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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

CENTURY SURETY COMPANY,)	Appeal from the Circuit Court
)	of Lake County.
Plaintiff and Counterdefendant-,)	
Appellee,)	
v.)	No. 13-MR-194
)	
WINCHESTER INDUSTRIAL CONTROLS)	
LLC,)	
Defendant and Counterplaintiff-)	
Appellant,)	
)	Honorable
(Fidelitone Inc. d/b/a Fidelitone Logistics,)	Jorge L. Ortiz,
Defendant).)	Judge, Presiding.

PRESIDING JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Jorgensen and Birkett concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly granted the insurance company judgment on the pleadings on both its motion for declaratory judgment and the appellant's counterclaim.

¶ 2 This case arises from an insurance coverage declaratory judgment action. The plaintiff insurance company, Century Surety Company (Century), sought a declaration that it did not have a duty to defend or indemnify the defendant, Winchester Industrial Controls LLC (Winchester), in connection with a lawsuit filed against Winchester by Fidelitone. In response, Winchester

filed a counterclaim, arguing that Century was obligated to defend and indemnify it. The circuit court of Lake County subsequently granted Century judgment on the pleadings as to both Century's motion for a declaratory judgment and Winchester's counterclaim. For the reasons that follow, we affirm that order.

¶ 3

BACKGROUND

¶ 4 Winchester purchased two policies from Century that provided it insurance coverage in the event it was sued for damages arising from bodily injury or property damage. The policies Winchester purchased specifically provided that coverage would not be provided for alleged damages arising out of "impaired property" or an inability to access certain electronic data. Impaired property was defined as property that has not been physically injured but rather was property that cannot be used as intended due to a defect, deficiency, or inadequacy of the insured's work.

¶ 5 Fidelitone filed a complaint against Winchester and others. The complaint alleged that Fidelitone contracted with the Beacon Group, LLC (Beacon) "to design and implement a 'Solution' for its logistical and supply chain processes and to provide productivity and efficiency improvements" in Fidelitone's Wauconda facility. Winchester was one of Beacon's subcontractors. Fidelitone claimed that, although it spent over \$2 million on the "Solution," it never worked. Fidelitone therefore sought to recover its economic losses from Winchester and the others due to the failure of the "Solution."

¶ 6 After Winchester was sued by Fidelitone, Winchester requested Century to defend it against Fidelitone's complaint. Century refused and instead filed a motion for a declaratory judgment, seeking a declaration that it owed Winchester neither a duty to defend it nor to indemnify it. Winchester filed a counterclaim, arguing that Century did owe a duty to defend it.

The trial court found that based on the plain language of the policies, Century did not owe a duty to defend or indemnify Winchester. The trial court therefore granted Century judgment on the pleadings as to both its complaint and Winchester's counterclaim. Winchester filed a timely notice of appeal.

¶ 7

ANALYSIS

¶ 8 Winchester argues that the trial court erred in ruling in Century's favor because (1) there is a question as to whether the two policies at issue should be treated as separate policies or one continuous policy; (2) the limitations of coverage endorsement provided Winchester additional coverage than provided by the terms of the general policies; and (3) the trial court's interpretation of Century's legal duty to defend was too narrow. All of Winchester's arguments fail.

¶ 9 At the outset, we note that because Winchester's claims pertain to the interpretation of an insurance contract and the trial court entering judgment on the pleadings on behalf of Century, our standard of review is *de novo*. See *Area Erectors, Inc. v. Travelers Property Casualty Co. of America*, 2012 IL App (1st) 111764, ¶¶ 19-20.

¶ 10 Here, Winchester purchased an insurance policy from Century for the period from June 23, 2011, to June 23, 2012. Winchester then purchased a second policy from Century for the period from June 23, 2012, to June 23, 2013. Winchester's first argument—that the two policies should be treated as one continuous policy—is contradicted by over 100 years of precedent in this state. See *Hartford Fire Insurance Co. v. Walsh*, 54 Ill. 164, 167 (1870) (every renewal of a policy of insurance, being based upon new consideration and optional for both parties, is a new contract); *Burmac Metal Finishing Co. v. West Bend Mutual Insurance Co.*, 356 Ill. App. 3d 471, 480 (2005) (same). Accordingly, we will consider the two policies at issue as separate policies.

The second policy clearly does not provide any coverage to Winchester because it indicates that it does not provide coverage for incidents arising prior to June 23, 2012. The allegations in Fidelitone's complaint allege that Winchester's misconduct occurred prior to that date.

¶ 11 As to the first policy, Winchester contends that there is a conflict between the general language of the policy and the "limitations of coverage" endorsement. Although Winchester acknowledges that the policy precludes coverage for damages arising from impaired property, it maintains that the limitations of coverage endorsement actually provides it additional coverage. Winchester insists that because the endorsement specifically referred to the type of work that it was doing on behalf of Fidelitone, the endorsement necessarily meant that Century would be obligated to defend it if Winchester was sued by Fidelitone. Winchester's argument contradicts the plain language of the insurance contract.

¶ 12 The endorsement at issue provided that it "changes the policy" and provides "limitation of coverage to specified classifications, operations, premises, or projects." The endorsement described the operations as the "[s]ervicing, maintenance, & repair for conveyor systems in commercial buildings [,] including develop and design of computer software that drives the conveyor system." The endorsement further provided that insurance coverage was for "bodily injury" and "property damage" that arises from the "operations shown above."

¶ 13 A court's primary objective in construing the language of the policy is to ascertain and give effect to the intentions of the parties as expressed in their agreement. If the terms of the policy are clear and unambiguous, they must be given their plain and ordinary meaning. *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 119 (1992).

¶ 14 In reading the first policy in conjunction with the endorsement, it is clear that Century was providing insurance only for bodily injury and property damage. The "limitation of

coverage” endorsement provided that it would only provide coverage if Winchester was performing specified business operations. Thus, the “limitation of coverage” endorsement provided less coverage than the policy without the endorsement would have. Winchester’s argument that the endorsement provided additional coverage is without merit.

¶ 15 In its final argument, Winchester insists that Century should have provided it a defense because Fidelitone “might” have eventually plead something that potentially fell within the insurance coverage that it had purchased from Century. This argument is contrary to clear precedent. It is well-settled that an insurer’s duty to defend is determined by comparing the allegations in the underlying complaint to the relevant provisions of the insurance policy. *Id.* at 107-08. An insurer’s duty to defend arises if the complaint alleges facts that fall within, or potentially within, the policy’s coverage. *United States Fidelity & Guaranty Co. v. Wilkin Insulation Co.*, 144 Ill. 2d 64, 73 (1991). Thus, this court considers the allegations that were actually filed in the underlying complaint, not ones that “might” have been. Based on this standard, the trial court did not err in determining that Century owed no duty to defend Winchester.

¶ 16

CONCLUSION

¶ 17 For the foregoing reasons, the judgment of the circuit court of Lake County is affirmed.

¶ 18 Affirmed.