In *Mid-Am Builders*, the issue was whether a cover letter transmitted simultaneously with a subcontract should be read together as a single instrument. Here, the two documents at issue--the subcontract and certificate of insurance--were not submitted together, are routinely not issued together, and our courts have held that such documents are not to be read together. See *Clarendon America Insurance Co.*, 374 Ill. App. 3d at 587. Further, in *Mid-Am Builders*, after receiving a copy of the certificate of insurance, the vice president of the subcontractor "called an agent at [the insurance company] and requested that [the general subcontractor] be named as an additional insured under the [subcontractor's] policy." *Mid-Am Builders*, 194 F. Supp. 2d at 824. Thus, in *Mid-Am Builders* there was clear evidence that the parties intended the subcontractor to be listed

as an additional insured on the CGL. Here, there is no such evidence of any intention that Gilbane be listed as an additional insured on the CGL policy and, in fact, the language in the subcontract and CGL policy explicitly state just the opposite. And, last, the discussion in *Mid-Am Builders* did not even touch upon the Illinois case law regarding certificates of insurance and disclaimers contained in certificates of insurance, which is essential in deciding the issues in this appeal.

¶ 35 Besides the obvious fact that the second case relied on by Gilbane is a New York case that has no controlling weight in Illinois, *Town of Fort Ann* is factually distinguishable from the case at bar. First, Gilbane concedes that the issue presented in *Town of Fort Ann* is different than the issue we are addressing herein, and we agree. Second, the certificates of insurance in *Town of Fort Ann* were never requested by the party seeking coverage and, as such, we have no way of knowing what language was contained in those certificates. In Illinois, as stated above, the language contained in the certificate of insurance is crucial in determining additional insured status, and is often dispositive in whether there is coverage or not. See *United Stationers Supply Co.*, 386 Ill. App. 3d at 102; *International Amphitheatre Co. v. Vanguard Underwriters Insurance Co.*, 177 Ill.

App. 3d 555 (1988) (If the certificate does not include a disclaimer, the insured may rely on representations made in the certificate); *Lezak & Levy Wholesale Meats, Inc. v. Illinois Employers Insurance Co.*, 121 Ill. App. 3d 954 (1984) (If the certificate includes a disclaimer, the insured may not rely on representations made in the certificate but must look to the policy itself to determine the scope of coverage.). As such, given the obvious factual differences and nonbinding nature of a New York case, we find *Town of Fort Ann* is irrelevant here.

¶ 36 Given that we have affirmed the trial court's ruling that Old Republic did not have a duty to defend Gilbane, Gilbane cannot raise an estoppel argument against Old Republic. See *Employers Insurance of Wausau v. Ehlco Liquidating Trust*, 186 Ill. 2d 127, 151 (1999) (The "estoppel doctrine applies only where an insurer has breached its duty to defend"); see *Employers Reinsurance Corp. v. E. Miller Insurance Agency, Inc.*, 332 Ill. App. 3d 326, 341 (2002). The general rule of estoppel provides that an insurer which takes the position that a complaint potentially alleging coverage is not covered under a policy that includes a duty to defend may not simply refuse to defend the insured. *Ehlco Liquidating Trust*, 186 Ill. 2d at 151. Rather, the insurer has two options: (1) defend the suit under a

reservation of rights or (2) seek a declaratory judgment that there is no coverage. *Id.* If the insurer fails to take either of these steps and is later found to have wrongfully denied coverage, the insurer is estopped from raising policy defenses to coverage. *Id.* However, application of the estoppel doctrine is not appropriate if the insurer had no duty to defend, or if the insurer's duty to defend was not properly triggered. *Id.* These circumstances include where the insurer was given no opportunity to defend; where there was no insurance policy in existence; and where, when the policy and the complaint are compared, there clearly was no coverage or potential for coverage. *Id.* Here, given that we have found that the clear and unambiguous language of the subcontract shows that Old Republic had no duty to defend Gilbane, Gilbane's estoppel argument fails.

¶ 37 Finally, Old Republic argues that it would not have to provide coverage to Gilbane even if the policy could be construed as naming Gilbane as an additional insured. Old Republic argues that the injury suffered by Gerasi did not arise out of the operations of Air Comfort, which is one of the conditions of coverage of the policy, and cites *Pekin Insurance Co. v. Precision Dose, Inc.*, 2012 IL App. (2d) 110195 and *Pekin Insurance Co. v. Wilson*, 237 Ill. 2d 446 (2010), in support of

this argument. Gilbane argues that the injury suffered by Gerasi did arise out of operations of Air Comfort, and cites *American Economy Insurance Co. v. Holabird and Root*, 382 Ill. App. 3d 1017 (2008), in support of its argument. However in light of our finding that Gilbane was not an additional insured under the CGL policy, we need not address the other issues raised by the parties in this appeal (see *United Stationers*, 386 Ill. App. 3d at 106), regardless of whether we find those arguments to be compelling.

¶ 38 CONCLUSION

¶ 39 For all the reasons stated above, we affirm the trial court's October 19, 2012 order granting summary judgment in favor of Old Republic.

¶ 39 Affirm.