2012 IL App (1st) 112651-U

No. 1-11-2651

SIXTH DIVISION
June 22, 2012

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JOHN MAGRUDER and JACQUELINE MAGRUDER,	)	Appeal from the
	)	Circuit Court of
Plaintiffs-Appellants,	)	Cook County
	)	
v.	)	No. 10 CH 53081
	)	
METROPOLITAN PROPERTY AND CASUALTY	)	
INSURANCE COMPANY,	)	Honorable
	)	Richard J. Billik, Jr.,
Defendant-Appellee.	)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Justices Garcia and Palmer concurred in the judgment.

O R D E R

¶ 1 *Held*: The unambiguous terms of the insured's personal excess liability policy did not provide excess underinsured motorist coverage.

¶ 2 Plaintiffs John and Jacqueline Magruder appeal the dismissal of their declaratory judgment action against defendant, Metropolitan Property & Casualty Insurance Company

(Metropolitan). The trial court found that the unambiguous terms of plaintiffs' personal excess liability policy did not provide excess underinsured motorist (UIM) coverage. For the reasons that follow, we affirm the judgment of the trial court.

¶ 3 I. BACKGROUND

¶ 4 In December 2008, plaintiff John Magruder was injured in an auto accident while driving his 2004 Ford pickup truck. At that time, plaintiffs John and Jacqueline Magruder had in effect an automobile insurance policy and an umbrella, or personal excess liability, policy issued by defendant Metropolitan. The automobile policy provided UIM coverage at a maximum of $100,000 for each person and $300,000 per occurrence. The umbrella policy provided for a $1,000,000 coverage limit and listed the above-mentioned automobile policy among the underlying insurance policies to which the umbrella coverage would attach.

¶ 5 The liability insurer for the at-fault driver compensated plaintiffs for their injuries in the full amount of its policy, $250,000. Accordingly, the $100,000/$300,000 UIM coverage under the plaintiffs' Metropolitan automobile policy was inapplicable because the at-fault driver's settlement exceeded the limits of the plaintiffs' applicable UIM coverage.

¶ 6 In January 2009, plaintiffs replaced their damaged vehicle and changed the vehicle information on their umbrella policy. Metropolitan sent plaintiffs a declaration page confirming that change to the umbrella policy. That declaration included, near the bottom of the second page and below the listing of the underlying automobile and homeowners policies, the following statement: "This policy does not provide uninsured or underinsured motorists coverage."

¶ 7 Plaintiffs made a claim under their Metropolitan umbrella policy for UIM benefits based on damages from the December 2008 accident and requested arbitration. Metropolitan, however, denied the claim on the basis that its umbrella policy did not provide UIM coverage. Specifically, Metropolitan stated that the policy clearly stated that it was a personal excess liability policy; its coverage was for damages to others for which the law held Metropolitan's insured responsible; and the policy expressly excluded coverage for any personal injury to Metropolitan's insured.

¶ 8 In December 2010, plaintiffs filed a declaratory judgment action, seeking a declaration that Metropolitan owed them UIM coverage under their umbrella policy and an order that Metropolitan must participate in arbitration. Metropolitan filed a motion to dismiss pursuant to section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2010)), which was granted with prejudice. Plaintiffs timely appealed.

¶ 9 II. ANALYSIS

¶ 10 We review an order granting or denying a section 2-615 motion *de novo*. *City of Chicago v. Beretta U.S.A. Corp.*, 213 Ill. 2d 351, 364 (2004). A 2-615 motion to dismiss challenges the legal sufficiency of the complaint by alleging defects on its face. *Id*. In reviewing the sufficiency of a complaint, we accept as true all well-pled facts and reasonable inferences that may be drawn from those facts. *Iseberg v. Gross*, 366 Ill. App. 3d 857, 860 (2006).

