2019 IL App (5th) 180285-U

NO. 5-18-0285

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

KIMBERLY HOPKINS, Plaintiff-Appellant, v. STATE FARM FIRE & CASUALTY COMPANY, ROLLING OAKS CONDOMINIUM ASSOCIATION, ALLSTATE INSURANCE COMPANY, CITY OF COLLINSVILLE, and COLLINSVILLE BUILDING & LOAN ASSOCIATION, Defendants (State Farm Fire & Casualty Company, Defendant-Appellee).	)	Appeal from the Circuit Court of Madison County. No. 13-MR-170 Honorable Clarence W. Harrison II, Judge, presiding.

JUSTICE CHAPMAN delivered the judgment of the court.
Presiding Justice Overstreet and Justice Moore concurred in the judgment.

ORDER

¶ 1 *Held*: Where an exclusion in State Farm Fire & Casualty Company's condominium unit owner's policy was not ambiguous or in violation of Illinois public policy, we affirm the trial court's order denying Kimberly Hopkins' motion for summary judgment and granting State Farm Fire & Casualty Company's motion for summary judgment.

¶ 2 Kimberly Hopkins appeals from the trial court's denial of her partial motion for summary judgment against State Farm Fire & Casualty Company (State Farm) and from the trial court's entry of summary judgment in State Farm's favor. She asks this court to determine that part A of

State Farm's condominium unit owner's policy covered the costs to rebuild the interior of her condominium after the City of Collinsville (City) ordered demolition of her unit based upon the City's ordinance that mandated changes to the foundational structure of her building. She argues that she should not be denied coverage based on an ordinance exclusion in her State Farm policy because the ordinance applied only to the foundational structure of the building, which was the responsibility of the condominium association and was not insured under her policy. For the reasons expressed in this order, we affirm.

¶ 3 BACKGROUND

¶ 4 Rolling Oaks Condominium Association (Rolling Oaks) managed eight condominium units in the City that were originally built in 1984. Kimberly Hopkins (Hopkins) purchased one of the eight Rolling Oaks condominiums. Hopkins' mortgage was provided by Collinsville Building & Loan Association. To insure her condominium, Hopkins purchased a condominium unit owner's policy from State Farm. Rolling Oaks purchased its own insurance coverage from Allstate Insurance Company (Allstate) that covered the external and foundational portions of the structure, which were Rolling Oaks' responsibility.

¶ 5 On June 20, 2012, a fire destroyed four of the Rolling Oaks condominium units and damaged a fifth unit so badly that the City required the demolition of the fifth unit and its three adjoining units. All eight units were demolished. Hopkins' unit sustained only smoke and water damage but was demolished because of the underlying structural issues. The notice of demolition was dated August 29, 2013, and was accompanied by a report prepared by David A. Loyet & Associates, LLC, a structural engineering firm. The report explained that the basement foundation walls were badly damaged and could not be reconstructed to applicable building code standards. The 2006 International Building Code was adopted by the City prior to the 2012 fire.

This construction code was more stringent than the code in effect when the condominiums were originally constructed. The new code required that seismic protections be included in the structural foundations. Initially, there had been a possibility that the foundational structures of the three condominiums with the least damage could have been made compliant. However, the City ultimately concluded that all eight condominiums had to be demolished.

¶ 6 Allstate issued a check in the amount of $663,557.10 to Rolling Oaks pursuant to coverage A for the damage to the exterior of the four fire-damaged units that required immediate demolition. Rolling Oaks filed a declaratory judgment suit against Allstate to enforce its coverage on the other four units. Rolling Oaks' cause of action against Allstate went to trial, and Rolling Oaks obtained a verdict in the amount of $600,000 that was later settled for an amount less than that total.

¶ 7 Hopkins filed a loss claim with State Farm. In her claim, State Farm acknowledged that the fire was a covered loss and additionally acknowledged that Hopkins was forced to move from her condominium pursuant to the City's notice of demolition. Hopkins received reimbursement for her separate housing and living costs as covered expenses under coverage C of the condominium unit owner's policy. In addition, Hopkins received reimbursement for personal property losses, including repairs for the smoke and water damage pursuant to coverage B. State Farm, however, would not provide reconstruction coverage pursuant to coverage A of its condominium unit owner's policy for the City-ordered demolition of Hopkins' unit.

