2016 IL App (1st) 142907-U
No. 1-14-2907

THIRD DIVISION
August 31, 2016

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

CAROLINA VERZURA and CHICAGO INVESTMENTS, LLC, A FLORIDA LLC,	)	Appeal from the Circuit Court of Cook County.
Plaintiffs-Appellants,	)	
	)	No. 12 L 5735
v.	)	
ALLSTATE INDEMNITY COMPANY and WILLIAM ZAYA,	)	The Honorable John Ehrlich, Judge Presiding.
Defendants-Appellees.	)	

JUSTICE PUCINSKI delivered the judgment of the court.
Justice Fitzgerald Smith concurred in the judgment.
Presiding Justice Mason specially concurred.

ORDER

¶ 1 *Held:* Judgment affirmed where insurance policy did not provide coverage for insured's claimed loss and circuit court did not abuse its discretion in dismissing complaint in its entirety.

¶ 2 This appeal involves an insurance coverage dispute under a general landlord liability policy. Plaintiff Carolina Verzura (Verzura) filed a claim for loss due to theft and vandalism of the insured building. Defendant Allstate Indemnity Company (Allstate) denied the claim finding no coverage under the policy. Verzura filed a legal action claiming breach of contract against

Allstate and breach of fiduciary duty against defendant William Zaya (Zaya) an Allstate agent. Allstate filed a motion for sanctions for discovery abuses and a motion for summary judgment. The circuit court granted summary judgment in favor of Allstate and Verzura appealed. For the following reasons, we affirm the judgment of the circuit court.

¶ 3 BACKGROUND

¶ 4 On October 30, 2010, Verzura, sole owner of defendant Chicago Investments LLC, which was the owner of a two-story brick building at 3617 W. Grenshaw, Chicago, Illinois, (dwelling), purchased a Landlords Package Insurance Policy (policy) for the dwelling from Allstate through Zaya. The policy was effective for one year. In general, the policy provided for "all risk" coverage for the dwelling and "named peril" coverage for personal property. In addition, the policy afforded coverage for "lost fair rental income" under limited circumstances.

¶ 5 The Policy

¶ 6 The policy issued by Allstate contained, in relevant part, the following provisions.

In "Coverage A," the policy provided coverage for "sudden and accidental direct physical loss to property * * * except as limited or excluded in this policy." The policy afforded "all risk" coverage for the dwelling (i.e., real property), however, it excluded loss due to theft or burglary from the dwelling. In addition, the policy excluded coverage for damage to the dwelling resulting from vandalism if the property was vacant or unoccupied more than 90 days immediately prior to the loss.

¶ 7 In "Coverage C," the policy provided "named peril" coverage for the insured's personal property. It afforded coverage for "sudden and accidental direct physical loss* * * caused by certain types of loss." In other words, the policy covered loss to personal property that resulted from certain "named perils." The "named perils" did not include theft or burglary and the

personal property coverage also excluded loss caused by vandalism if the property was vacant or unoccupied more than 90 days immediately prior to the loss.

¶ 8 In "Coverage D," the policy provided coverage for "lost fair rental income" resulting from a covered loss which made a rental unit uninhabitable. The coverage for "lost fair rental income" only applied if the rental unit was habitable and (a) occupied by a tenant; or (b) under a rental agreement; or (c) the rental unit was occupied by a tenant within 60 days of the loss and was in the process of being renovated.

¶ 9 Under Section I of the policy delineating "Conditions," subsection 10 provided:

"(a) [t]he residence premises may be vacant or unoccupied for any length of time, except where a time limit is indicated in this policy for specific perils. A building structure under construction is not considered vacant or unoccupied.

(b) [y]ou may make alterations, additions or repairs, and you may complete structures under construction."

¶ 10 The policy also included an endorsement, purchased by Verzura, which added vandalism as a "named peril;" however, it eliminated all coverage for "vandalism or loss caused by fire resulting from vandalism, if the insured dwelling was vacant or unoccupied for more than 90 consecutive days immediately prior to the vandalism."

