2017 IL App (1st) 152734-U

FOURTH DIVISION
June 22, 2017

No. 1-15-2734

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

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| NICHOLAS RUSSO and EDIE RUSSO, | ) | Appeal from the |
| | ) | Circuit Court of |
| Plaintiffs-Appellants, | ) | Cook County |
| | ) | |
| v. | ) | No. 11 L 8080 |
| | ) | |
| ALLSTATE INDEMNITY COMPANY, INC., | ) | Honorable |
| | ) | James E. Snyder |
| | ) | Ronald Bartkowicz |
| Defendant-Appellee. | ) | Judges Presiding. |

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PRESIDING JUSTICE ELLIS delivered the judgment of the court.
Justices Howse and Burke concurred in the judgment.

## ORDER

¶ 1 *Held*: Affirmed. Trial court properly granted summary judgment in favor of insurer. Unambiguous language of homeowners' insurance policy excluded coverage for losses caused by water that backs up through sewers or drains, or that overflows from flood-control system.

¶ 2 Plaintiffs, Nicholas Russo and Edie Russo, appeal the decision of the circuit court of Cook County granting summary judgment in favor of defendant, Allstate Indemnity Company, Inc. (Allstate), in plaintiffs' action for breach of contract. After plaintiffs' home was damaged by water in the basement, Allstate determined that the damages were caused by "water backup" or

"overflow" and were excluded under plaintiffs' homeowners' insurance policy. But Allstate paid plaintiffs $10,000 for the water damage, because they had obtained a "Water Back-Up Endorsement" providing additional coverage for this type of loss that was otherwise excluded under the policy.

¶ 3 Plaintiffs filed suit, demanding additional payment. Plaintiffs claimed that the water had entered their basement because pressure from outside water "broke and fractured" an otherwise functional flood-control system. Plaintiffs alleged that the water damage should have been covered in full under a separate policy provision. That provision was a separate exclusion for losses due to "mechanical breakdown," but contained an exception. Plaintiffs relied on the language of that exception.

¶ 4 The circuit court ultimately agreed with Allstate and entered summary judgment in its favor. We affirm the trial court's decision.

¶ 5 I. BACKGROUND

¶ 6 The relevant facts are not in dispute. Allstate issued a homeowners' policy to plaintiffs for the period of April 2010 to April 2011. On July 23, 2010, it was raining, and plaintiffs' flood-control system failed to keep out the rainwater, flooding the basement and causing considerable damage. The plumber who came to plaintiffs' house testified at deposition that the flood-control system's "flapper" was broken, and the electric sump pump was burned out and inoperative. As a result, water backed up into plaintiffs' basement.

¶ 7 Plaintiffs' homeowners' policy with Allstate covered damage to the dwelling ("Coverage A") and to personal property contained within that dwelling ("Coverage C"). Both Coverage A and Coverage C had exclusions from coverage, of course, and among them, Exclusions 2 and 3 were identical as to each form of coverage. Exclusions 2 and 3 stated that Allstate would not

cover loss to the dwelling, or the personal property contained in that dwelling, if the loss was caused by:

> "2. Water or any other substance that backs up through sewers or drains.
>
> 3. Water or any other substance that overflows from a sump pump, sump pump well or other system designed for the removal of subsurface water which is drained from a foundation area of a structure."

¶ 8 But plaintiffs purchased an additional "Water Back-Up Endorsement" with Allstate, which covered losses, up to $10,000, for damages to dwelling or property caused by:

> "water ... within your dwelling … which:
>
> a. backs up through sewers or drains located within the residence premises; or
>
> b. overflows from a sump pump, sump pump well or other system located within the residence premises designed for the removal of subsurface water which is drained from a foundation area of a structure."

¶ 9 It is clear, from a comparison of the two preceding paragraphs, that the language of Exclusions 2 and 3 closely tracks the language of the Water Back-Up Endorsement. Allstate determined that plaintiffs' loss fell within this language—that water had backed up or overflowed in plaintiffs' basement due to a faulty flood-control system. Based on this determination, Allstate found plaintiffs' loss to be excluded by Exclusions 2 and 3 but covered under the Water Back-up Endorsement, and thus Allstate paid plaintiffs the limit of that additional endorsement—$10,000.

