

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).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THOMAS G. WALKER,)	Appeal from the Circuit Court
)	of Du Page County.
Plaintiff-Appellant,)	
)	
v.)	No. 15-C-1454
)	
SAFECO INSURANCE CO. OF)	
ILLINOIS,)	Honorable
)	Peter W. Ostling,
Defendant-Appellee.)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Zenoff and Spence concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly entered summary judgment in favor of defendant insurance company: Plaintiff sought \$3,000 in coverage under a liability section of the policy that was inapplicable to the claim and instead was due only \$250 under a property loss section of the policy.

¶ 2 Plaintiff, Thomas G. Walker, appeals the trial court's grant of summary judgment in favor of defendant, Safeco Insurance Co. of Illinois. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Plaintiff maintains a homeowner's policy. His grandson, who lives in the home, found an apartment for rent in Washington D.C. on Craigslist, and wired \$4,600 to the alleged owner. The

recipient of the funds did not own the apartment, however; the grandson had been tricked. The money was never recovered.

¶ 5 Plaintiff sought insurance coverage under his homeowner's policy for the \$4,600 loss. In an email sent to the insurance company, plaintiff sought \$3,000 in coverage based on the policy limit listed on the policy declarations page for a "Fund Transfer." Plaintiff also made reference to coverage in the policy for negotiable instruments and fund transfer cards. Defendant denied the request for \$3,000 in coverage and instead offered \$250, which it stated was the policy limit for the theft of money.

¶ 6 Plaintiff filed a small claims action seeking \$3,000 in coverage "for the insurance limit specified in the homeowner declaration sheet for 'fund transfer' loss." Defendant moved for summary judgment. The parties tendered to the court the insurance policy and the declarations page. There were no affidavits filed and, while a hearing was held on the motion, there is no transcript or substitute for a transcript in the record.

¶ 7 Section I of the insurance policy provided for property coverage. That section included coverage for theft of personal property and included a section for special limits for personal property which provided that "[t]he following groups of personal property are covered only up to the special limit shown on your Policy Declarations page." It then listed in part: "a. Money, pre-paid cards or passes, monetary value carried on electronic-chip or magnetic cards, bank notes, bullion, gold other than goldware, silver other than silverware and platinum." It also listed "c. Securities, debit cards, checks, cashier's checks, traveler's checks, money orders and other negotiable instruments, accounts, deeds, evidences of debt, letters of credit, notes other than bank notes, manuscripts, passports, tickets, personal documents, and records or data."

¶ 8 Section II of the policy provided for liability coverage. That section stated that the insurer would pay up to the limit of liability for the damages for which the insured was legally liable if a claim was made or suit was brought against the insured for damages because of bodily injury or property damage caused by an occurrence to which coverage applied. It then listed additional liability coverages, including “Credit Card, Fund Transfer Card, Forgery and Counterfeit Money,” stating that it would pay up to the limit shown on the policy declarations page for the legal obligation of an insured to pay because of theft or unauthorized use of credit cards or “b. loss resulting from theft or unauthorized use of a fund transfer card used for deposit, withdrawal, or transfer of funds.” The policy stated that it did not cover “use” by a resident of insured’s household, a person entrusted with the credit card or fund transfer card, or any person if any insured had not complied with all terms and conditions under which the credit card or fund transfer card was issued.

¶ 9 The policy came with a separate policy declarations page. That page, under Section I for property coverages and special limits of liability stated “a. Money, pre-paid cards. . .” and listed a \$250 limit. It also listed “c. Securities, debit cards. . .” with a limit of \$3,000. The page then listed a new section for “Other Additional Policy Coverages,” which included “Credit Card, Fund Transfer, Forgery & Counterfeit Money” with a limit of \$3,000. The declaration page did not specifically list that those items were under section II of the policy or use the words “liability coverages.” However, none of the items under the policy for property coverages were listed in that section.