¶ 8 Hopkins filed a declaratory judgment suit against State Farm asking the court to declare that State Farm's policy provided coverage under coverage A for this catastrophic loss. In an amended complaint, Hopkins added the City as a defendant and sought injunctive relief against the City to halt the demolition of her unit until she obtained coverage for the anticipated loss.

State Farm answered the first amended complaint and added its own counterclaim seeking a declaration that it did not provide coverage for the City-ordered demolition of Hopkins' condominium.

¶ 9 State Farm's counterclaim alleged that coverage A afforded Hopkins no right to payments for indemnity because of its "Ordinance or Law" exclusion. In its initial September 13, 2012, denial letter, State Farm did not make any specific exclusionary reference and simply cited, SECTION I–LOSSES NOT INSURED. The counterclaim provided the specific bases for State Farm's denial. State Farm distinguished its policy from Allstate Insurance Company's policy covering Rolling Oaks because the Allstate policy contained an endorsement providing coverage for the demolition of a building required by ordinance.

¶ 10 Hopkins filed a second amended complaint and an answer to State Farm's counterclaim. This second amended complaint was at issue in the motions for summary judgment.

¶ 11 State Farm filed a motion for summary judgment, arguing that the "Ordinance or Law" exclusion in its condominium unit owner's policy barred Hopkins from obtaining recovery of construction costs for the interior of her unit.

¶ 12 Hopkins then filed her motion for partial summary judgment, asserting that the loss exclusion State Farm relied upon was ambiguous and was contrary to public policy and therefore could not be relied upon to deny payments under coverage A. In support of her argument, Hopkins stated that all condominium associations were required by law to obtain coverage that included an endorsement covering losses caused by demolition resulting from enforcement of an ordinance. She noted that the primary reason that condominium associations must have this coverage for the exteriors and foundations of its condominiums is to protect the individual condominium owners who could not rebuild the interior of their space without the overall

external structure intact. She argued that this statutory requirement should also apply to condominium owners' policies, because if not, the exclusion negates the protection provided by the statutory provision imposed upon the insurers of the condominium associations.

¶ 13 Hopkins explained the ramifications of State Farm's alleged policy exclusion more fully as follows: Because of the statutory requirement that condominium association policies must cover ordinance-mandated demolition damages, the external and foundational structure of the Rolling Oaks eight condominiums could be rebuilt. But, because State Farm's condominium unit owner's policy purported to exclude ordinance-mandated demolition damage, Hopkins and other similarly-situated condominium owners were excluded from recovering their "walls in" coverage, meaning that they would receive no reimbursement to rebuild the interior of the units, including load-bearing walls that would support the roof. Moreover, if the individual condominium unit owners are denied reimbursement funding for construction, the condominium association owners will also not be able to proceed with rebuilding.

¶ 14 Prior to argument on the competing motions for summary judgment, the City was dismissed from the suit because it had already demolished the condominiums pursuant to its directive.

¶ 15 The trial court heard oral argument on May 10, 2018, and entered an abbreviated order denying Hopkins' motion and granting State Farm's motion. On May 17, 2018, the trial court entered a formal written order to the same effect. The court did not elaborate on its reasoning.

¶ 16 ANALYSIS

¶ 17 Hopkins appeals from the trial court's summary judgment order arguing, alternatively, that the Ordinance or Law exclusion is either ambiguous or violates public policy. If we

conclude that either argument has merit, then we must reverse the trial court's order denying Hopkins' motion and granting State Farm's motion.

