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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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PEKIN INSURANCE COMPANY,	)	Appeal from the Circuit Court
	)	of Du Page County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 15 MR 1755
	)	
JB ARCHITECTURE GROUP, INC., an	)	
Illinois Corporation,	)	
	)	
Defendant-Appellee,	)	
	)	
and	)	
	)	
BRADY O'MARY,	)	Honorable
	)	Paul M. Fullerton,
Defendant.	)	Judge, Presiding.

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JUSTICE McLAREN delivered the judgment of the court.  
Justices Burke and Schostok concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Summary judgment properly granted where Pekin Insurance Company had duty to defend JB Architecture Group, Inc., in underlying liability action because fungi and bacteria exclusion endorsement did not clearly apply to exclude otherwise covered property damage. Affirmed.
- ¶ 2 Plaintiff, Pekin Insurance Company (Pekin), appeals from the circuit court's judgment order finding that it owes a duty to defend defendant JB Architecture Group, Inc. (JB) in the

underlying action brought against JB by defendant Brady O'Mary (O'Mary). For the reasons stated below, we affirm.

¶ 3

### I. BACKGROUND

¶ 4 After a fire destroyed her home, O'Mary engaged JB to construct a replacement home. O'Mary filed a four-count complaint against JB, alleging bodily injury and property damage arising from JB's breach of contract, negligence, breach of implied warranty of good workmanship, and breach of express warranty. With respect to the negligence count, O'Mary alleged:

“9. Unfortunately, the Defendant [JB] breached the contract and acted negligently and constructed a residence riddled with defects—set forth with more specificity below—that damaged the Plaintiff [O'Mary] by causing the Plaintiff to spend additional sums to correct those defects and that damaged the Plaintiff by causing her property damage and bodily injuries.

10. Certain defects in the construction of the Plaintiff's residence by the Defendant damaged the existing foundation and, as a consequence of that damage and other construction defects, caused water to infiltrate the residence that damaged or destroyed Plaintiff's personal property, thereby causing her to suffer additional losses and damages.

\* \* \*

12. Defendant's negligence in performing its work resulted in additional cracks in the foundation that caused water infiltration and thereafter the formation of mold on the foundation and on the improvements and fixtures purchased by the Plaintiff and on or in Plaintiff's personal property.

13. The presence of the mold caused allergic reactions and headaches and other bodily suffering for the Plaintiff and the Plaintiff's family.

14. The water infiltration resulting from the Defendant's negligence also damaged and destroyed Plaintiff's personal property."

¶ 5 JB tendered its defense against O'Mary's claims to its commercial general liability insurer, Pekin. Pekin defended JB subject to a reservation of rights and filed a declaratory judgment action alleging it had no duty to defend JB under its policy. With respect to O'Mary's negligence count, Pekin alleged that it had no duty to defend because bodily injury and damages to property sustained due to exposure to mold are excluded under the policy's fungi or bacteria exclusion endorsement. This exclusion precludes coverage, in pertinent part, for "'bodily' or 'property damage' arising out of the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, any 'fungi' or bacteria on or within a building or structure, including its contents, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such injury or damage." Under the policy, fungi includes mold.

¶ 6 The parties filed cross motions for summary judgment. The trial concluded that the underlying complaint's negligence count triggered a duty to defend JB and, accordingly, denied Pekin's motion for summary judgment and granted JB's motion for summary judgment. Because we affirm on this basis, we do not address the parties' assertions or the court's findings on the other counts of the underlying complaint. See *Pekin Insurance Co. v. Richard Marker Associates, Inc.*, 289 Ill. App. 3d 819, 821 (1997) ("If recovery is premised on several theories of liability, some of which are excluded from coverage, the insurer is still obligated to defend as long as one theory might possibly fall within the scope of the policy coverage.").

