FIRST DIVISION
March 31, 2017

No. 1-16-2625
2017 IL App (1st) 162625-U

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

FOUNDERS INSURANCE COMPANY,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 15 CH 09209
	)	
TIFFANY OWENS,	)	Honorable
	)	Kathleen G. Kennedy,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE CONNORS delivered the judgment of the court.
Justices Harris and Simon concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err in granting summary judgment in favor of the insurer where the insured failed to demand uninsured motorist arbitration within the two-year limitations period set forth in clear language in her insurance policy and where the two-year limitations period has been found to be consistent with Illinois public policy; affirmed.

¶ 2 Defendant, Tiffany Owens, appeals the trial court's order granting summary judgment in favor of plaintiff, Founders Insurance Company (Founders), on the basis that Owens's demand for arbitration was untimely pursuant to the terms of the insurance policy at issue. Owens argues that the court below erred when it granted Founders's motion because Owens is entitled to uninsured motorist coverage pursuant to the Illinois Insurance Code. Founders responds that the trial court was correct in granting summary judgment in its favor where the operative insurance

policy required a written demand for arbitration to be received by Founders within two years of the accident, and Owens did not submit her demand until four years and seven months after the accident. We agree with Founders and affirm the decision of the trial court.

¶ 3 BACKGROUND

¶ 4 This case stems from an automobile accident that occurred on August 18, 2008, in Dolton, and in which the vehicle of Jovan Cadat[1] was involved in an accident with Owens's vehicle. Owens was a named driver on a policy of automobile insurance issued by Founders under policy number "NWIL014626." Specifically relevant for this appeal is the exclusions portion of the uninsured motorist coverage part of the policy, which, in relevant part, reads:

> "Coverage H - Uninsured Motorist Coverage for Bodily Injury;
>
> Exclusions. This policy does not apply under Part IV:
>
> ***
>
> (n) to any claim for which the Company does not receive a written demand for arbitration within two years of the date of the accident, or if coverage for the claim is based on a court order of rehabilitation or liquidation by reason of insolvency of an insurer, within the later of two years of the date of the accident or six months of entry of the court order of rehabilitation or liquidation by reason of insolvency."

Also included in the policy was a section entitled "Conditions," which was noted to apply to all parts of the policy. Relevant here was a section titled, "Action Against Company," that read:

> "Parts II, III and IV. No actions shall lie against the Company unless, as a condition precedent thereto, there shall have been full compliance with all terms of this policy nor, under Part III, until thirty days after proof of loss is filed and the amount of

[1] Cadat was not a named party to the underlying action and is not a party to this appeal.

> loss is determined as provided in this policy nor, under Part IV and except as stated therein, unless written demand for arbitration shall have been received by the Company within two years of the accident; provided that if coverage under Part IV is based on entry of a court order of rehabilitation or liquidation by reason of insolvency of an insurer, then in such event suit or arbitration shall not be commenced against the Company after the later of two years after the date of the accident or six months after the entry of such court order of rehabilitation or liquidation by reason of insolvency. For purposes of this policy, arbitration is commenced against the Company only when the company receives a written demand for arbitration."

¶ 5 As a result of the August 18, 2008, accident, Owens sustained injuries, and filed a lawsuit against Cadat, seeking $12,000. At the time of the accident, Cadat was insured by Universal Casualty Company (Universal), and as a result of the accident, Owens made a collision claim against Founders for the damage to her vehicle. On October 29, 2008, after resolving Owens's collision claim, Founders sent a subrogation notice to Universal. On November 4, 2008, Universal sent Founders a letter denying coverage on the basis that the involved vehicle did not fall within its insuring agreement. Owens was not informed that Universal had denied coverage based on this non-owners policy exclusion. Nonetheless, Universal paid 94% of Founders's subrogation claim on July 20, 2012.

¶ 6 On July 22, 2010, Owens filed a personal injury action in circuit court against Cadat. On July 1, 2011, Owens obtained a judgment[2] against Cadat in the amount of $12,000. On February 28, 2013, Owens filed a citation to discover assets against Universal, and counsel for Universal appeared on March 26, 2013. Further, Universal filed a complaint for declaratory judgment

[2] Although unclear from the record in this case, in its response brief, Founders states that it is its understanding that neither an attorney for Cadat appeared in the personal injury action, nor did he represent himself *pro se*, thus, it is likely that the judgment entered was based on a default.

against Cadat, Owens, and Northwest Insurance in circuit court on May 7, 2013. Subsequently, judgment was entered in favor of Universal on December 9, 2014.

