No. 3-10-0009

Order filed February 10, 2011

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2011

ANGIE RITTER and JEREMY RITTER,	)	Appeal from the Circuit Court
	)	for the 10th Judicial Circuit,
Plaintiffs-Appellees,	)	Peoria County, Illinois,
	)	
v.	)	No. 08--MR--150
	)	
STATE FARM MUTUAL AUTOMOBILE	)	
INSURANCE COMPANY,	)	Honorable
	)	Stuart P. Borden,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices Lytton and Wright concurred in the judgment.

ORDER

Held: The trial court correctly determined that declaratory judgment plaintiffs were entitled to summary judgment on an underinsured motorist claim against their insurance company as no dispute of material fact existed as to whether the plaintiffs timely commenced their right of action against the insurance company and the plaintiffs were entitled to judgment as a matter of law.

The plaintiffs, Angie Ritter and Jeremy Ritter (the Ritters), filed a complaint seeking a declaratory judgment that they had made a timely uninsured motorist coverage claim with their insurer, State Farm Mutual Automobile Insurance Company (State Farm). The Ritters were

seeking a money judgment against State Farm along with attorney fees and penalties under section 155 of the Insurance Code (215 ILCS 5/155 (West 2002). State Farm raised as a bar to the Ritter's complaint a policy limitation provision requiring commencement of arbitration or suit within two years of the date of the accident. Both parties filed cross-motions for summary judgment. The circuit court held that the Ritters had made a timely demand for arbitration, granted their motion for summary judgment and denied State Farm's motion for summary judgment. State Farm appeals.

FACTS

The Ritters were involved with an uninsured motorist in a motor vehicle accident on March 5, 2005. At the time of the accident, the Ritters had in force and effect a policy of motor vehicle insurance with State Farm which provided uninsured motorist coverage. On March 14, 2005, Attorney Daniel Cusack, as attorney for the plaintiffs, sent two letters to State Farm, which were identical in all respects except that one letter identified Jeremy Ritter as the client and the other letter identified Angie Ritter as the client. The letters read as follows:

> "Dear Sir or Madam:
>
> Please be advised that we represent [Jeremy S. Ritter][Angie Ritter] with regard to the above-mentioned accident. I have enclosed our Notice of Attorney's Lien which is addressed to your company as the uninsured carrier. Upon receipt of this letter and Lien, all negotiations regarding this incident should be carried on through our office. No contact should be made by your company directly with our client. Please acknowledge your receipt of this letter and our Attorney's Lien, in writing.

This is also to serve as official notification that we are making an uninsured motorist claim and a claim for payment of medical expenses under the provisions of the policy of insurance in question. Please advise us of any information which you require in order to process the payment of medical expenses and the uninsured claim, and we will gladly furnish it to you."

Both letters were acknowledged by State Farm claim representative Nancy Jewell in a letter dated March 21, 2005, a copy of which was attached as an exhibit to the complaint. The letter read as follows:

"Dear Mr. Cusack:

This letter serves to acknowledge your representation of Angie Ritter and Jeremy Ritter for injuries sustained as a result of this loss. The claim file has been recently assigned to me for further handling. The medical payment coverage for Angie has been exhausted with a partial payment to Methodist Medical Center for date of loss treatment.

Please forward all of the medical records and bills upon conclusion of treatment in order to evaluate the pending uninsured motorist claim for each party."

State Farm opened a claim file and, over the ensuing two and a half years, noted on occasion in its file that uninsured motorist coverage claims were pending for the Ritters. State Farm received no further communication from the Ritters or their attorney until September 28,

2007, when it received two letters from Jamie Henderson, a paralegal at Cusack's office. Each letter stated the name of one of the Ritters, and stated as follows:

> "Enclosed please find copies of all records, reports and specials which we currently have in our file regarding our above-noted client. After you have had a chance to review the enclosures, kindly contact Dan Cusack to discuss possible settlement of this claim."

On October 16, 2007, Claim Representative Nancy Jewel sent correspondence to Attorney Cusack, stating as follows:

> "State Farm Insurance respectfully declines to extend a settlement offer from the Uninsured Motorist Coverage. The policy language reads "Under the uninsured motor vehicle coverages, any arbitration or suit against us will be barred unless commenced within two years after the dates of the accident."

The policy included the following provisions:

> "Deciding Fault and Amount - Coverages U, U1 and W.
>
> Two questions must be decided by agreement between the *insured* and us:
>
> 1. Is the *insured* legally entitled to collect damages from the owner or driver of the *uninsured motor vehicle* or *underinsured motor vehicle*; and
> 2. If so, in what amount?

