THIRD DIVISION
October 31, 2012

Nos. 1-12-0190, 1-12-1048 (Consolidated)

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
FIRST JUDICIAL DISTRICT

ALFRED WOLKENBERG and ALICE WOLKENBERG, Plaintiffs and Respondents-Appellees, v. ALLSTATE INSURANCE COMPANY, Defendant and Petitioner-Appellant.	)	APPEAL FROM THE CIRCUIT COURT OF COOK COUNTY
ALFRED WOLKENBERG and ALICE WOLKENBERG, Plaintiffs-Appellants, v. ALLSTATE INSURANCE COMPANY, Defendant-Appellee.	)	No. 11 L 6823 HONORABLE JOAN POWELL, JUDGE PRESIDING.

JUSTICE STEELE delivered the judgment of the court.
Presiding Justice Salone and Justice Neville concurred in the judgment.

O R D E R

¶ 1 *HELD*: Plaintiff insureds appealed the dismissal of their complaint against the defendant automobile insurer, which was based on the forum selection clause in the insurance policy. The appellate court found the policy language was unambiguous and affirmed the judgment of the circuit court.

¶ 2 In these consolidated appeals, plaintiffs, Alfred and Alice Wolkenberg (Wolkenbergs), appeal an order of the circuit court of Cook County dismissing their complaint against defendant, Allstate Insurance Company (Allstate), due to a forum selection clause in the automobile insurance policy Allstate issued to the Wolkenbergs. Allstate petitions this court to reverse an order of the circuit court denying their motion to transfer this case to Florida pursuant to the doctrine of *forum non conveniens*. For the following reasons, we conclude that the circuit court properly dismissed the complaint and affirm the judgment of the circuit court.

¶ 3 BACKGROUND

¶ 4 On June 30, 2011, the Wolkenbergs filed a complaint against Allstate in the circuit court of Cook County, containing the following allegations. On or before March 8, 2010, Alfred bought an Allstate automobile insurance policy with underinsurance coverage and stackable coverage premiums for limits of $500,000, as well as an umbrella policy with limits of $1 million.

¶ 5 Alfred's Allstate automobile insurance policy contains a section of "General Provisions," which states in part that "[t]he following provisions apply throughout the policy unless a different provision regarding the same subject matter is provided under a particular coverage or it is otherwise indicated." The policy contains the following general provisions:

> "**What Law Will Apply**
>
> This policy issued in accordance with the laws of Florida and covers property or risks principally located in Florida. Subject to the following paragraph, any and all

claims or disputes in any way related to this policy shall be governed by the laws of Florida.

If a covered loss to the auto, a covered auto accident, or any other occurrence for which coverage applies under this policy happens outside Florida, claims or disputes regarding that covered loss to the auto, covered auto accident, or other covered occurrence may be governed by the laws of the jurisdiction in which that covered loss to the auto, covered auto accident, or other covered occurrence happened, only if the laws of that jurisdiction would apply in the absence of a contractual choice of law provision such as this.

Where Lawsuits May Be Brought

Subject to the following two paragraphs, any and all lawsuits in any way related to this policy shall be brought, heard and decided only in a state or federal court located in Florida. Any and all lawsuits against persons not parties to this policy but involved in the sale, administration, performance, or alleged breach of this policy or involved in any other way with this policy, shall be brought, heard and decided only in a state or federal court located in Florida, provided that such persons are subject to or consent to suit in the courts specified in this paragraph.

If a covered loss to the auto, a covered auto accident, or any other occurrence for which coverage applies under this policy happens outside Florida, lawsuits regarding that covered loss to the auto, covered auto accident, or other covered occurrence may also be brought in the judicial district where that covered loss to the auto, covered auto accident, or other covered occurrence happened.

Nothing in this provision, Where Lawsuits May Be Brought, shall impair any party's right to remove a state court lawsuit to a federal court." (Emphasis in original.)

¶ 6 Part IV of Alfred's Allstate automobile insurance policy provides coverage for uninsured motorists, which the policy defines to include an underinsured motor vehicle. Part IV of the policy contains the following provision:

"**If We Cannot Agree**

If the insured person and we do not agree on that person's right to receive any damages or the amount of that person's damages, then the disagreement will be resolved in a court of competent jurisdiction. Costs, including attorney fees, are to be paid by the party incurring them.

Notwithstanding this provision, should the insured person mutually agree to arbitrate the disagreement, the Florida Arbitration Code will not apply unless the insured person and we mutually agree to apply that code." (Emphasis in original.)

¶ 7 The Wolkenbergs allege that on March 8, 2010, Alfred sustained injuries in an automobile collision with another driver insured by Allstate with $50,000 total coverage. Alfred's medical expenses were $207,002.51. Alfred demanded a settlement with Allstate within his policy limits of $1.5 million; Allstate offered $200,000 from the underinsurance coverage. Alfred sought damages for breach of contract, while Alice sought damages for loss of consortium.