¶ 18 Section 2-1005(c) of the Code of Civil Procedure provides that a party is entitled to summary judgment as a matter of law if "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact." 735 ILCS 5/2-1005(c) (West 2016). If there are outstanding genuine issues of material fact, the trial court should deny a motion for summary judgment. *Koziol v. Hayden*, 309 Ill. App. 3d 472, 476, 723 N.E.2d 321, 323 (1999). " 'A genuine issue of material fact precluding summary judgment exists where the material facts are disputed, or, if the material facts are undisputed, reasonable persons might draw different inferences from the undisputed facts.' " *Monson v. City of Danville*, 2018 IL 122486, ¶ 12, 115 N.E.3d 81 (quoting *Adames v. Sheahan*, 233 Ill. 2d 276, 296, 909 N.E.2d 742, 753 (2009)); see also *Koziol*, 309 Ill. App. 3d at 476.

¶ 19 Summary judgment is a drastic remedy and should not be granted unless the movant's right to judgment is unquestionable. *Monson*, 2018 IL 122486, ¶ 12 (citing *Adams v. Northern Illinois Gas Co.*, 211 Ill. 2d 32, 42-43, 809 N.E.2d 1248, 1256 (2004)); *Hutchcraft v. Independent Mechanical Industries, Inc.*, 312 Ill. App. 3d 351, 357, 726 N.E.2d 1171, 1176 (2000). The trial court must strictly construe all evidence in the record against the moving party and liberally in favor of the opponent. *Monson*, 2018 IL 122486, ¶ 12 (citing *Adams*, 211 Ill. 2d at 42); *Purtill v. Hess*, 111 Ill. 2d 229, 240, 489 N.E.2d 867, 871 (1986); *Koziol*, 309 Ill. App. 3d at 476. Appellate courts review summary judgment orders on a *de novo* basis. *Monson*, 2018 IL 122486 ¶ 12 (citing *Barnett v. Zion Park District*, 171 Ill. 2d 378, 385, 665 N.E.2d 808, 811 (1996)); *Myers v. Health Specialists, S.C.*, 225 Ill. App. 3d 68, 72, 587 N.E.2d 494, 497 (1992).

¶ 20 We start our analysis of this insurance coverage issue with a recitation of the language contained in State Farm's condominium unit owner's policy. Here, there is no dispute that Hopkins is the "insured" and that her condominium unit was the "Insured Location." An "occurrence" is defined as "an accident *** which results in *** property damage." "Property damage" is defined to include "[p]hysical damage to or destruction of tangible property, including loss of use of this property."

¶ 21 At issue in this case is coverage A, which covers the building property. The policy provides:

> "We cover items of real property which pertain directly to your unit and are your insurance responsibility under the governing rules of the condominium. This includes building additions and alterations, installations or additions comprising a part of the described unit. This also includes your share of an association deductible but only when the deductible is not assessed against all unit owners."

Further down in the policy, under a section entitled "SECTION I–LOSSES INSURED," the policy states: "We insure for accidental direct physical loss to the property described in Coverage A ***. Except as provided in SECTION I–LOSSES NOT INSURED." Paragraph 2 under SECTION I–LOSSES NOT INSURED contains the exclusion at issue in this case:

> "2. We do not insure under any coverage for any loss which would not have occurred in the absence of one or more of the following excluded events. We do not insure for such loss regardless of (a) the cause of the excluded event; or (b) other causes of the loss; or (c) whether other causes acted concurrently or in loss; or in any sequence with the excluded event to produce the loss; or (d) whether the event occurs suddenly or gradually, involves isolated or widespread damage, arises from natural or external forces, or occurs as a result of any combination of these:
>
> a. Ordinance or Law, meaning enforcement of any ordinance or law regulating the construction, repair or demolition of a building or other structure."

This exclusionary clause is known as the long form of the anticoncurrent-causation clause.

¶ 22 As noted previously, Hopkins argues that this "Ordinance or Law" exclusion is ambiguous or is contrary to Illinois public policy.