¶ 10 In its motion for summary judgment, defendant argued that the claim fell under Section I of the policy as a property loss for theft of money and thus was limited to \$250 coverage under the policy. Defendant further argued that there was no coverage available under Section II

pertaining to a fund transfer card, as the loss was not a liability loss arising from a legal obligation of plaintiff to pay a third party. Defendant argued that there was also no coverage under that section for use by a resident of the household, thus defendant did not have an insurable interest under that section of the policy. The trial court granted defendant's motion for summary judgment, and plaintiff appeals.

¶ 11

II. ANALYSIS

¶ 12 Plaintiff contends that defendant and the trial court wrongly construed the claim as being brought under the section of the policy for liability coverage. He argues that the provision for a "Fund Transfer" on the declarations page applies, and entitles him to \$3,000 instead of \$250 for a loss of money. Defendant responds that the policy declarations page limit for a "Fund Transfer" refers to coverage under the liability coverage section of the policy, which is not applicable to the case.

¶ 13 The construction of an insurance contract and a determination of the rights and obligations of the contracting parties are questions of law and are suitable for resolution by summary judgment. *Continental Casualty Co. v. Donald T. Bertucci, Ltd.*, 399 Ill. App. 3d 775, 776 (2010). Summary judgment is proper where, when viewed in the light most favorable to the nonmoving party, the pleadings, depositions, admissions, and affidavits on file reveal that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. *Williams v. Manchester*, 228 Ill. 2d 404, 417 (2008). Whether the entry of summary judgment was appropriate is a matter that we review *de novo*. *Id.*

¶ 14 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."

Westfield Insurance Co. v. FCL Builders, Inc., 407 Ill. App. 3d 730, 733 (2011) (quoting *Schultz v. Illinois Farmers Insurance Co.*, 237 Ill. 2d 391, 400 (2010)). Also, “[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.]” *Id.* (quoting *Founders Insurance Co. v. Munoz*, 237 Ill. 2d 424, 433 (2010)).

¶ 15 “[A]n insurance policy must be interpreted from an examination of the complete document.” *Hobbs v. Hartford Insurance Company of the Midwest*, 214 Ill. 2d 11, 23 (2005). The declarations page of an insurance policy is but one piece of the insuring agreement and, although it contains important information specific to the policyholder, it cannot address every conceivable coverage issue. *Id.* “Thus, some uncertainty could arise if the declarations page is read in isolation from the rest the agreement.” *Id.* Accordingly, all provisions of an insurance policy must be construed together. See *id.*

¶ 16 Here, plaintiff asks this court to read the declarations page without reference to the policy as a whole. But, when the declarations page is read in conjunction with the policy (as we must read it, see *id.*), it is clear that the reference to a “Fund Transfer” on the declaration page refers to the liability section of the policy. In other words, the declarations page did not, as plaintiff suggests, establish freestanding liability coverage, apart from the liability-coverage section, for a loss that resulted from a transfer of funds.

¶ 17 Our determination concerning the liability-coverage section is dispositive. As defendant notes, and plaintiff does not argue otherwise, the liability section of the policy is not applicable where the insured has incurred no liability to a third party. See *Carlson v. Rehabilitation Institute of Chicago*, 2016 IL App (1st) 143853, ¶ 14. Moreover, as defendant also notes, the policy

specifically excludes coverage for loss by a household member. Thus, the provision on the declarations page for a “Fund Transfer” is not applicable. Instead, the provision for the theft of “money” with a limit of \$250 is the applicable provision.

¶ 18 While plaintiff at one time appeared to assert that the limit for a loss of a negotiable instrument might apply, he did not develop that argument before the trial court and does not present it in any way on appeal. Accordingly, any argument concerning the applicability of that provision has been forfeited. *Carlson*, 2016 IL App (1st) 143853, ¶ 36.

¶ 19 III. CONCLUSION

¶ 20 For the reasons stated, the judgment of the circuit court of Du Page Country is affirmed.

¶ 21 Affirmed.