2011 IL App (2d) 101215-U
No. 2-10-1215
Order filed September 9, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

BADGER MUTUAL INSURANCE COMPANY,	)	Appeal from the Circuit Court of McHenry County.
Plaintiff-Appellant,	)	
v.	)	No. 10—MR—104
CHEN'S KING WOK, INC.,	)	Honorable Michael T. Caldwell,
Defendant-Appellee.	)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Presiding Justice Jorgensen and Justice Hudson concurred in the judgment.

ORDER

Held: The trial court erred in granting judgment on the pleadings for defendant, as plaintiff's insurance policy validly excluded coverage for any injury or damage arising from the operation of an auto; in so excluding, the policy did not violate section 7—317(b)(2) of the Illinois Vehicle Code, which applies only to "motor vehicle liability policies" and provides only that insurers may not cover registered owners without also covering permissive users.

¶ 1 Plaintiff, Badger Mutual Insurance Company, issued a commercial general liability (CGL) policy to defendant, Chen's King Wok, Inc., which operates a restaurant in Crystal Lake. While working for defendant, Jonathon Ernst was involved in an automobile collision with Darin Peterson,

who sued defendant and Ernst. Plaintiff then filed this action, seeking a declaration that it had no duty to defend or indemnify defendant because its policy excluded coverage for injuries arising from the use of an automobile. The trial court granted judgment for defendant, holding that the automobile exclusion was against public policy. Plaintiff appeals, contending that public policy does not prohibit enforcement of the automobile exclusion. We reverse.

¶ 2 Plaintiff's complaint alleged that defendant operates a restaurant in Crystal Lake. On September 18, 2009, defendant's employee, Jonathon Ernst, was driving a 1998 Nissan Sentra that he owned when it collided with a car driven by Darin Peterson. At the time, Ernst was in the course of his employment with defendant. (Both parties assume that Ernst was delivering food, although this is not clear from the record.)

¶ 3 Peterson sued defendant and Ernst. When defendant tendered defense of the action to plaintiff, it filed this declaratory judgment action. Plaintiff moved for judgment on the pleadings, arguing that its policy plainly excluded coverage for "bodily injury or property damage that arises out of the ownership [or] operation *** of an auto." The trial court denied the motion, holding that "the omnibus coverage pursuant to section 7—317 of the Illinois Vehicle Code is required" under the CGL policy. See 625 ILCS 5/7—317(b)(2) (West 2010). Defendant then filed its own motion for judgment on the pleadings, which the trial court granted. Plaintiff timely appeals.

¶ 4 Plaintiff contends that the trial court erred by holding that section 7—317(b)(2) mandates coverage here. Plaintiff points out that section 7—317(b)(2) appears in the Illinois Vehicle Code. It is part of the "financial responsibility" law mandating that vehicles be covered by minimum liability coverage. See 625 ILCS 5/7—601 (West 2010). Plaintiff argues that, consistent with that

statutory scheme, section 7—317(b)(2), by its terms, applies only to a "motor vehicle liability policy," which plaintiff's policy is not as it expressly excludes coverage for motor vehicles.

¶ 5 A motion for judgment on the pleadings is similar to a motion for summary judgment but limited to the pleadings. *Pekin Insurance Co. v. Wilson*, 237 Ill. 2d 446, 455 (2010). Judgment on the pleadings is proper if the pleadings disclose no genuine issue of material fact and that the movant is entitled to judgment as a matter of law. *Id.* We review *de novo* the grant of judgment on the pleadings. *Id.*

¶ 6 Because an insurance policy is a contract, the rules applicable to contract interpretation govern the interpretation of an insurance policy. *Nicor, Inc. v. Associated Electric & Gas Insurance Services Ltd.,* 223 Ill. 2d 407, 416 (2006). "Our primary function is to ascertain and give effect to the intention of the parties, as expressed in the policy language." *Founders Insurance Co. v. Munoz*, 237 Ill. 2d 424, 433 (2010). If its language is unambiguous, a provision will be applied as written, unless it contravenes public policy. *Id.* Similarly, an unambiguous statute must be applied as written. *Fosler v. Midwest Care Center II, Inc.*, 398 Ill. App. 3d 563, 569 (2009).

¶ 7 We agree with plaintiff that section 7—317's plain language precludes its application to the CGL policy at issue. Section 7—317 is entitled " 'Motor vehicle liability policy' defined." 625 ILCS 5/7—317 (West 2010). Section 7—317(a) provides, in relevant part, that a " 'motor vehicle liability policy' " is "an 'owner's policy' or an 'operator's policy' of liability insurance, certified as provided in Section 7—315 or section 7—316 as proof of financial responsibility for the future." 625 ILCS 5/7—317(a) (West 2010).[1] Section 7—317(b)(2) provides that an "Owner's Policy"

[1]Sections 7—315 and 7—316 provide for the filing of a certificate of insurance by a licensed insurance carrier. 625 ILCS 5/7—315, 7—316 (West 2010).