¶ 23 Construction of an insurance policy involves a question of law, and therefore, our review is *de novo*. *American States Insurance Co. v. Koloms*, 177 Ill. 2d 473, 480, 687 N.E.2d 72, 75 (1997); *Crum & Forster Managers Corp. v. Resolution Trust Corp.*, 156 Ill. 2d 384, 391, 620 N.E.2d 1073, 1077 (1993). The primary objective of a reviewing court is to give effect to the intent of the parties. *Valley Forge Insurance Co. v. Swiderski Electronics, Inc.*, 223 Ill. 2d 352, 362, 860 N.E.2d 307, 314 (2006). We must review the language of the policy in total and construe the language utilized by the insurer by affording the language its plain and ordinary meaning. *United States Fire Insurance Co. v. Schnackenberg*, 88 Ill. 2d 1, 5, 429 N.E.2d 1203, 1205 (1981); *Valley Forge Insurance Co.*, 223 Ill. 2d at 363.

¶ 24 A court should not try to find an ambiguity in the language where none truly exists. *Schnackenberg*, 88 Ill. 2d at 5; *Valley Forge Insurance Co.*, 223 Ill. 2d at 363; *Hobbs v. Hartford Insurance Co. of the Midwest*, 214 Ill. 2d 11, 29-31, 823 N.E.2d 561, 571-72 (2005). However, "[i]t is the insurer's burden to affirmatively demonstrate the applicability of an exclusion." *Pekin Insurance Co. v. Miller*, 367 Ill. App. 3d 263, 267, 854 N.E.2d 693, 697 (2006). When an insurer relies upon exclusionary policy language to deny coverage, the language's application to the facts must be clear and free from doubt. *Cohen Furniture Co. v. St. Paul Insurance Co. of Illinois*, 214 Ill. App. 3d 408, 412-13, 573 N.E.2d 851, 853 (1991). In situations where insurance policy language is ambiguous or uncertain–in other words, subject to more than one interpretation–then that language must be construed in favor of the insured and against the insurer who wrote the policy language at issue. *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 108-09, 607 N.E.2d 1204, 1212 (1992).

¶ 25 Ambiguity

¶ 26 Hopkins contends that an ambiguity exists with the coverage State Farm provided for unit owners. State Farm's policy for condominium unit owners is designed to replace the interior structure, including flooring, doors, and interior walls, to include load bearing walls to support the roof.

¶ 27 Hopkins' State Farm policy provided coverage for that portion of the building structure that is the unit owner's responsibility. Hopkins paid insurance premiums to cover the cost of repair for property damage to the "residence premises." Hopkins' policy provides coverage for repairs to the interior of her unit but does not provide coverage for damage to the exterior structure and foundation, as that responsibility belongs to Rolling Oaks.

¶ 28 In support of her argument that the policy is ambiguous, Hopkins states that reading the following two provisions in the "Unit Owner's" policy together creates an ambiguity: (1) the provision that covers the interior of the individual unit and (2) the provision excluding coverage for demolition resulting from application of an ordinance or law. She notes that, as applied, the latter provision involves part of the building not insured under Hopkins' State Farm policy. Hopkins states that "[t]here appears to be no dispute of fact that the ordinance requiring the demolition of Plaintiff's condominium unit involved the demolition and reconstruction of the foundation and firewalls, obligations of Defendant, Rolling Oaks, for both insurance coverage and construction." Hopkins claims that the exclusion creates an ambiguity because in this situation the foundational walls were not insured by the State Farm policy, and the ordinance at issue is solely directed to parts of the building not insured by this policy. Hopkins' implicit argument is that an exclusion cannot logically be read as being applicable to a coverage that is not included in the policy in the first place.

¶ 29 State Farm counters that the language of the policy will only be found to be ambiguous if it is subject to more than one reasonable interpretation–not "creative possibilities." *Bruder v. County Mutual Insurance Co.*, 156 Ill. 2d 179, 193, 620 N.E.2d 355, 362 (1993); *Hobbs*, 214 Ill. 2d at 29-31.