¶ 7 On March 12, 2013, Owens, acting through counsel, mailed a demand for arbitration to Founders under the uninsured motorist coverage of the policy at issue. Founders received Owens's demand on March 15, 2013. On June 11, 2015, Founders filed a complaint for declaratory judgment, which forms the basis of the instant appeal. Founders's complaint sought a declaration that it owed no duty to provide uninsured motorist coverage, arbitration, or benefits in connection with the August 18, 2008, accident, because Owens's demand for arbitration submitted to Founders on March 12, 2013, was untimely.

¶ 8 On April 5, 2016, Founders filed its motion for summary judgment, arguing that the plain language of the policy at issue required Owens to provide a written demand for uninsured motorist arbitration within two years of the date of the accident but Owens failed to do so, and instead mailed her demand four years and seven months after the accident. Owens filed her response on May 26, 2016, asserting that denying her uninsured motorist coverage would circumvent the purpose of section 143a of the Illinois Insurance Code, (215 ILCS 5/143a (West 2008)), which statutorily mandates uninsured motorist coverage, and which places the insured in substantially the same position as if the wrongful uninsured driver had been minimally insured. In its reply, filed on June 7, 2016, Founders pointed out that the two cases relied upon by Owens, *American Service Insurance Co. v. Pasalka*, 363 Ill. App. 3d 385 (2006), and *Burgo v. Illinois Farmers Insurance Co.*, 8 Ill. App. 3d 259 (1972), were not congruent with the facts of this case.

¶ 9 According to the trial court's written order dated August 31, 2016, the parties waived argument on Founders's motion for summary judgment. The court determined that although Owens's "coverage argument is compelling in light of the undisputed facts of the payment by the

tortfeasor's carrier and the delay in the ultimate determination of the tortfeasor's coverage status *** Founders'[s] two-year limitation period is consistent with public policy." The court also found that, "the terms of the policy are clear and unambiguous, so the court must give them their plain meaning." Ultimately, the court granted Founders's motion for summary judgment, and stated:

> "Under the plain language of the policy [Owens] was to submit a written demand for uninsured motorist arbitration within two years of the accident. [Owens] admits that her demand for arbitration was not timely submitted. On that basis, Founders is entitled to the summary judgment it seeks because [Owens's] demand for arbitration was untimely. Thus, Founders has and owes no duty to provide uninsured motorist coverage, arbitration, or benefits to [Owens] in connection with the motor vehicle accident of August 18, 2008."

¶ 10 Owens filed her timely notice of appeal on September 30, 2016.

¶ 11 ANALYSIS

¶ 12 The sole issue presented by Owens on appeal is whether the trial court erred when it granted summary judgment in favor of Founders, finding that Owens's demand for arbitration was untimely.

¶ 13 Summary judgment is an appropriate remedy "where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law." *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 102 (1992). When examining an appeal from a summary judgment ruling, we conduct a *de novo* review. *Id.*

¶ 14 It is well-settled that an insurance policy in which no ambiguity appears is to be read as any other contract, that is, according to its terms' plain and ordinary meaning. *Hannigan v.*

Country Mutual Insurance Co., 264 Ill. App. 3d 336, 339 (1994). Additionally, "in interpreting the provisions of an insurance contract, the entire document should be examined, considering the language of the policy as well as the subject matter and purpose of the contract." *Id.* "Where provisions in an insurance contract do not violate law or public policy, courts must enforce them without rewriting them or injecting terms not agreed to by the parties." *Pasalka*, 363 Ill. App. 3d at 389.

¶ 15 On appeal Owens argues that the trial court erred when it granted Founders's motion for summary judgment based on its finding that her demand for arbitration was untimely. Specifically, she points to the cases of *Pasalka* and *Burgo*, which she also cited in her response to Founders's motion for summary judgment. Founders responds that the trial court properly granted summary judgment, because the plain language of the policy required the insured (Owens) to provide a written demand for uninsured motorist arbitration within two years from the date of the accident. Further, Founders argues that Illinois courts have held such "date of accident" policy limitations to be clear and enforceable. In her reply, Owens asserts that this court should allow her insurance coverage because the status of the uninsured vehicle was determined more than two years after the accident and Illinois public policy favors coverage in such a scenario.