¶ 11 The Claim

¶ 12 On May 13, 2011, Verzura contacted Allstate to report a claim. At that time, Verzura reported there was a theft and vandalism to the insured dwelling on May 7, 2011. Verzura reported that there had been substantial damage and theft which consisted of the following: kitchen countertops were dismantled and damaged; drywall was damaged; kitchen sinks were removed; plumbing pipes and electrical conduit were ripped and stolen; toilets and sinks were

dismantled; tiled walls were demolished; showers, bath fixtures, bathroom mirrors and toilet accessories were ripped from the walls and damaged; a hot water heater was dismantled and stolen; a furnace was vandalized and removed; wood floors were damaged; the finish on the walls and ceilings was damaged; and a window was broken.

¶ 13 During Allstate's investigation, Verzura was interviewed by Marcelo Diaz (Diaz), a senior claims adjuster for Allstate. Based on Verzura's statements during that interview and the terms of the policy, Allstate determined that the policy did not afford coverage for the claim. On May 20, 2011, Allstate sent a letter informing Verzura that it was denying her claim because "the primary cause of the loss was theft and burglary, and the policy does not have this endorsement."

¶ 14 The Lawsuit

¶ 15 On May 25, 2012, Verzura filed a three-count complaint against Allstate and Zaya. Count I alleged breach of contract against Allstate and count II alleged a violation of section 155 of the Illinois Insurance Code (Insurance Code) (215 ILCS 5/155 (West 2010)) that Allstate had engaged in vexatious and unreasonable conduct. Count III alleged breach of fiduciary duty against Zaya.

¶ 16 Subsequently, Allstate filed a motion to dismiss counts I and II and filed a motion for summary judgment arguing there was no coverage for the loss alleged in Verzura's complaint. An affidavit from Diaz was attached to the motions, in which Diaz averred that he interviewed Verzura on May 17, 2011, and during that conversation, Verzura said the property was being remodeled and nobody was living there. Verzura stated she had been remodeling the property since 2010, and the remodeling had resumed in January 2011. Diaz also averred that Verzura said the property had been unoccupied for one year prior to the loss. Based on this information, Diaz concluded that the property was vacant or unoccupied for more than 90 consecutive days

immediately prior to the loss and Verzura could not recover for theft, vandalism or for lost fair rental income.

¶ 17 Thereafter, Verzura filed a three-count amended complaint where the factual allegations remained substantially similar to the original complaint, however, Verzura included the dates of May 13, 2011, and May 20, 2011, as additional dates the property incurred losses. Allstate followed with a motion for summary judgment. Allstate argued that Verzura never reported these additional dates of loss and it was incumbent upon Verzura to clarify which losses occurred on which dates. The circuit court granted the motion, but allowed Verzura leave to file a second amended complaint.

¶ 18 Verzura filed a second amended complaint and Allstate followed with a motion for summary judgment again attaching Diaz's affidavit. The circuit court granted Allstate's motion. Subsequently, Verzura filed a motion to reconsider and attempted to introduce new evidence. The court granted Verzura leave to file a third amended complaint and the motion to reconsider was withdrawn.

¶ 19 On May 6, 2014, Verzura filed a third amended complaint against Allstate and Zaya. The allegations in the third amended complaint essentially remained unchanged, however, Verzura abandoned her claim for a violation of section 155 of the Insurance Code. Count I alleged breach of contract against Allstate. Count II alleged breach of fiduciary duty against Zaya. Verzura attached an affidavit from Al Thompson (Thompson), in which Thompson averred that he provided "house sitting services" for the property from March 2011, through February 2012. Verzura also attached her own affidavit, averring that from March, 2011 through the dates of the losses, the building was occupied by Thompson or his representatives.

¶ 20 In May 2014, Allstate filed a motion for sanctions under Illinois Supreme Court Rule 219(c)(v) requesting that Verzura's third amended complaint be dismissed in its entirety as a sanction for Verzura's continued discovery abuses throughout the litigation. Ill. S. Ct. R. 219(c)(v) (eff. July 1, 2002). Allstate claimed that Verzura filed her complaint on May 25, 2012, and as of the date of the filing of the motion for sanctions, Verzura had not complied with discovery. Allstate alleged that Verzura had yet to respond to written discovery requests that were propounded in September 2012, this despite 20 months passing, a motion to compel being filed and three separate court orders requiring discovery responses from Verzura. There followed, several court orders for status and case management, continuing Allstate's motion for sanctions.