¶ 8 On September 23, 2011, Allstate filed a motion to transfer the case, pursuant to the doctrine of *forum non conveniens*. Allstate asserted that: (1) the automobile collision occurred in Manatee County, Florida; (2) the Wolkenbergs lived in Sarasota County, Florida, which is adjacent to Manatee County; (3) the owner and operator of the other automobile both reside in Manatee County; (4) Alfred received medical care in Manatee County; and (5) Allstate issued its policies, including the choice of law provision in the automobile policy, to the Wolkenbergs in Florida. On October 11, 2011, the Wolkenbergs responded to the motion to transfer, arguing: (1) the plaintiffs' choice of forum is entitled to deference; (2) plaintiffs would need to depose Allstate corporate officers who signed the insurance contract in Northbrook, Illinois; (3) plaintiffs could take evidence depositions from treating physicians in Florida; (4) attorneys for both sides were located in Illinois; (5) Allstate's principal place of business is in Illinois; and (6) court congestion was an insignificant factor, particularly where the circuit court could advance trial cases involving elderly plaintiffs. On October 25, 2011, Allstate filed its reply. On December 21, 2011, following a hearing on the matter, the trial judge denied Allstate's motion to transfer the case pursuant to the doctrine of *forum non conveniens*.

¶ 9 On January 18, 2012, Allstate filed a timely notice of appeal to this court from the denial of its motion to transfer, ultimately properly styled as a petition for leave to appeal pursuant to Supreme Court Rule 306(a)(2) (eff. Feb. 16, 2011). On March 26, 2012, this court allowed Allstate's petition for leave to appeal.

¶ 10 Meanwhile, on January 26, 2012, Allstate filed a motion to dismiss under section 2-619(a) of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-619 (West 2010)) in the trial court, based on the forum selection clause contained in the general provisions of the policy. On February 15, 2012, the Wolkenbergs filed their response to the motion to dismiss, arguing that the "If We Cannot Agree" provision of the uninsured motorist coverage was controlling or created an ambiguity in the policy to be construed in their favor. On February 23, 2012, Allstate filed its reply. On February 27, 2012, the Wolkenbergs filed a supplementary response to the motion to dismiss. Following a hearing on March 16, 2012, the circuit court entered an order granting Allstate's motion to dismiss. On April 9, 2012, the Wolkenbergs filed a timely notice of appeal to this court from the order dismissing their complaint. On April 24, 2012, Allstate filed a motion to consolidate the appeals, which this court granted on June 5, 2012.

¶ 11 DISCUSSION

¶ 12 In these consolidated appeals, the Wolkenbergs argue that the trial court erred in granting Allstate's motion to dismiss. Allstate argues that the case was properly dismissed and that the circuit court erred in denying its motion to dismiss based on the doctrine of *forum non conveniens*. We turn to consider the dismissal of the Wolkenbergs' complaint, as it is dispositive of the appeals.

¶ 13 A motion to dismiss under section 2-619 of the Code (735 ILCS 5/2-619 (West 2010)) admits the legal sufficiency of a plaintiff's claim but asserts certain defects or defenses outside the pleading that defeat the claim. *Solaia Technology, LLC v. Specialty Publishing Co.*, 221 Ill. 2d 558, 579 (2006). "The purpose of a section 2-619 motion to dismiss is to dispose of a case on the basis of issues of law or easily proved issues of fact." *Hertel v. Sullivan*, 261 Ill. App. 3d 156, 160 (1994). This court has considered the existence of a forum selection clause as an "affirmative matter" which may warrant dismissal under section 2-619(a)(9) of the Code (735 ILCS 5/2–619(a)(9) (West 2010)). See, *e.g.*, *Walker v. Carnival Cruise Lines, Inc.*, 383 Ill. App. 3d 129, 131 (2008); *Dace International, Inc. v. Apple Computer, Inc.*, 275 Ill. App. 3d 234, 237 (1995). Our standard of review is *de novo*. *Solaia*, 221 Ill. 2d at 579.

¶ 14 Although the parties generally agree that Illinois and Florida law are substantially identical regarding the issues raised in the consolidated appeals, the policy here generally provides that where the covered occurrence is in Florida, "all claims and disputes in any way related to this policy shall be governed by the law in Florida." Contract principles apply to the interpretation of an insurance policy, which is a type of contract. *O'Brien v. McMahon*, 44 So. 3d 1273, 1277 (Fla. Dist. Ct. App. 2010). "[I]n construing insurance policies, courts should read each policy as a whole, endeavoring to give every provision its full meaning and operative effect." *Auto-Owners Insurance Co. v. Anderson*, 756 So. 2d 29, 34 (Fla. 2000). In interpreting an insurance contract, we are bound by the plain meaning of the contract's text. *State Farm Mutual Automobile Insurance Co. v. Menendez*, 70 So. 3d 566, 569 (Fla. 2011). If the policy language is plain and unambiguous, a court must interpret the policy in accordance with its plain meaning. *Id.*