¶ 10 Plaintiffs, on the other hand, contended that a different exclusion to coverage should govern the outcome—Coverage A's Exclusion 15, by which Allstate excludes coverage for losses, among other things, caused by "mechanical breakdown." The reason plaintiffs cite

Exclusion 15 is that it contains an exception: If mechanical breakdown "cause[s] the sudden and accidental escape of water or steam from a plumbing, heating or air conditioning system, household appliance or fire protection sprinkler system," then Allstate will cover "the direct physical damage caused by the water or steam." Plaintiffs claim that just such a situation arose, and they are therefore entitled to coverage.

¶ 11 Ultimately, the trial court agreed with Allstate and entered summary judgment in its favor, ruling that plaintiffs were not entitled to coverage under the policy by virtue of Exclusions 2 and 3. This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 We review *de novo* the circuit court's rulings on both a motion for summary judgment and a motion to reconsider summary judgment. *Pence v. Northeast Illinois Regional Commuter R.R. Corp.*, 398 Ill. App. 3d 13, 16 (2010). *De novo* review is independent of the trial court's decision; we need not defer to the trial court's judgment or reasoning. *Motorola Solutions, Inc. v. Zurich Insurance Co.*, 2015 IL App (1st) 131529, ¶ 114. Summary judgment is proper only where the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact, and that the moving party is entitled to a judgment as a matter of law. *Mashal v. City of Chicago*, 2012 IL 112341, ¶ 49. This case involves the interpretation of the homeowners' policy. The construction of an insurance policy is a question of law, which is also reviewed *de novo*. *Rich v. Principal Life Insurance Co.*, 226 Ill. 2d 359, 370-71 (2007).

¶ 14 An insurance policy is a contract, subject to the same rules of interpretation that govern the interpretation of any other contract. *Founders Insurance Co. v. Munoz*, 237 Ill. 2d 424, 433, (2010). Our primary goals are to determine the parties' intent and to give effect to that intent, as

expressed through the language of the policy. *Bartkowiak v. Underwriters at Lloyd's, London*, 2015 IL App (1st) 133549, ¶ 28. We apply the unambiguous provisions in an insurance policy as written, unless such application violates public policy. *Nicor, Inc. v. Associated Electric and Gas Insurance Services Ltd.*, 223 Ill. 2d 407, 416-17 (2006); *State Farm Mutual Automobile Insurance Co. v. Villicana*, 181 Ill. 2d 436, 442 (1998). Any ambiguity in the insurance policy will be interpreted in favor of coverage. *Pekin Insurance Co. v. AAA-1 Masonry & Tuckpointing, Inc.*, 2017 IL App (1st) 160200, ¶ 23.

¶ 15 The trial court ruled that Exclusions 2 and 3 barred coverage for plaintiffs' loss, accepting Allstate's position that the loss was caused by water "backing up" or "overflowing" from the flood-control system. Plaintiffs argue that the trial court was wrong, because "[t]he basement water was not caused by a backup" but, rather, "by a broken flood control system." If anything, plaintiffs say, the phrase "water backup" is undefined and ambiguous, requiring an interpretation in their favor.

¶ 16 These phrases are not ambiguous merely because plaintiffs say they are, or merely because they are undefined. We will find ambiguity only where competing *reasonable* interpretations are offered. See *Nicor, Inc. v. Associated Electric & Gas Insurance Services Ltd.*, 223 Ill. 2d 407, 417 (2006) ("That a term is not defined by the policy does not render it ambiguous, nor is a policy term considered ambiguous merely because the parties can suggest creative possibilities for its meaning."); *Rich*, 226 Ill. 2d at 371 (ambiguity found in insurance policies if they are reasonably susceptible to more than one meaning).