¶ 21 In June 2014, Allstate filed a motion for summary judgment regarding Verzura's third amended complaint. On August 19, 2014, the circuit court granted the motion for summary judgment and dismissed Verzura's case in its entirety with prejudice.[1] This timely appeal followed.

¶ 22 ANALYSIS

¶ 23 On appeal, Verzura contends that the circuit court erred in granting summary judgment in favor of Allstate because there were issues of material facts in her claim for breach of contract. Verzura raises four arguments in support of her contention. Verzura argues: (a) the policy provided coverage for loss due to vandalism; (b) the policy provided coverage for loss due to theft to the dwelling; (c) the policy provided coverage for loss of personal property; and (d) the policy provided coverage for "lost fair rental income." Verzura also contends that the circuit

[1] Zaya was served with Verzura's complaint but never appeared or filed any documents in the case.

court abused its discretion in dismissing the complaint in its entirety because the complaint stated a claim for breach of fiduciary duty against Zaya.

¶ 24 Allstate responds that after determining that the building was unoccupied for more than 90 consecutive days immediately prior to the loss, the policy did not provide coverage for the underlying claim. Allstate asks that we affirm the circuit court's judgment.[2]

¶ 25 Summary judgment is appropriate when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *Purtill v. Hess*, 111 Ill. 2d 229, 240 (1986). Summary judgment is a drastic measure and should only be granted if the movant's right to judgment is clear and free from doubt. *Id*. Where a reasonable person could draw divergent inferences from undisputed facts, summary judgment should be denied. *Pyne v. Witmer*, 129 Ill. 2d 351, 358 (1989); *Outboard Marine Corp. v. Liberty Mut. Ins. Co.*, 154 Ill. 2d 90, 102 (1992).

¶ 26 In construing an insurance policy, this court's main objective is to ascertain and give effect to the intent of the contracting parties. *Bohner v. Ace American Insurance Co.*, 359 Ill. App. 3d 621, 623 (2005). The insurer has the burden to affirmatively demonstrate the applicability of an exclusion. *Pekin Insurance Co. v. Miller*, 367 Ill. App. 3d 263, 267 (2006). Further, exclusion provisions which limit or exclude coverage must be construed liberally in favor of the insured and against the insurer. *Standard Mutual Insurance v. Mudron*, 358 Ill. App. 3d 535, 537 (2005). Where a policy provision is clear and unambiguous, its words must be given their plain, ordinary and popular meanings. *Bohner*, 359 Ill. App. 3d at 623. If a provision is subject to more than one reasonable interpretation, it is ambiguous and will be construed in favor of the insured. *State Automobile Mutual Insurance Co. v. Kingsport Development, LLC*, 364 Ill. App. 3d 946, 951–52 (2006). However, courts will not strain to find an ambiguity where none

[2] Zaya did not file a brief on appeal.

exists. *Miller*, 367 Ill. App. 3d at 267; *Am. Family Mut. Ins. Co. v. Niebuhr*, 369 Ill. App. 3d 517, 522 (2006).

¶ 27 The review of an entry of a summary judgment is *de novo. Outboard Marine Corp.*, 154 Ill. 2d at 102. Specifically, the construction of an insurance policy is a question of law, which is reviewed *de novo. Central Illinois Light Co. v. Home Insurance Co.*, 213 Ill. 2d 141, 153 (2004).

¶ 28 I. Breach of Contract against Allstate

¶ 29 A. Vandalism

¶ 30 Verzura argues that the circuit court erred in granting summary judgment in favor of Allstate because the policy provided coverage for loss due to vandalism. Verzura claims that the policy defined vandalism as "willful or malicious conduct resulting in damage or destruction of property." Verzura maintains there was damage to the walls, floors, interior doors and a window, and that these items were not taken, but were maliciously destroyed, and her claimed loss fell within the provided coverage.