¶ 7

## II. ANALYSIS

¶ 8 The controlling principles for determining whether a duty to defend exists are well settled:

“To determine whether an insurer has a duty to defend its insured from a lawsuit, a court must compare the facts alleged in the underlying complaint to the relevant provisions of the insurance policy. [Citation.] The allegations must be liberally construed in favor of the insured. [Citation.] If the facts alleged fall within, or potentially within, the policy’s coverage, the insurer is obligated to defend its insured. [Citation.] This is true even if the allegations are groundless, false, or fraudulent, and even if only one of several theories of recovery alleged in the complaint falls within the potential coverage of the policy. [Citation.] Thus, an insurer may not justifiably refuse to defend a lawsuit against its insured unless it is clear from the face of the underlying complaint that the allegations set forth in the complaint fail to state facts that bring the case within, or potentially within, the coverage of the policy. [Citation.]”

*Valley Forge Ins. Co. v. Swiderski Elecs., Inc.*, 223 Ill. 2d 352, 363 (2006). Accordingly, the underlying complaint, like the insurance policy, must be liberally construed in favor of the insured in determining the insurer’s duty to defend; thus, all doubts and ambiguities must be resolved in favor of the insured. *U.S. Fid. & Guar. Co. v. Wilkin Insulation Co.*, 144 Ill. 2d 64, 74 (1991). This principle of liberal construction similarly applies to exclusions, which must be construed narrowly in favor of coverage. *Gillen v. State Farm Mutual Automobile Insurance Co.*, 215 Ill. 2d 381, 393 (2005).

¶ 9 A circuit court's entry of summary judgment is subject to *de novo* review, and the construction of an insurance policy, which presents a question of law, is likewise reviewed *de novo*. *Swiderski Elecs., Inc.*, 223 Ill. 2d at 360.

¶ 10 Pekin argues that because O'Mary's negligence count alleged property damage caused by both water and mold, the fungi or bacteria exclusion endorsement applies to exclude coverage for the negligence count and, therefore, the trial court erred in determining that Pekin has a duty to defend JB. JB argues that O'Mary's negligence count alleged water damage to personal property distinct from damage to personal property caused by mold; therefore, the fungi or bacteria exclusion endorsement does not apply to the alleged water damage, and the trial court correctly concluded that Pekin owes a duty to defend JB.

¶ 11 O'Mary's complaint alleged (1) that "[c]ertain defects in the construction of [her] residence \*\*\* caused water to infiltrate the residence that damaged or destroyed [her] personal property"; (2) that "[JB's] negligence \*\*\* resulted in additional cracks in the foundation that caused water infiltration and thereafter the formation of mold \*\*\* on or in [her] personal property"; and (3) "[t]he water infiltration resulting from [JB's] negligence also damaged and destroyed [her] personal property." Pekin contends these allegations establish that any damage to O'Mary's personal property was caused, concurrently or in sequence, by both water and mold, and therefore the fungi or bacterial exclusion endorsement operates to exclude coverage for her personal property damage.

¶ 12 We are unwilling to assume that all of the alleged damage to O'Mary's personal property was caused by both water and mold. An equally reasonable interpretation of the allegations is that O'Mary alleged water damage to some personal property and mold damage to other personal property. At the very least, the allegations are ambiguous. It is a well-settled principle that

“vague, ambiguous allegations against an insured should be resolved in favor of finding a duty to defend.” *Illinois Tool Works Inc. v. Travelers Cas. and Surety Co.*, 2015 IL App (1st) 132350, ¶ 26. Accordingly, Pekin “can only refuse to defend if the allegations in the underlying complaint preclude any possibility of coverage.” *Id.* at ¶ 27; *USAA Cas. Ins. Co. v. McInerney*, 2011 IL App (2d) 100970, ¶ 13. O’Mary’s allegations do not preclude any possibility of coverage.

¶ 13 When liberally construed in favor of JB, the allegations state facts that bring the case potentially within the coverage of the policy, thus triggering Pekin’s duty to defend JB. *Swiderski Elecs., Inc.*, 223 Ill. 2d at 363.

¶ 14

### III. CONCLUSION

¶ 15 For the reasons stated, we affirm the trial court’s judgment that Pekin has a duty to defend JB in the underlying action.

¶ 16 Affirmed.