¶ 30 Both parties acknowledge that an ordinance or law exclusion has only been considered once by an Illinois court in *Cohen Furniture Co. v. St. Paul Insurance Co.* At issue in *Cohen* was whether the "law" exclusion barred additional reimbursement to Cohen Furniture Company after a fire loss when reconstruction required installation of a fire suppression system at an additional $54,000 cost. *Cohen*, 214 Ill. App. 3d at 411. The Jacksonville, Illinois Building Code had been amended after the furniture building was originally constructed to require the installation of the fire suppression system. *Id.* at 410. The insurance policy excluded losses " 'caused directly or indirectly by the enforcement of any law governing the use, construction, repair or demolition of buildings or other structures, including removal of debris. Such loss is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.' " *Id.* at 412. The court found that the increased cost of rebuilding, to include the fire suppression system installation, was a direct result of the enforcement of the ordinance and thus was squarely within the terms of the law exclusion. *Id.* at 413. The court also concluded that no well-reasoned explanation was offered for why the law exclusion should be in contravention of Illinois public policy. *Id.* at 414 (citing *Hewins v. London Assurance Corp.*, 68 N.E. 62, 64 (Mass. 1903) (holding that *in the absence of exclusionary language for new building laws and requirements,* where the reason for the increased fire damages is primarily the result of the fire, the increased expenses are covered)).

¶ 31 We have reviewed the policy language, including the exclusionary language, and conclude that there is no ambiguity. There is no question that State Farm's policy was intended to provide coverage for damage to the interior structure of Hopkins' condominium unit. But, as with every insurance policy, there are exceptions. This exception is plainly written to exclude any resulting demolition caused by a change in a law or an ordinance. The exception was broadly written, but its meaning is clear and unambiguous. *Valley Forge Insurance Co.*, 223 Ill. 2d at 363. The 2006 building code change mandated that the structural foundation of this building could not be constructed as it was in 1984. As a result, the entire building was demolished. Although Hopkins argues that the cause of the demolition was the foundation and the foundation was the sole responsibility of Rolling Oaks, the reality is that demolition of the foundation necessitated demolition of the entire building including Hopkins' unit. Demolition of her unit is a "loss" which would not have occurred in the absence of the amendment to the City's ordinance. Thus, the loss falls squarely within the express language.

¶ 32 We find further support for our conclusion that State Farm's anticoncurrent-causation clause is not ambiguous from *Bozek v. Erie Insurance Group*, 2015 IL App (2d) 150155, 46 N.E.3d 362. There, the plaintiffs were insured under a homeowner's policy issued by Erie Insurance Group. The plaintiffs sustained damage to an in-ground swimming pool because of two separate events. *Id.* ¶ 1. One of the events was covered under the Erie policy–a failed pressure-relief valve. The second event was excluded under the Erie policy–hydrostatic pressure. Both events contributed to a single loss. The anticoncurrent-causation clause stated: " 'We do not pay for loss resulting directly or indirectly from any of the following, even if other events or happenings contributed concurrently, or in sequence, to the loss.' " The plaintiffs argued that the phrase "in sequence" meant that if the covered cause occurred subsequent to the excluded cause, there would be no coverage. *Id.* ¶ 2. In that case, because the covered cause-pressure-relief valve

failure–occurred before the excluded case–hydrostatic pressure–the plaintiffs argued that the anticoncurrent-causation clause did not apply. The appellate court concluded that the "in sequence" phrase was not the key component to the anticoncurrent-causation clause, that instead the critical word was concurrent. *Id.* ¶ 3. If each cause of the loss contributed concurrently, then coverage for the loss is precluded. *Id.*

¶ 33 The *Bozek* court explained that the purpose of an anticoncurrent-causation clause "is to avoid application of the general rule that there is coverage so long as the efficient or dominant cause is covered." *Id.* ¶ 23 (citing Peter Nash Swisher, *Causation Requirements in Tort and Insurance Law Practice:Demystifying Some Legal Causation "Riddles,"* 43 Tort Trial & Ins. Prac. L.J. 1, 27 (2007)). State Farm contends that this means that although the initial cause of Hopkins' loss was the fire and was a covered loss, the subsequent cause of the ordinance or law exclusion in cases of demolition was not a covered loss, and thus the concurrent causes result in no coverage.