¶ 31 Verzura recognizes that the policy excluded loss due to vandalism, but that an endorsement purchased by Verzura added vandalism as a "named peril." Verzura acknowledges that the vandalism endorsement provided no coverage if the dwelling was vacant or unoccupied for more than 90 consecutive days immediately prior to the vandalism, however, based on the "Conditions" section of the policy, the dwelling was not considered vacant or unoccupied. Verzura points to Section I of the policy delineating "Conditions," and subsection 10(a) which specifically stated that "a building structure under construction is not considered vacant or unoccupied." Verzura argues that based on this condition, that she was remodeling the dwelling, the dwelling was not considered vacant or unoccupied. Verzura claims that a reasonable construction of the policy supports her position, and that under the terms of the policy, the fact

that there were no tenants in the building at the time of the vandalism was irrelevant to the issue of occupancy.

¶ 32 Allstate responds that the policy provided that a loss consisting of or caused by vandalism is excluded, however, this exclusion was amended by the endorsement, which allowed for coverage of loss due to vandalism with certain limitations. Allstate contends that the affidavit from Diaz, averring that Verzura reported that the property had been unoccupied for one year prior to the loss and that nobody was living in the property, implicates the endorsement's limitations, which excluded loss when property was vacant for more than 90 consecutive days immediately prior to the vandalism.

¶ 33 Allstate further responds that the "Conditions" section of the policy that Verzura relies on was taken out of context. The first sentence in that provision provided that "the residence premises may be vacant or unoccupied for any length of time, except where a time limit is indicated in this policy for specific perils." The policy continues that a "building structure under construction is not considered vacant or unoccupied." Allstate claims that when read together, they clearly indicate that a building structure under construction as a residence premises is not considered vacant or unoccupied. The policy defines a "residence premises" as your dwelling, other structures and land located at the address stated in the policy; "your" is defined as the person named as the insured; "dwelling" is defined as a building structure which is used principally as a private residence and located at the address stated in the policy; and "rental unit" means that portion of your dwelling which forms separate living space intended for tenant occupancy. Allstate maintains that the property was not a residence premises as that term is defined in the policy, and therefore the property was vacant and unoccupied. Allstate asserts that Verzura did not live at the dwelling and in fact resided elsewhere. Allstate contends that based

on the terms of the policy and Verzura's claimed loss, the premises was unoccupied and the policy provided no coverage for loss.

¶ 34 When an insurer relies upon an exclusionary clause in an insurance policy to deny coverage, the applicability of the clause must be clear and without doubt because any doubts as to coverage will be resolved in favor of the insured. *Yamada Corp. v. Yasuda Fire & Marine Insurance Co.*, 305 Ill. App. 3d 362, 371 (1999). An exclusion in an insurance policy serves the purpose of taking out events otherwise included within the defined scope of coverage. *Hartford Accident & Indemnity Co. v. Case Foundation Co.*, 10 Ill. App. 3d 115, 125 (1973). However, courts should not torture the language of a policy to find coverage where it is clear that none exists. *Cohen Furniture Co. v. St. Paul Insurance Co.*, 214 Ill. App. 3d 408, 411 (1991); *Pope ex rel. Pope v. Econ. Fire & Cas. Co.*, 335 Ill. App. 3d 41, 48-49 (2002).

¶ 35 With respect to the exclusion based on vacancy or unoccupancy, courts have defined "vacant" as "generally empty or deprived of contents." *Thompson v. Green Garden Mutual Insurance Co.*, 261 Ill. App. 3d 286, 291 (1994). A house is unoccupied when "it has ceased to be a customary place of habitation or abode, and no one is living or residing in it." 44 Am. Jur. 2d Insurance § 1220 (1982). The interpretation of the words "vacant" and "unoccupied" as used in an insurance policy is a question of law, but whether the subject dwelling was vacant or unoccupied at the time of the loss is a question of fact. *Thompson*, 261 Ill. App. 3d at 291; *Kolivera v. Hartford Fire Insurance Co.*, 8 Ill. App. 3d 356, 359 (1972).