¶ 11 On appeal, plaintiffs contend that, when Metropolitan added to the 2009 umbrella policy declaration page the conspicuous statement exempting UIM coverage, Metropolitan was either deleting the UIM coverage that was in the umbrella policy as of the date of Mr. Magruder's

accident or adding a disclaimer of UIM coverage to a previously ambiguous policy. Plaintiffs assert that the umbrella policy clearly supplemented the entire underlying automobile policy, including its uninsured and underinsured provisions. Specifically, plaintiffs note that the umbrella policy states that it will cover "the various kinds of insurance shown in the Declarations" and the declaration lists the automobile policy and the homeowners policy as the two underlying policies to which the umbrella policy applies. Plaintiffs further allege that UIM coverage "is a liability coverage like any other" and extends to cover the at-fault driver that injured Mr. Magruder because the umbrella policy states that it will cover the responsibilities not only of the named insured, but also of "another person defined as the" insured. Plaintiffs also argue that the umbrella policy does not expressly state that it excludes UIM coverage and Metropolitan never admonished plaintiffs about any such exclusion until after the automobile accident.

¶ 12 Defendant Metropolitan responds that the plain language of the entire umbrella policy compels the conclusion that it provides only excess liability coverage and not UIM protection. Specifically, Metropolitan states that the umbrella policy is entitled a "personal excess liability policy." In addition, the umbrella policy's coverage section, the title of which reiterates that it pertains to *liability*, provides:

> "We will pay all sums in excess of the retained limit *for damages to others caused by an occurrence for which the law holds an insured responsible* and to which this policy applies." (Emphasis added.)

Furthermore, the exclusions section of the umbrella policy provides:

"This policy does not apply to personal injury or property damages:

H. to any property owned by an insured.

* * *

K. personal injury to any insured."

Under the definitions section of the umbrella policy, *damages* "means the cost of paying those who suffer personal injury or property damages." *Personal injury* "means bodily injury, sickness, disease or disability, false arrest, detention or imprisonment, malicious prosecution, libel, slander or defamation of character, invasion of privacy, wrongful eviction or wrongful entry, or mental anguish." *Property damages* "means injury or destruction of tangible property, including loss of use of the damaged or destroyed property." *Underlying policy* "means a policy listed as an underlying policy in the Declarations."

¶ 13 The construction of an insurance policy and its provisions is a question of law that we review *de novo*. *Rohe ex rel. Rohe v. CNA Insurance Co.*, 312 Ill. App. 3d 123, 126 (2000). When construing the language of an insurance policy, a court's primary objective is to ascertain and give effect to the intentions of the parties as expressed by the words of the policy. *Hobbs v. Hartford Insurance Co. of the Midwest*, 214 Ill. 2d 11, 17 (2005). Because the court must assume that every provision was intended to serve a purpose, an insurance policy is to be construed as a whole, giving effect to every provision (*Central Illinois Light Co. v. Home Insurance Co.*, 213 Ill. 2d 141, 153 (2004)), and taking into account the type of insurance provided, the nature of the risks involved, and the overall purpose of the contract (*American*

States Insurance Co. v. Koloms, 177 Ill. 2d 473, 479 (1997)). If the words used in the policy are clear and unambiguous, they must be given their plain, ordinary, and popular meaning, and the policy will be applied as written, unless it contravenes public policy. *Hobbs*, 214 Ill. 2d at 17. "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." *Id.* "Ambiguity exists in an insurance contract if the language is subject to more than one reasonable interpretation, but we will not strain to find an ambiguity where none exists." *Abram v. United Services Automobile Ass'n*, 395 Ill. App. 3d 700, 703 (2009).

¶ 14 Plaintiffs assert that "UIM is a liability coverage like any other except the chairs are switched." That assertion, however, is not supported by Illinois law. In *Cincinnati Insurance Co. v. Miller*, 190 Ill. App. 3d 240, 245 (1989), the court distinguished uninsured motorist (UM) coverage, which is first party insurance, from liability insurance. Whereas liability insurance protects the insured from financial losses for claims brought by other persons which are legally recoverable against the insured, UM coverage, in contrast, protects the insured, regardless of his liability, from financial losses for his injury, death or property damage caused by and legally recoverable from another person who owns or operates an uninsured vehicle. *Id*. at 245, 247-48 (construing the term *liability* in excess insurance policies to mean liability for injuries or other losses to someone other than the insured and concluding that an insured could not recover on his own liability policy if it did not contain an express UM or UIM coverage provision).