¶ 34 As in *Bozek*, the exclusion at issue in this policy was part of an anticoncurrent-causation clause. That clause clearly states that the exclusion applies regardless of whether there are other causes and regardless of whether the loss "arises from natural *or external forces.*" (Emphasis added.) Here, there was a covered event, the fire, and a noncovered event, the ordinance exclusion resulting in the demolition of the building, and therefore the concurrent events preclude coverage for Hopkins' loss. *Id.* ¶¶ 3, 23.

¶ 35 Public Policy

¶ 36 Hopkins alternatively argues that enforcement of State Farm's "Ordinance or Law" exclusion in the condominium unit owner's policy is contrary to public policy.

¶ 37 To decide whether an agreement violates Illinois public policy, we must " 'determine whether the agreement is so capable of producing harm that its enforcement would be contrary to

the public interest.' " *Phoenix Insurance Co. v. Rosen*, 242 Ill. 2d 48, 55, 949 N.E.2d 639, 644 (2011) (quoting *In re Estate of Feinberg*, 235 Ill. 2d 256, 265-66, 919 N.E.2d 888, 894-95 (2009)). Illinois courts have long upheld the rights of parties to freely contract. *Phoenix Insurance Co.*, 242 Ill. 2d at 55 (citing *Mohanty v. St. John Heart Clinic, S.C.*, 225 Ill. 2d 52, 64, 866 N.E.2d 85, 92 (2006); *Vine Street Clinic v. HealthLink, Inc.*, 222 Ill. 2d 276, 299, 856 N.E.2d 422, 438 (2006)). The Illinois Supreme Court has stated that it is in the interests of the public that parties should not be unnecessarily restricted to contract freely. *First National Bank of Springfield v. Malpractice Research, Inc.*, 179 Ill. 2d 353, 359, 688 N.E.2d 1179, 1182 (1997) (quoting *Schumann-Heink v. Folsom*, 328 Ill. 321, 330-31, 159 N.E. 250, 254 (1927)). A court's power to declare a private contract void on public policy grounds is therefore used sparingly. *Phoenix Insurance Co.*, 242 Ill. 2d at 55 (citing *Progressive Universal Insurance Co. of Illinois v. Liberty Mutual Fire Insurance Co.*, 215 Ill. 2d 121, 129, 828 N.E.2d 1175, 1180 (2005)).

¶ 38 "There is no precise definition of public policy, and consequently no absolute rule by which a contract can be measured or tested to determine whether or not it is contrary to public policy. Each case, as it arises, must be judged and determined according to its own peculiar circumstances." *Zeigler v. Illinois Trust & Savings Bank*, 245 Ill. 180, 193, 91 N.E. 1041, 1045 (1910). For an agreement between two parties to be invalidated on public policy grounds, the terms must be in contradiction to the constitution, statutory law, or other courts' decisions, or the terms must be "manifestly injurious to the public welfare." *Progressive Universal*, 215 Ill. 2d at 129-30. The burden to establish a violation of public policy is heavy. *Phoenix Insurance Co.*, 242 Ill. 2d at 55. Furthermore, the legislature has a superior role over the judicial branch in determining public policy. *Id.* at 55-56 (citing *Reed v. Farmers Insurance Group*, 188 Ill. 2d 168, 175, 720 N.E.2d 1052, 1057 (1999) (" 'When the legislature has declared, by law, the public

policy of the State, the judicial department must remain silent, and if a modification or change in such policy is desired the law-making department must be applied to, and not the judiciary, whose function is to declare the law but not to make it.' " (Internal quotation marks omitted.))). The Illinois Supreme Court has "strictly adhered to the position that the public policy of the state is not to be determined by 'the varying opinions of laymen, lawyers or judges as to the demands of the interests of the public.' " (Internal quotation marks omitted.) *Mohanty*, 225 Ill. 2d at 65 (quoting *Groome v. Freyn Engineering Co.*, 374 Ill. 113, 124, 28 N.E.2d 274, 280 (1940)).