¶ 36 Clearly, the question of whether a particular house is occupied depends upon the specific facts of each case. In *Thompson*, the court stated that the word "unoccupied" or the phrase "vacant or unoccupied" when used to describe an exclusion from coverage means "that no one was living in the dwelling or had actual use or possession of the dwelling at the time of the loss."

Thompson, 261 Ill. App. 3d at 291; *Lundquist v. Allstate Ins. Co.*, 314 Ill. App. 3d 240, 244-46 (2000). It is apparent, when we consider the definition of "unoccupied" within the context of the facts presented here, the dwelling was unoccupied.

¶ 37 If we were to adopt Verzura's interpretation of the policy, the coverage exclusion and its endorsement would serve no real purpose. We must assume however that every provision in an insurance policy was intended to serve a purpose. See *Founders Insurance Co., v. Munoz*, 237 Ill. 2d 424, 438 (2010). We find that Verzura has failed to establish that the property was occupied at the time of the loss. In fact, Verzura stated no one was living there and admitted she did not have any tenants at the time of the loss. Further, when Verzura notified Allstate of the loss, Verzura reported her home address as 1931 NE 197th TER, Miami, Florida. Verzura purchased the endorsement that contained limitations to coverage and the alleged loss involved the limitations. We conclude that the property was unoccupied and the vandalism endorsement in this case unambiguously applies to bar coverage for loss due to vandalism. See *Great Ins. Co. of America v. Robert B. McManus*, Inc., 272 Ill. App. 3d 510, 515 (1995); (An insurer has the right to limit coverage on a policy and the plain language of a valid limitation on coverage must be effectuated). See *Central Illinois Public Service Co. v. Allianz Underwriters Insurance Co.*, 240 Ill. App. 3d 598, 602 (1992) (Our courts will enforce clearly drawn exclusions). Verzura failed to show any material facts that were at issue.

¶ 38 Finally, Verzura contends that Allstate's reliance on Diaz's affidavit should not have had any bearing on the court's determination because the affidavit was hearsay, as it was a statement made out of court, being offered to show the truth of matters asserted therein, and thus resting on its value upon the credibility of the out-of-court asserter. Verzura claims that the affidavit was

provided to show that the property was unoccupied and that the statements contained in the affidavit were inadmissible hearsay.

¶ 39 Allstate responds that this issue was not presented to the trial court and it should be forfeited on appeal. Allstate further argues that Diaz's affidavit recounting Verzura's statements represents an admission by a party opponent and is not, by definition, hearsay, citing Illinois Rules of Evidence, 801(d)(2). Ill. R. Evid. 801(d)(2) (eff. Jan. 1, 2011).

¶ 40 In order to preserve an issue for review, a party must make an appropriate objection in the circuit court. See, e.g., *Kambylis v. Ford Motor Co*., 338 Ill. App. 3d 788, 798-99 (2003). Where the party fails to do so, the issue is waived. *Id.* Here, nothing in the record indicates that Verzura objected to Diaz's affidavit and, as a result, the issue is waived. *Klein v. Steel City National Bank*, 212 Ill. App. 3d 629, 634 (1991); *Cianci v. Safeco Ins. Co. of Illinois*, 356 Ill. App. 3d 767, 778 (2005).

¶ 41 B. Theft

¶ 42 Verzura next argues that the circuit court erred in granting summary judgment in favor of Allstate because the policy provided coverage for loss due to theft to the dwelling. Verzura acknowledges that according to the terms of the policy, under "Coverage A," there was no coverage for theft; however, there was limited coverage for a dwelling under construction that was not unoccupied for more than 90 consecutive days immediately prior to the loss. Verzura again references Section I of the policy delineating "Conditions," and subsection 10(a). Verzura argues that based on this condition, that she was remodeling the dwelling, the dwelling was not considered vacant or unoccupied.

¶ 43 In further support of her argument, Verzura refers to the language in provision 17 of the policy, that stated that the policy did not cover losses due to theft or burglary, except for the

following: "[h]owever, we will cover damage to the exterior of covered building structures caused by the breaking in of a burglar or burglars, if the dwelling is completed and has not been vacant or unoccupied for more than 90 consecutive days immediately prior to the loss. When we cover damage to the exterior of covered building structures caused by a burglar or burglars, we will also cover damage to interior surfaces of exterior doors and windows damaged by the break-in." Verzura contends that since all the fixtures were in place at the time of the loss, the building was complete and therefore, under the plain language of the policy, the dwelling was not considered unoccupied and Verzura was covered for her claimed loss due to theft to the dwelling.