If there is no agreement, these questions shall be decided by arbitration.

Upon the *insured* requesting arbitration, each party to the dispute shall select an arbitrator and the two arbitrators so named shall select a third arbitrator. ***

* * *

Under the uninsured motor vehicle coverages, any arbitration or suit against us will be barred unless commenced within two years after the date of the accident."

In the section of the policy titled "CONDITIONS" the policy contained the following:

"2. Suit Against Us

There is not right of action against us:

a. until all the terms of this policy have been met; and

***

c. under uninsured motor vehicle, medical payments, any physical damage, death, dismemberment and loss of sight and loss of earnings coverages, until 30 days after we get the *insured's* notice of accident or *loss*.

d. under uninsured motor vehicle coverage unless such action is commenced within two years after the date of the accident."

On April 4, 2008, the Ritters filed their complaint for declaratory judgment in the instant matter. In count I, the Ritters sought a declaration that their uninsured motorist coverage claims against State Farm were timely made. In count II, they sought a judgment for money damages for the value of their uninsured motorist coverage claims plus attorney fees and penalties under section 155 of the Insurance Code. 215 ILCS 5/155 (West 2002).

On May 14, 2008, State Farm filed a motion to dismiss under section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2002)) alleging that the Ritters had failed to commence arbitration or suit against State Farm within two years of the date of the accident.

The parties engaged in discovery that included the deposition of Nancy Jewell, a claims representative for State Farm, taken by plaintiff's counsel. In that deposition, Jewell stated that Cusack's March 14, 2005, letters were the first notice that the plaintiffs had a potential uninsured motorist claim. Jewell also testified in her deposition that the claim had originally been assigned to a different claim representative, but when it was identified as a potential uninsured motorist claim, it was re-assigned to her. At her deposition, Jewell produced her claims log regarding the Ritters' claim. She explained that the log showed that State Farm received two "U" claims on March 21, 2005, which meant that the claims were possible uninsured motorist claims. Jewell's claims log also contained an entry dated December 19, 2005, which stated "[a]greed to contact defense atty to draw up case specific I/A due to fact U claims pend which will impact total amount owed by clmt." Another entry in the claims filed was entered by Greg Whitaker, under the section titled "Team Manager Comments" stating that "Two 'U' claims pend. Demand packages pend from atty." Another entry by Whitaker states: "[a]ppears the uninsured clmt and their atty have contacted us about future SUB and I/A (see log 149)."

Cross motions for summary judgment were filed, and following argument on the motions, the trial court held that "plaintiffs' demand for arbitration was timely made" and granted plaintiffs' summary judgment motion on count I of the complaint, while denying State Farm's summary judgment motion on the same count.

ANALYSIS

The sole issue on appeal is whether the trial court properly granted the plaintiffs' motion for summary judgment based upon a finding that the plaintiffs had made a timely demand for arbitration. The construction of the language of an insurance policy is a question of law properly decided on a motion for summary judgment and, as such, its interpretation can be determined on *de novo* review independent of the trial court's judgment. *Metropolitan Property and Causalty Ins. Co. v. Pittington*, 362 Ill. App. 3d 220, 223 (2005). Further, if the facts are uncontroverted and the issue is the trial court's application of the law to the uncontroverted facts, review is *de novo*. *Arthur v. Catour*, 216 Ill. 2d 72, 78 (2005).

The Ritters contend that the notices given by their attorney with respect to their uninsured motorist claims and the actions taken by the defendant in response to those notices were sufficient to protect their rights under the policy. The general rule is that when an insurer attempts to place a limit on the uninsured motorist provisions of its insurance policy, the limitations must be liberally construed in favor of the policyholder and strongly against the insurer. *Moses v. Coronet Insurance Co.*, 192 Ill. App. 3d 921, 923 (1989). The plaintiffs maintain that the letters from their attorney dated March 14, 2005, and the accompanying notices of Cusack's attorney's lien, served the purpose of notifying State Farm of their uninsured motorist claims and, as a matter of law, preserved the rights under the terms of the policy.

Plaintiffs rely heavily upon *Hale v. County Mutual Insurance Co.*, 334 Ill. App. 3d 751 (2002) in support of their position.