¶ 39 Hopkins' argument that the exclusion violates public policy depends largely on the policy and purpose behind section 12 of the Condominium Property Act (Act), which provides as follows:

> "(a) Required coverage. No policy of insurance shall be issued or delivered to a condominium association, and no policy of insurance issued to a condominium association shall be renewed, unless the insurance coverage under the policy includes the following:
>
> > (1) Property insurance. Property insurance (i) on the common elements and the units, including the limited common elements and except as otherwise determined by the board of managers, the bare walls, floors, and ceilings of the unit, (ii) providing coverage for special form causes of loss, and (iii) in a total amount of not less than the full insurable replacement cost of the insured property, less deductibles, but including coverage for the increased costs of construction due to building code requirements, at the time the insurance is purchased and at each renewal date." 765 ILCS 605/12(a)(l) (West 2012).

There is no dispute that Rolling Oaks complied with its statutory duty to secure adequate coverage under this provision.

¶ 40 Hopkins argues that the policy provisions in State Farm's condominium unit owner's policy are at odds with the interests this statute was intended to protect. She argues that we can infer that the mandate to condominium associations in section 12 is to benefit and protect the individual unit owners. Hopkins explains the underlying purpose of the statutory enactment as

follows: after a catastrophic loss of a building, if ordinance and law updates are not covered by the insurance policy of the condominium association, the association may not have the financial resources to rebuild the property. Without the overall structure of the building, each unit owner would sustain his or her own financial loss. Therefore, Hopkins argues that the legislature adopted section 12 of the Act to mandate that condominium associations secure liability policies in which coverages could not be limited or barred due to an anticoncurrent-causation clause that encompassed the ordinance and law exclusion. Hopkins asserts that the public policy issues are obvious in that the legislature intended that insurance policies must cover those potential increased costs associated with any law or ordinance enacted after the building was constructed.

¶ 41 State Farm counters that section 12 of the Act does not contain a similar policy relative to unit owners and that the insurance requirement covering a law or ordinance exclusion was strictly mandated for the condominium associations. The only insurance coverage "mandated" for a unit owner is dependent upon what the board of directors decides:

> "(h) *** The board of directors may, under the declaration and bylaws or by rule, require condominium unit owners to obtain insurance covering their personal liability and compensatory (but not consequential) damages to another unit caused by the negligence of the owner or his or her guests, residents, or invitees, or regardless of any negligence originating from the unit. The personal liability of a unit owner or association member must include the deductible of the owner whose unit was damaged, any damage not covered by insurance required by this subsection, as well as the decorating, painting, wall and floor coverings, trim, appliances, equipment and other furnishings." *Id.* § 12(h).

¶ 42 The best indicator of legislative intent is the statutory language itself, which should be given its plain and ordinary meaning. *People v. Giraud*, 2012 IL 113116, ¶ 6, 980 N.E.2d 1107. " 'In determining the plain meaning of statutory terms, we consider the statute in its entirety, keeping in mind the subject it addresses and the apparent intent of the legislature in enacting it.' " (Internal quotation marks omitted.) *Id.* If the language is clear and unambiguous, then the

courts must apply the language of the statute as written. *Id.* (citing *People v. Collins*, 214 Ill. 2d 206, 214, 824 N.E.2d 262, 266 (2005)).

¶ 43 In this case, section 12 of the Act expressly applies to the condominium associations–not to the individual condominium unit owners. We find no basis in the statute itself to conclude that the legislature mistakenly failed to include a comparable mandatory policy provision for the individual unit owners. We are mindful that section 12 was likely intended to protect the unit owners in the event that the associations did not have adequate insurance coverage. However, we find nothing else within section 12 to suggest that the legislature's overriding intent was to extend the requirements of that section to individual unit owners. Nothing in the statute mandates that individual condominium unit owners must obtain insurance without an ordinance or law exclusion.