¶ 17 Under the circumstances in this factual setting, we find no ambiguity. The pump system that was supposed to stop the rainwater from entering the basement failed, allowing the water to back up (or overflow) into the basement. The plumber himself used this verbiage, but the

specific buzzword-language aside, it is precisely what the plumber described in his deposition. The fact that this back-up or overflow was caused by a malfunctioning flood-control system does not remove the applicability of Exclusions 2 or 3. We find neither ambiguity in the language nor a question of material fact precluding summary judgment in Allstate's favor.

¶ 18 Plaintiffs raise two other arguments in support of their claim. The first is that the Water Back-Up Endorsement, which Allstate found applicable, cannot be used for the purpose of reducing otherwise applicable coverage. But that is a mischaracterization. The additional endorsement, whose language all but identically tracked the language of Exclusions 2 and 3 (see *supra* ¶¶ 7-8), was intended to provide coverage (albeit to the limited extent of $10,000) that otherwise did not exist. That is the purpose of such an endorsement, to provide additional coverage at an additional cost. The Water Back-Up Endorsement thus makes perfect sense in light of Exclusions 2 and 3, underscoring our interpretation of those exclusions, not creating ambiguity or a question of material fact.

¶ 19 For that reason, we need not discuss plaintiffs' related argument that they were not given proper notice of the Water Back-Up Endorsement, a somewhat curious claim in any event—but one that is beside the point, given that Exclusions 2 and 3 deny coverage to plaintiffs regardless of the *existence* of that additional endorsement, much less any notice of it.

¶ 20 Plaintiffs' other argument, as we briefly mentioned earlier, is that a different exclusion dictates the outcome of this case. Plaintiffs rely on Exclusion 15, which provides that Allstate will not cover certain losses, including those caused by "mechanical breakdown." Plaintiffs seize on the *exception* to Exclusion 15, which provides that, if any causes of damage otherwise excluded under Exclusion 15 "cause the sudden and accidental escape of water or steam from a plumbing, heating, or air conditioning system, household appliance or fire protective sprinkler

system within your dwelling, we cover the direct physical damage caused by the water or steam." Plaintiffs claim that this exception to the exclusion covers the very factual scenario before us.

¶ 21 The problem for plaintiffs is that an exception to an exclusion cannot create coverage that is otherwise barred by another, independent exclusion from coverage in the same policy. In *Western Casualty & Surety Co. v. Brochu*, 105 Ill. 2d 486 (1985), our supreme court interpreted a general comprehensive liability policy with several independent exclusions. One of those exclusions contained an exception which the insured argued was applicable, but the supreme court rejected that claim, because another exclusion clearly applied. *Id*. at 496-97.

¶ 22 An exception to an exclusion might save an insured from that particular exclusion, but it cannot be read to invalidate another, separate exclusion within the policy that unambiguously applies. See *id*. at 494 ("If *any one* of the exclusions applies there is no coverage.") (emphasis added); *Allstate Insurance Co. v. Eggermont*, 180 Ill. App. 3d 55, 61 (1989) (following *Brochu* and noting that "the granting of coverage by way of an exception to an exclusion did not prevent limitation of such coverage by other clear and unambiguous exclusions listed in the exclusions section"); *Continental Casulaty Co. v. Donald T. Bertucci, Ltd.*, 399 Ill. App. 3d 775, 789 (2010) ("an exception to an exclusion does not create coverage or provide an additional basis for coverage").

¶ 23 Because Exclusions 2 and 3 unambiguously apply to the loss presented here, it makes no difference whether Exclusion 15, or an exception to Exclusion 15, applies. The exception to Exclusion 15 does not create coverage, ambiguity, or a question of material fact.

¶ 24 We would note, in any event, that the exception to Exclusion 15 is compatible with Exclusions 2 and 3. The "escape of water or steam from a plumbing, heating, or air conditioning

system, household appliance or fire protective sprinkler system" is suited to a malfunctioning air conditioner or toilet or refrigerator, not to the back-up or overflow of water from a sewer, sump pump, or "or other system designed for the removal of subsurface water." Nothing in that exception to Exclusion 15 does violence to Exclusions 2 and 3.

¶ 25 III. CONCLUSION

¶ 26 We affirm the trial court's ruling in all respects.

¶ 27 Affirmed.