In *Hale*, the plaintiff sustained personal injuries as a result of a motor vehicle accident occurring on April 11, 1997. At the time of the accident, Hale was insured by Country Mutual under a policy providing $100,000 in underinsured motorist coverage. Less than one month before the two year-limitation period contained in the underinsured motorist policy was to expire, Hale's attorney sent a letter to Country Mutual stating in relevant part: "[i]t appears that we have an underinsured claim. At this time I ask that you disclose the underinsured motorist and medical payments policy limits of Mr. Hale." *Hale*, 334 Ill. App. 3d at 753. Country Mutual received the letter and assigned the case a claim number. Four months later, Country Mutual responded with a letter and asked Hale's attorney to complete an "Underinsured Motorist Notice Claim" form. Hale's attorney promptly completed the form and sent it back to Country Mutual. Less than a month later, Country Mutual informed Hale's attorney that it was denying coverage in that arbitration had not been demanded on or before the two year limitation period had expired. *Hale*, 334 Ill. App. 3d at 755.

The issue in *Hale* was whether Hale's attorney's letter constituted an unequivocal demand for arbitration. Notwithstanding the lack of precise verbiage used in the letter, the court held that "the language used by Hale's attorney was not perfect but served the purpose of notifying Country Mutual of the underinsured-motorist claim." *Hale*, 334 Ill. App. 3d 755. "By establishing a claim number, setting up its file, and sending out the claim form, Country Mutual invoked its claim-handling process." *Hale*, 334 Ill. App. 3d at 755. The Fifth District of our appellate court reasoned that Country Mutual's actions on the claim handling process acknowledged notification of the claim, which is the only appropriate purpose for a contractual

limitation period on an uninsured motorist claim. *Hale*, 334 Ill. App. 3d at 755; See *American Service Insurance Co. v. Pasalka*, 363 Ill. App. 3d 385, 395 (2006) (statutory purpose of uninsured motorist provision would be defeated by enforcing two-year contractual limitation on invoking right of arbitration); see also *Burgo v. Illinois Farmers Insurance Co.*, 8 Ill. App. 3d 259, 261 (1972) (a policy provision requiring the policyholder to demand arbitration within certain time period effectively denied coverage required by statute and was void as against public policy).

The plaintiffs herein maintain that their situation is essentially identical to the plaintiff in *Hale* and that the *Hale* court's analysis focusing on notice of a potential uninsured claim as being sufficient to satisfy the requirement that the insured initiate suit or arbitration within two years of the accident date. The defendant, however, maintains that *Hale* was wrongly decided and therefore should not be followed by this court. Instead, defendant points to the First District's *Buchalo v. Country Mutual Insurance Co.*, 83 Ill. App. 3d 1040 (1980), as being more persuasive. In *Buchalo*, the insured's attorney sent a letter the insurance company stating: "I believe that the best thing to do with respect to this case is to arbitrate." *Buchalo*, 83 Ill. App. 3d at 1043. The letter was not sent, however, until shortly after the two-year period had expired. *Buchalo*, 83 Ill. App. 3d at 1044.

We find that *Buchalo* is distinguishable from the instant matter. Here, Cusack's letter contained what he designated as an "official notification" of an uninsured motorist claim. The *Buchalo* letter contained only the attorney's "belief" that the case should be arbitrated. Secondly, and more importantly, the letter in *Buchalo* came after the expiration of the contractual two-year period while, in the instant matter, Cusack's notification letter was sent shortly after the date of the accident. Additionally, in *Buchalo*, unlike the instant matter, the

insurance company sent no correspondence regarding instructions on how to handle the matter. Here, State Farm acknowledged receipt of the correspondence and lien notices from Cusack and responded by letter from claims adjuster Jewell, treating the claim as having been properly brought to the company's attention.

We also find that *Parish v. Country Mutual Insurance Co.*, 351 Ill. App. 3d 693 (4th Dist. 2004), cited by State Farm, is clearly distinguishable from *Hale* and from the instant matter in that the plaintiffs "did not notify [the insurer] of their underinsured claim in any manner in the two years after the accident." 351 Ill. App. 3d at 698. The *Parish* court concluded that, because of this factual distinction with *Hale*, it did not need to determine whether it agreed with the rationale in *Hale*. 351 Ill. App. 3d at 698. We reach the same conclusion in the instant matter.

CONCLUSION

For the foregoing reasons, the judgment of the circuit court of Peoria County, granting the plaintiffs' motion for summary judgment and denying the defendant's cross-motion for summary judgment, is affirmed. The matter is to be remanded to the circuit court for further consideration consistent with this decision.

Affirmed and remanded.