¶ 44 We also find support for our conclusion that enforcement of this insurance exclusion does not violate public policy in the absence of language in section 12 mandating *insurers* to provide the insurance to condominium associations. Although section 12 mandates that condominium associations obtain coverage to avoid an ordinance or law exclusion, nothing in the statute mandates that insurers provide that coverage. In *Royal Glen Condominium Ass'n v. S.T. Neswold & Associates, Inc.*, the appellate court explained that the purpose of the Act is "to govern the affairs of Illinois condominium associations." *Royal Glen Condominium Ass'n v. S.T. Neswold & Associates, Inc.*, 2014 IL App (2d) 131311, ¶ 22, 18 N.E.3d 137 (citing *Poulet v. H.F.O., L.L.C.*, 353 Ill. App. 3d 82, 90, 817 N.E.2d 1054, 1060 (2004)). The court held that "[n]owhere in the *** Act is there an explicit statement requiring an insurance producer to issue or deliver an insurance policy that strictly complies with section 12(a)." *Id.* ¶ 24. The court contrasted section 12(a) of the Act with section 7-601 of the Illinois Vehicle Code, which specifically sets out

minimal requirements and "expressly states that the insurance policy issued must be in accordance with the requirements of sections 143a and 143a-2 of the Illinois Insurance Code." *Id.* (citing 215 ILCS 5/143a, 143a-2 (West 2010)).

¶ 45 In further support of its conclusion that the Act does not mandate that insurers include that coverage in all condominium association policies, the court turned to the legislative history, in which both the governor and a senator stated that the changes were minor and technical. *Id.* ¶¶ 27-28. Prior to the amendment in 2002, only the board of managers was identified as having the duty to obtain the required insurance. After the amendment, the duty was placed on the condominium association. *Id.* ¶ 29. "[T]here is nothing in the legislative history to suggest that the changes were made with the intent to impose a duty on insurance producers ***." *Id.* The court opted not to interpret the statute to mean that the insurance companies must include that special endorsement to cover increased costs potentially due to building code requirements and held:

> "section 12(a)(1) is intended to regulate the insurance obligations of boards of managers of condominium associations by specifying the types of insurance that boards are required to procure and when they must reassess their insurance needs. Interpreting the statute as plaintiff urges would place on the insurance industry a burden not contemplated by the legislature, to procure sufficient insurance to cover the full insurable replacement cost of the insured property, including increased costs due to building code requirements." *Id.* ¶ 30.

Royal Glen Condominium Ass'n stands for the proposition that the burden to procure the specific coverage needed to cover increased costs due to an ordinance or law is on the condominium association–not the insurance companies. Thus, there is no reason to conclude that the public policy of this state imposes a duty on insurers of individual unit owners.

¶ 46 Although we conclude that there is no public policy basis to void State Farm's "Ordinance or Law" exclusion in its condominium unit owner's policy, we note that Allstate's

policy potentially covered part of the interior of Hopkins' unit. Section 12(a)(1)(i) provides that the condominium association must purchase property insurance "on the common elements and the units, including the limited common elements and except as otherwise determined by the board of managers, the bare walls, floors, and ceilings of the unit." 765 ILCS 605/12(a)(1)(i) (West 2012). In addition, section 12(f) specifically provides: "If at the time of a loss under the policy there is other insurance in the name of a unit owner covering the same property covered by the policy, the association's policy is primary insurance." *Id.* § 12(f). Although, Hopkins lacks standing to pursue a proportional reimbursement from Allstate because the named insured is Rolling Oaks, we note that the possibility to obtain some reimbursement from Rolling Oaks may remain dependent upon whether the Rolling Oaks board of managers opted out of this overlapping coverage.

¶ 47 CONCLUSION

¶ 48 We find that State Farm's policy language was not ambiguous and also find that State Farm's ordinance or law exclusion does not violate Illinois public policy.

¶ 49 State Farm filed a motion to strike one of Hopkins' arguments on appeal. On October 24, 2018, we took State Farm's motion to strike with the case. State Farm argues that this court should strike Hopkins' estoppel argument. We grant State Farm's motion because the record reflects that Hopkins did not raise the estoppel issue in the trial court and has therefore forfeited the right to argue the issue for the first time on appeal. *Ragan v. Columbia Mutual Insurance Co.*, 183 Ill. 2d 342, 355, 701 N.E.2d 493, 499 (1998).

¶ 50 Accordingly, we affirm the judgment of the circuit court of Madison County.

¶ 51 Affirmed.