¶ 15 " '[C]ontracting parties have the right to select and agree on a forum in which to resolve future disputes.' " *Celistics, LLC v. Gonzalez*, 22 So. 3d 824, 825 (Fla. Dist. Ct. App. 2009) (quoting *Golden Palm Hospitality, Inc. v. Stearns Bank National Ass'n*, 874 So. 2d 1231, 1234 (Fla. Dist. Ct. App. 2004)). "Florida courts have long recognized that '[f]orum selection clauses are presumptively valid.' " *American Safety Casualty Insurance Co. v. Mijares Holding Co.,* *LLC*, 76 So. 3d 1089, 1091 (Fla. Dist. Ct. App. 2011) (quoting *Corsec, S.L. v. VMC Int'l Franchising*, LLC, 909 So. 2d 945, 947 (Fla. Dist. Ct. App. 2005)). Florida law presumes that the forum selection clauses in contracts are valid and enforceable, and a party seeking to avoid enforcement of such a clause must establish that enforcement would be unjust or unreasonable. *American Safety Casualty Insurance Co.*, 76 So. 3d at 1092. The interpretation of a contractual forum selection clause is a question of law, subject to review *de novo*. See *Celistics*, 22 So. 3d at 825 (Fla. Dist. Ct. App. 2009); *Weisser v. PNC Bank, N.A.*, 967 So. 2d 327, 330 (Fla. Dist. Ct. App. 2007).

¶ 16 The Wolkenbergs argue that the forum selection language in their policy is ambiguous. Policy language is considered to be ambiguous if the language is susceptible to more than one reasonable interpretation. *Id*. at 570. When language in an insurance policy is ambiguous, a court will resolve the ambiguity in favor of the insured. See *id*. However, a policy provision is not ambiguous simply because it requires analysis. *Id*. The fact that several provisions have to be construed together does not necessarily render the policy ambiguous. *Geico General Insurance Co. v. Arnold*, 730 So. 2d 782, 784 (Fla. Dist. Ct. App. 1999). When provisions of a contract conflict, a specific provision dealing with a particular subject will control over a different provision dealing only generally with that same subject. *Idearc Media Corp. v. M.R. Friedman and G.A. Friedman, P.A.*, 985 So. 2d 1159, 1162 (Fla. Dist. Ct. App. 2008).

¶ 17 In this case, the general provisions of the policy contain a forum selection clause that plainly requires that "any and all lawsuits in any way related to this policy shall be brought, heard and decided only in a state or federal court located in Florida," unless the covered occurrence happens outside Florida. However, the general provisions of the policy "apply throughout the policy unless a different provision regarding the same subject matter is provided under a particular coverage or it is otherwise indicated." The Wolkenbergs maintain that the "If We Cannot Agree" provision of the uninsured motorist coverage, which generally provides that disagreements "will be resolved in a court of competent jurisdiction," is controlling or creates an ambiguity in the policy to be construed in their favor. The Wolkenbergs argue that "a" is synonymous with "any" when referring to a court of competent jurisdiction.

¶ 18 We disagree. The "If We Cannot Agree" provision of the uninsured motorist coverage, when read as a whole, is plainly concerned with how disputes are to be resolved, *i.e.*, judicially or by arbitration, rather than where disputes are to be resolved, which is the subject matter of a forum selection clause. Even assuming *arguendo* that the reference to "a court of competent jurisdiction" could be construed as a forum selection clause, it would be unenforceable as such under Florida law, because it does not eliminate forum uncertainty or show a meeting of minds on the location of a forum. See *Lopez v. United Capital Fund, LLC*, 88 So. 3d 421, 426 (Fla. Dist. Ct. App. 2012). Thus, we conclude that the "If We Cannot Agree" provision of the uninsured motorist coverage, when read as a whole, is not "regarding the same subject matter" as the forum selection clause and does not "otherwise indicate" that the forum selection clause does not apply. There is no conflict between language stating that disputes generally will be resolved by a court of competent jurisdiction and language specifying which courts may be a proper forum for resolving those disputes. Accordingly, we conclude that the circuit court did not err in dismissing the Wolkenbergs' complaint. Given our conclusion, we need not address the propriety of the circuit court order denying Allstate's motion to transfer.

¶ 19 CONCLUSION

¶ 20 In short, the circuit court did not err in dismissing the Wolkenbergs' complaint, because the "If We Cannot Agree" provision of their uninsured motorist coverage is not controlling and does not create an ambiguity in the policy to be construed in the Wolkenbergs' favor. Under the plain, unambiguous language of the policy Allstate issued to the Wolkenbergs, a lawsuit based on an occurrence in Florida must be brought in Florida. For all of the aforementioned reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 21 Affirmed.