¶ 16 We agree with Founders's position on appeal and find that the trial court properly granted summary judgment in its favor. Although Owens relies on *Pasalka* and *Burgo* as support for her position, we find those cases to be inapplicable to the factual scenario before us. In *Pasalka*, the insurer denied coverage to its insureds based on their failure to file demands for arbitration within two years of the accidents as required pursuant to a limitation in the policies. *Pasalka*, 363 Ill. App. 3d at 387. In each case, the insureds were involved in accidents with drivers who

had insurance at the time of the accidents, but the insurance companies covering the drivers became insolvent more than two years after the accidents. *Id.* On appeal, the insureds argued that the trial court properly granted summary judgment in their favor, because there was no reason to file claims for uninsured motorist coverage until the insurance companies became insolvent. *Id.* The appellate court agreed that summary judgment in the insureds' favor was proper, finding that an insurance policy which lacks an exception for an insured who could not discover the insolvency of the tortfeasor's insurer until after the two-year deadline "is intended to defeat uninsured motorist coverage." *Id.* at 391-92. As a result, the court determined that the two-year limitations provision violated section 143a of the Insurance Code and public policy. *Id.* at 392.

¶ 17 Unlike the insurance policy in *Pasalka*, the policy at issue here expressly provided an exception to the two-year limitations period if insolvency of the insurer should occur. Here, the policy stated in the case of an insolvency of an insurer, "then in such event suit or arbitration shall not be commenced against the Company after the later of two years after the date of the accident or six months after the entry of such court order of rehabilitation or liquidation by reason of insolvency." Thus, the exact language that was missing from the policy in *Pasalka*, and consequently rendered the two-year limitations period against public policy, was present here. Therefore, the *Pasalka* decision does not apply to the factual scenario before us.

¶ 18 Simiarly, we find *Burgo* to be inapposite. In *Burgo*, the insurance provision at issue limited the insured's time to demand arbitration to one year from the date of the accident. *Burgo*, 8 Ill. app. 3d at 261. In reaching its decision that the one-year limitations period was against public policy, the court acknowledged that, "[i]f the practical effect of the contract provision is to deprive the insured of uninsured motorist coverage required by the statute, then the provision is

void and of no effect." *Id*. at 263. The court found that the insurance company intentionally wrote the policy to shorten the time period to less than the time provided by the statute of limitations for personal injury actions in Illinois, which is two years. *Id.* As a result, the *Burgo* court held that "the contract provision limiting the arbitration demand to one year after the accident violates the statute of limitations to bring the injury suit and violates the statute on uninsured motorists and is arbitrary, unreasonable and capricious and against the public policy of this state, and is therefore void." *Id.* at 264.

¶ 19 Here, the limitations period is two years, not one year as it was in *Burgo*. Therefore, we cannot find that this case mirrors *Burgo* when the court in that case hinged much of its holding on the fact that the one-year limitations period condensed the insured's time for filing to a timeframe less than the two-year statute of limitation period required by Illinois's personal injury statute. See *id.* at 263.

¶ 20 Further, although Owens argues that Illinois public policy favors coverage when the uninsured status of the vehicle was not determined until after the two-year limitations period, she fails to point out any cases that support such a proposition. Instead, Founders cites to, and we find convincing, numerous cases in which Illinois courts have recognized that two-year limitations periods are consistent with our state's public policy. See *Hermanson v. Country Mutual Insurance Co.*, 267 Ill. App. 3d 1031, 1035 (1994) (holding that "the limitations provision in [the insurer's] policy clearly provided that plaintiff must file his demand for arbitration as well as his lawsuit within two years of the accident"); *Hannigan v. Country Mutual Insurance Co.*, 264 Ill. App. 3d 336, 342 (1994) (determining that it was unnecessary for the discovery rule to be applied due to the clear requirements of the policy provision at issue, the court held that the two-year statute of limitations contained in the insurer's policy did not violate

public policy); *Shelton v. Country Mutual Insurance Co.*, 161 Ill. App. 3d 652, 660 (1987) (rejecting the plaintiff's "discovery rule" argument and finding that the two-year statute of limitations did not violate public policy).

¶ 21 In this case, the accident occurred on August 18, 2008. Thus, in order for Owens's demand for arbitration to be timely, Founders was required to have received her demand by August 18, 2010. However, Owens did not mail her demand until March 12, 2013, and Founders did not receive the demand until March 15, 2013, which was four years and seven months after the accident. As a result, we find that Owens's demand for arbitration was untimely under the plain, unambiguous language of the policy which has been deemed consistent with Illinois public policy by previous courts. Therefore, we affirm the trial court's decision granting summary judgment in Founders's favor.

¶ 22 CONCLUSION

¶ 23 Based on the foregoing, we find that the trial court properly granted Founders's motion for summary judgment.

¶ 24 Affirmed.