¶ 44 Allstate responds that the policy specifically excluded coverage for loss due to theft or burglary. Allstate states that since Verzura alleged that the building sustained substantial damage as a result of theft to structural portions of the building, and further alleged that copper piping and other materials were stolen, under the terms of the policy, Verzura's loss due to theft of the dwelling was not covered.

¶ 45 Allstate acknowledges that the policy provided limited coverage for damage to the exterior of the building structure caused by theft; however, Verzura never alleged there was any damage to the exterior of the building. Allstate maintains that this limited coverage only applied if the dwelling was completed and had not been vacant or unoccupied for more than 90 consecutive days immediately prior to the loss. Allstate further maintains that the policy required Verzura to notify Allstate within 30 days of completion of the construction to inform Allstate of this completion, and that Allstate was never notified. Allstate also claims that Verzura stated that the property was vacant for over a year prior to the loss. Allstate contends that under these conditions, the policy provided no coverage for Verzura's claimed loss due to theft.

¶ 46 We find that the policy specifically excluded loss due to theft and Verzura has failed to implicate the limited coverage, because Verzura has failed to establish that the property was occupied at the time of the loss and that the construction was completed. We conclude that the policy provided no coverage for loss due to theft of the dwelling because the property was unoccupied for more than 90 consecutive days immediately prior to the loss. See *Stiefel v. Illinois Insurance Co.,* 116 Ill. App. 3d 352, 355 (1983) (When a policy contains an explicit limitation on coverage this language must be effectuated).

¶ 47 C. Loss of Personal Property

¶ 48 Verzura next argues that the circuit court erred in granting summary judgment in favor of Allstate because the policy provided coverage for Verzura's loss of personal property. Verzura recognizes that under "Coverage C," the personal property protection section, the policy was completely silent as to coverage for burglary, theft or vandalism of personal property. However, Verzura claims the policy states that: "[p]ersonal property owned or used by an insured person which is rented or held for rental with the residence premise, or used for the service of the residence premises. Coverage applies only while the personal property is on the residence premises or while it is temporarily removed for repairs." Verzura maintains that since it was never determined if the personal property on the premises was used for the service of the residence premise, this fact should have precluded Allstate from denying coverage at the time of the claim.

¶ 49 Allstate responds that the policy provides that Allstate will cover sudden and accidental direct physical loss to Verzura's personal property, except as limited or excluded in the policy, caused by certain "named perils." Allstate maintains that the coverage for personal property was issued on a "named peril" basis and personal property was only covered when a loss was caused

by one of these enumerated perils. These perils are: (1) fire or lighting; (2) windstorm or hail; (3) explosion; (4) riot or civil commotion; (5) aircraft; (6) vehicles; (7) smoke; (8) falling objects. (9) weight of ice, snow or sleet; (10) artificially generated electrical current; (11) breaking of glass; (12) bulging, burning cracking or rupture of a steam or hot water heating or air conditioning system; (13) water or steam that escapes from a plumbing, heating or air conditioning system; or (14) freezing of a plumbing, heating or air conditioning system. Allstate states that theft and burglary are not "named perils" and thus, there is no coverage for personal property that is damaged as a result of theft or burglary.

¶ 50 We note that a "named perils" policy excludes all risks not specifically included in the contract. See *Board of Education of Maine Township High School District No. 207, v. International Insurance Company,* 344 Ill. App. 3d 106, 113-14 (2003); *Poulton v. State Farm Fire & Cas. Companies,* 267 Neb. 569, 574 (2004). In other words, a "named perils" policy provides coverage in accordance with the legal maxim "*expressio unius est exclusio alterius*" (the expression of one thing is the exclusion of the others), and is the converse of an "all risks" policy, which provides coverage for all direct losses not otherwise excluded. *Poulton,* 267 Neb. at 574.