"[s]hall insure the person named therein and any other person using or responsible for the use of such motor vehicle or vehicles with the express or implied permission of the insured." 625 ILCS 5/7—317(b)(2) (West 2010). Thus, the statute, while not a model of draftsmanship, clearly applies only to a "motor vehicle liability policy," which, in turn, is a policy issued to the owner or operator of a motor vehicle. Here, the policy was issued to the operator of a restaurant and did not insure any motor vehicles. Thus, by its terms, section 7—317(b)(2) does not apply here.

¶ 8 While we appreciate the trial court's desire to provide coverage for the small-business defendant and, ultimately, for the accident victim, its reasoning (which we supply by inference because it is not set forth in the record) appears circular: because the CGL policy is required to insure permitted users of motor vehicles, it must be a motor vehicle policy. However, it is simply illogical to hold that any liability insurance policy, regardless of what it purports to cover, must include coverage for permissive users of motor vehicles.

¶ 9 This conclusion is confirmed by a trio of supreme court cases. In *State Farm Mutual Automobile Insurance Co. v. Smith*, 197 Ill. 2d 369 (2001), the named insured's passenger was injured by a vehicle that had been entrusted to a valet parking service. State Farm denied coverage based on a policy provision excluding coverage when the vehicle was " 'being repaired, serviced or used by any person employed or engaged in any way in a car business.' " (Emphases omitted). *Id.* at 373. The supreme court held that the " 'car business' " exclusion conflicted with section 7—317(b)(2) because, contrary to the statute's express command, it prohibited coverage for a person using the vehicle by permission. *Id.*

¶ 10 In *Progressive Universal Insurance Co. v. Liberty Mutual Fire Insurance Co.*, 215 Ill. 2d 121 (2005), the court clarified and limited its holding in *Smith*. In *Progressive*, a man using his mother's

vehicle to deliver a pizza struck and injured a pedestrian. The vehicle's insurer denied coverage, citing a "food delivery" exclusion in its policy. The supreme court rejected the insured's argument that section 7—317(b)(2) voided the exclusion. In doing so, the court explained the legislative intent behind the "omnibus" requirement:

> "[T]he legislature merely intended to insure that the common and often unavoidable practice of entrusting one's vehicle to someone else does not foreclose an injured party from obtaining payment for otherwise covered losses resulting from operation of the vehicle. The scope of coverage is unaffected by the law. The statute simply eliminates from coverage determinations the happenstance that a vehicle was operated by a permissive user rather than the actual owner. If a loss is covered by the policy, the fact that the vehicle was operated by a permissive user will not excuse the insurer from its obligation to pay. The loss will continue to be covered. Conversely, if a loss is excluded from coverage by the policy, the fact that the vehicle was operated by a permissive user will not trigger an obligation to pay that would not have existed had the vehicle been operated by its actual owner." *Id.* at 137-38.

¶ 11 Thus, the court clearly explained that the only purpose of section 7—317(b)(2) is to mandate coverage where an otherwise covered mishap occurs while the vehicle is driven by a permissive user rather than the registered owner. Put simply, an insurer may not discriminate between registered owners and permitted users. However, the section does not mandate coverage of any particular type of accident or prohibit otherwise reasonable exclusions.

¶ 12 The court considered the scope of section 7—317(b)(2) again in *Founders Insurance Co. v. Munoz*, 237 Ill. 2d 424 (2010). There, the court considered policy provisions denying coverage when

a person using a motor vehicle did not have a " 'reasonable belief' " that he or she was entitled to do so. The court held that the policy provisions did not violate the public policy espoused by section 7—317(b)(2), because they did not discriminate against permitted users; they applied to named insureds and permitted users alike. *Id.* at 445. The court, having held that insurers are not required to cover every possible risk and may legitimately limit their risks (*id.* at 442 (citing *Progressive*, 215 Ill. 2d at 136)), held that the insurers could limit their risk by excluding both insureds and permissive users "who lack the most basic requirement for driving in this state: a valid license." *Id.* at 445.

¶ 13 These cases make abundantly clear that section 7—317(b)(2) does not mandate coverage here. The CGL policy is not a "motor vehicle liability policy" and, moreover, the exclusion here does not discriminate between owners and permitted users of motor vehicles. It excludes coverage regardless of whether the vehicle is being operated by its owner or by a permitted user.

¶ 14 Accordingly, we reverse the judgment of the circuit court of McHenry County and enter judgment for plaintiff.

¶ 15 Reversed; judgment entered.