¶ 15 To support the proposition the UIM claims fall within liability insurance, plaintiffs cite *Schultz v. Illinois Farmers Insurance Co.*, 237 Ill. 2d 391, 404 (2010) ("Once a person qualifies

as an insured for purposes of the policy's bodily injury liability provisions, he or she must be treated as an insured for UM and UIM purposes as well."). *Schultz*, however, involved construing the coverage under the insured's primary automobile policy, which required UIM coverage pursuant to section 143(a) of the Illinois Insurance Code (215 ILCS 5/143(a) (West 2010)), and, thus, is distinguishable from the issue before this court, which involves the construction of an excess liability policy. See 215 ILCS 5/143a-2(5) (West 2010) (insurers that provide liability coverage on an umbrella basis are not required to provide, on a supplemental basis, coverages that conform to statutory requirements concerning motorists carrying and insurers offering certain minimum amounts of third-party liability and first-party UM/UIM coverage); see also *Abram*, 395 Ill. App. 3d at 715.

¶ 16 After reviewing all the provisions of the umbrella policy, we find that its terms are unambiguous and it provides plaintiffs with liability coverage in excess of the limits of their automobile and homeowner policies but specifically excludes any coverage for the plaintiffs' own personal injuries or property damages and, thus, excludes UIM coverage. See *Abram*, 395 Ill. App. 3d at 714-18 (excess policy did not provide UIM coverage where the policy stated that it did not provide first-party insurance coverage, including UM and UIM coverage, and excluded coverage for any insured's bodily or personal injury); *Miller*, 190 Ill. App. 3d at 244, 247 (umbrella policy did not provide UM coverage where the policy's intended purpose was to protect the insured from liability, the policy contained no separate endorsement provision for UM coverage, and the policy "listed as underlying auto policy coverage only the bodily injury liability for automobiles owned or operated by the insured and made no reference to uninsured motorist

coverage"); *Hartbarger v. Country Mutual Insurance Co.*, 107 Ill. App. 3d 391, 393-95 (1982) (umbrella policy, which did not specifically list UM coverage in the exclusions, was not ambiguous and did not provide UM coverage). "Only the insuring clause entitled 'coverage' grants coverage" (*Atlantic Mutual Insurance Co. v. Payton*, 289 Ill. App. 3d 866, 871 (1997)), and the coverage clause in the umbrella policy at issue here specifically limits coverage to plaintiffs' liabilities owed to third parties. Furthermore, the umbrella policy expressly excludes coverage for plaintiffs' own personal injuries and property damages.

¶ 17 Plaintiffs assert that if Metropolitan intended to exclude UIM coverage, it could have expressly stated so in the umbrella policy. This court has specifically rejected this argument, stating:

> "the failure of the insurer to list uninsured motorist coverage in the exclusions to the umbrella policy does not create any ambiguity in view of the numerous terms limiting the umbrella policy to excess liability coverage. *** [E]xclusions are relevant in construing an insurance policy only when the policy provides coverage in the first place. [citation.] The umbrella policy did not provide uninsured motorist protection, and thus there was no need to exclude it." *Hartbarger*, 107 Ill. App. 3d at 394; accord *Abram*, 395 Ill. App. 3d at 718.

Here, the umbrella policy expressly states that it excludes coverage for the insureds' personal injuries and property damages and only provides excess liability coverage. The fact that the exclusion section of the umbrella policy does not list UIM coverage is irrelevant because the umbrella policy did not provide such coverage to the insureds in the first place. *Abram*, 395 Ill.

App. 3d at 718.

¶ 18 Finally, plaintiffs point to the January 2009 umbrella policy declaration page, which Metropolitan sent plaintiffs after they changed their vehicle information in January 2009. Near the bottom of the second page, after listing the underlying automobile and homeowners policies, that document states: "This policy does not provide uninsured or underinsured motorists coverage." Plaintiffs argue that the 2009 umbrella policy declaration page indicates that Metropolitan was either deleting UIM coverage from the umbrella policy or attempting to clarify ambiguous policy provisions concerning UIM coverage. We do not agree. As discussed above, the unambiguous provisions of the umbrella policy establish that it did not provide UIM coverage, and there was no need to exclude UIM coverage because the policy did not provide it. Accordingly, plaintiff's attempt to construe the parties' contract by relying on a document that was sent to them after the umbrella policy's inception and after the vehicle accident is unavailing.

¶ 19 III. CONCLUSION

¶ 20 Metropolitan's umbrella policy does not provide UIM coverage. Therefore, we affirm the circuit court's dismissal of plaintiff's declaratory judgment cause of action with prejudice.

¶ 21 Affirmed.