¶ 51 Consequently, in order for there to be coverage for damage to personal property under the policy, the damage to the personal property must arise out of one of the 14 "named perils." See, *Board of Education of Maine Township High School District No. 207,* 344 Ill. App. 3d at 116; *Curtis O. Griess & Sons v. Farm Bureau Ins. Co.*, 247 Neb. 526, 530, (1995) ("[i]n order to recover under an insurance policy of limited liability, the insured must bring himself or herself within its express provisions"). 10 Lee R. Russ & Thomas F. Segalla, Couch on Insurance 3d § 148:48 at 148-84 (1998) (specific perils policy covers "losses caused by specified perils; to the

extent not specified, no coverage results"). In sum, we find that there was no coverage for loss of personal property because neither theft nor burglary was a "named peril." See *Pekin*, 367 Ill. App, 3d at 267.

¶ 52 Verzura also argues that the policy states that it does not cover loss to the property described in "Coverage C" when "there are two or more causes of loss to the property" and that a genuine issue of material fact exists as to the cause of the loss of personal property. Verzura contends the cause for her loss of personal property had never been established.

¶ 53 Allstate responds that the phrase "there are two or more causes of loss to the property" is taken out of context. The subsequent part of "Coverage C," section b, is that in addition to the above quoted sentence, the sentence "and the predominant cause(s) of loss is(are) excluded under" the "named perils." Further, Allstate maintains that both theft and burglary were not "named perils." Moreover, Allstate informed Verzura on May 20, 2011, that after investigation, it was denying her claim because the primary cause of loss was theft and burglary, and the policy did not have that endorsement. Thus, we find Verzura's argument without merit.

¶ 54 D. Lost Fair Rental Income

¶ 55 Lastly, Verzura argues that the circuit court erred in granting summary judgment in favor of Allstate because the policy provided coverage for "lost fair rental income." Verzura contends that the policy provided that when a loss covered under "Coverage A," made a rental unit uninhabitable, the "lost fair rental income" would be covered. Verzura maintains that her rehabilitation of the premises was almost complete and that the apartments were just about ready to accept tenants at the time of this loss. Verzura further maintains that she raised a valid claim for "lost fair rental income" because of her inability to complete the project and accept tenants due to the theft and extensive vandalism to the property.

¶ 56 Allstate responds that the policy did not afford coverage for "lost fair rental income" when there was no covered loss and there was no tenant. In "Coverage D," the policy provided coverage for an insured's "lost fair rental income" resulting from a covered loss which makes a rental unit uninhabitable. This protection began only if, at the time of the loss, the rental units were habitable: and "(a) occupied by a tenant; or (b) you had a signed written rental agreement; or (c) the rental unit was occupied by a tenant within 60 days of the loss and was in the process of being renovated." Allstate argues that the loss was not covered under "Coverage A" and that there was no evidence of a tenant at the subject property.

¶ 57 Allstate maintains that Thompson's affidavit, averring that he was "house sitting," does not indicate that he was paying any rent and Verzura's affidavit did not reveal that she was receiving any rent. Allstate further maintains that there was no evidence of a rental agreement for the subject property and Verzura could not establish that she had a tenant; in fact, Verzura admitted that "she did not have a tenant." Allstate contends that under these circumstances, the policy did not provide coverage for "lost fair rental income."

¶ 58 We agree. As noted above, there is no covered loss under the policy. Also, Verzura, by her own admissions, stated in a response to one of Allstate's motions for summary judgment, that she "would agree that she did not have a tenant." Further, she admitted to Allstate that the property was unoccupied for more than 90 consecutive days immediately prior to the loss. Moreover, Verzura argued that her rehabilitation of the premises was almost complete and the two apartments were "just about ready" to accept tenants at the time of the loss, indicating that the premises were uninhabitable at the time of the loss. Accordingly, we find that there was no coverage for "lost fair rental income" when there was no covered loss under the policy, the

premises were uninhabitable and there was no tenant. See *Founders Insurance Co*, 237 Ill. 2d at 438 (every provision in an insurance policy was intended to serve a purpose).

¶ 59 We find that Verzura's policy did not provide coverage for the underlying claim, there was no evidence of a breach of contract against Allstate and Verzura failed to show any material facts that were at issue. We conclude that the circuit court did not err in granting summary judgment in favor of Allstate. See *Purtill*, 111 Ill. 2d at 240.

¶ 60 II. Dismissal in Entirety

¶ 61 We now turn to Verzura's final contention on appeal that the circuit court abused its discretion in dismissing her complaint in its entirety because the complaint stated a claim for breach of fiduciary duty against Zaya. Verzura asserts that this case did not present a situation where the court had authority to dismiss her claim against Zaya. Verzura further argues that the court's failure to give her notice and an opportunity to respond to a dispositive motion was inherently prejudicial.

¶ 62 A trial court does not abuse its discretion '"unless, in view of all the circumstances, its decision so exceeded the bounds of reason that no person would take the view adopted by the trial court."' *Gambino v. Boulevard Mortgage Corp.*, 398 Ill. App. 3d 21, 51 (2009) (quoting *In re Marriage of Demar*, 385 Ill. App. 3d 837, 852 (2008)); *Father & Sons Home Imp. II, Inc. v. Stuart*, 2016 IL App (1st) 143666, ¶ 47. Where discretion has been vested in the circuit court, only a clear abuse of discretion or an application of impermissible legal criteria justifies reversal. *Boatmen's Nat. Bank of Belleville v. Martin*, 155 Ill. 2d 305, 314 (1993).

¶ 63 First, we note that the failure to include a report of proceedings in the record on appeal requires affirmation of the court's order. "To support a claim of error, the appellant has the burden to present a sufficiently complete record." *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d

144, 156 (2005) (citing *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984)). "Without an adequate record preserving the claimed error, the reviewing court must presume that the circuit court had sufficient factual basis for its holding and that its order conforms to the law." *Corral*, 217 Ill. 2d at 157 (quoting *Foutch*, 99 Ill. 2d at 392). Based upon the record supplied to this court, we are unable to find that the court's rulings are unreasonable or that the opposite conclusion is clear. Therefore, the circuit court's order dismissing the case in its entirety was supported by the evidence in the record on appeal.

¶ 64 Second, the circuit court had before it Allstate's motion for sanctions requesting the dismissal of Verzura's third amended complaint under Ill. S. Ct. R. 219(c)(v). The motion alleged that Verzura had continued discovery violations for 20 months, which consisted of the following: on May 9, 2012, the court ordered all parties to respond to written discovery; on March 1, 2013, Allstate requested Verzura respond to discovery; on September 23, 2013, Allstate filed a motion to compel compliance with discovery; on September 27, 2013, the court ordered Verzura to respond to written discovery; on April 22, 2014, the court again ordered Verzura to answer written discovery by May 1, 2014; on May 20, 2014, Allstate's motion for sanctions was entered and continued; on May 27, 2014, at a discovery status hearing, the motion was continued; on June 9, 2014, the motion was again continued; and on June 16, 2014, Allstate filed a motion for summary judgment as to Verzura's third amended complaint. Finally, on July 7, 2014, Allstate's motion for summary judgment and motion for sanctions were continued and set for hearing on August 19, 2014. Considering the extensive procedural postures, we find Verzura's argument that she had no notice of a dispositive motion disingenuous.

¶ 65 Third and finally, a circuit court has the inherent authority to control its docket and impose sanctions for failure to comply with a court order. *Dolan v. O'Callahan*, 2012 IL App

(1st) 111505, ¶ 65. The recognition of the court's inherent authority is necessary to prevent undue delay in the disposition of cases caused by abuses to discovery rules and also to empower courts to control their dockets. *Cronin v. Kotte Associates, LLC*, 2012 IL App (1st) 111632, ¶ 39.

¶ 66 Under the circumstances of this case, we conclude that the circuit court did not abuse its discretion when it dismissed Verzura's complaint in its entirety.

¶ 67 CONCLUSION

¶ 68 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 69 Affirmed.

¶ 70 PRESIDING JUSTICE MASON, specially concurring.

¶ 71 I concur in the judgment only.