2015 IL App (1st) 140790-U

THIRD DIVISION
March 25, 2015

No. 1-14-0790

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ILLINOIS STATE BAR ASSOCIATION MUTUAL INSURANCE COMPANY, Plaintiff-Appellant, v. BEELER LAW, P.C., a dissolved Illinois professional corporation and EUGENE W. BEELER, JR., Defendants-Appellees, and RONALD S. MANGUM, R.M. LUCAS, CO., an Illinois corporation, and CHICAGO TITLE LAND TRUST NO. 3000121848, Defendants.	)	Appeal from the Circuit Court of Cook County. No. 11 CH 31961 The Honorable Kathleen M. Pantle Judge, presiding.

JUSTICE LAVIN delivered the judgment of the court.
Justices Hyman and Mason concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly granted summary judgment in an insurance lawsuit in favor of plaintiff because defendants failed to timely notify plaintiff of potential claims against

defendants under the insurance policy, which relieved plaintiff of its duty to defend defendants. We affirm.

¶ 2 This appeal arises from the trial court's order granting summary judgment in an insurance lawsuit to plaintiff the Illinois State Bar Association Mutual Insurance Company. The only issue presented for our review is plaintiff's duty to defend defendants Beeler Law, P.C. and Eugene W. Beeler, Jr. (Beeler). On appeal, defendants contend that the trial court erroneously granted plaintiff's motion for summary judgment because defendants gave plaintiff timely notice of the claims against it under the insurance policy, and therefore, plaintiff breached its contract with defendants by refusing to defend certain underlying lawsuits. We affirm.

¶ 3 BACKGROUND

¶ 4 Plaintiff issued its policy of insurance to defendant Beeler Law, P.C. as the named insured. The policy provided for Lawyers Professional Liability Insurance, on a claims made and reported basis, with an effective policy period from September 25, 2009, to September 25, 2010 (the Policy). On September 23, 2010, plaintiff sent defendants a letter informing them that an extended reporting period could be purchased within 30 days of the end of the Policy, but defendants did not purchase this extended endorsement. The following day, Beeler personally accessed plaintiff's website and reported three potential claims through plaintiff's online email "contact us" form. Beeler completed the form, including the name of the firm, his email address, telephone number and comments. Specifically, in the comments section, Beeler included the following information: "Potential claims: 1) RM Lucas, Co.; 2) R Magnum; 3) Abdul Razzaq. Details to follow." Beeler then send the email to plaintiff and provided no additional follow-up information prior to the expiration of the policy on September 25.

¶ 5 On April 15, 2011, Ronald S. Magnum (Magnum) filed suit against defendants, alleging claims for breach of fiduciary duty, professional negligence and breach of contract. Defendants provided a copy of the complaint to plaintiff on August 1, 2011, and tendered the matter for a

defense under the Policy. Two months later, R.M. Lucus Company (Lucas), along with Chicago Title Land Trust No. 3000121848, filed a similar suit against defendants, who again provided a copy of the complaint to plaintiff and tendered the matter for a defense under the Policy. In response, plaintiff filed an amended complaint seeking a declaratory judgment that under the Policy it did not owe defendants a defense on the Mangum and Lucas actions.[1] Defendants, in turn, filed an amended counterclaim seeking a declaratory judgment that plaintiff had a duty to defend and indemnify defendants in both actions. Subsequently, plaintiff moved for summary judgment and defendants filed their own cross-motion for summary judgment. Following briefing and a hearing, the circuit court granted plaintiff's motion. The court concluded that defendants breached the notifying provision under the Policy, and thus, this breach relieved plaintiff of its duty to defend defendants. Defendants now appeal.

¶ 6 ANALYSIS

¶ 7 Defendants contend that the trial court erroneously granted plaintiff's motion for summary judgment because defendants gave plaintiff timely notice of the claims against it before the Policy's expiration. Summary judgment is proper where the pleadings, admissions, depositions and affidavits demonstrate there is no genuine issue as to any material fact so that the movant is entitled to judgment as a matter of law. *Ioerger v. Halverson Construction Co., Inc.*, 232 Ill. 2d 196, 201 (2008); 735 ILCS 5/2-1005 (West 2010). In determining whether a genuine issue of material fact exists, the court must consider such items strictly against the movant and liberally in favor of its opponent. *Williams v. Manchester*, 228 Ill. 2d 404, 417 (2008). We

[1] We note that as nominal defendants in the coverage action, Mangum and Lucas filed answers to the amended complaint, but they are not parties to this appeal.

review the trial court's order granting summary judgment *de novo*. *Weather-Tite, Inc. v. University of St. Francis*, 233 Ill. 2d 385, 389 (2009).

¶ 8 Duties of an insured are controlled by the terms and conditions of its insurance contract. *American Country Insurance Co. v. Bruhn*, 289 Ill. App. 3d 241, 247, (1997). In construing an insurance policy, the primary function of the court is to ascertain and enforce the intentions of the parties as expressed in the agreement. *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 108 (2001). In order to ascertain the duty to defend, the court must construe the insurance policy as a whole and "take into account the type of insurance purchased, the nature of the risks involved, and the overall purpose of the contract." *Travelers Ins. Co. v. Eljer Manufacturing, Inc*., 197 Ill. 2d 278, 292 (2001). If the words of a policy are clear and unambiguous, a court must afford them their plain, ordinary, and popular meaning. *Id.* at 293. The main purpose of a claims made policy, like the Policy at issue in this case, is to allow the insurance company to easily identify risks, allowing it to know in advance the extent of its claims exposure and compute its premiums with greater certainty. *Continental Casualty Co. v. Coregis Insurance Co.*, 316 Ill. App. 3d 1052, 1063 (2000).

¶ 9 Under the Policy, the notice provision (Condition N) provides that:

> "N. Notice of CLAIM. As a condition of insurance coverage, the INSURED will, as soon as practicable, and within the POLICY TERM or EXTENDED REPORTING PERIOD, give the COMPANY written notice of any CLAIM. The notice of CLAIM will include:
>
> 1. the date(s) of the act, error, or omission,
> 2. the damage or injury that has or may result,
> 3. the identity of anticipated or possible claimants, and

4. the circumstances by which the INSURED first became aware of such act, error, or omission.

5. a summary of the circumstances giving rise to the CLAIM.

In the event suit is brought against an INSURED, the INSURED will immediately forward us every demand, notice, or summons you or your representative receives.

The INSURED agrees with us that any notice required by the Policy to be effective must be received by the COMPANY."

¶ 10 Here, it is undisputed that defendants failed to comply with the notice requirements under Condition N of the Policy. Beyond Beeler's deficient email, the record demonstrates that the first actual notice to plaintiff was almost seven months after the Policy's term ended when defendants tendered plaintiff the Magnum complaint. Defendants, however, contend that plaintiff still had a duty to defend defendants; because although they failed to meet the notice requirements under Condition N, they did give general notice to plaintiff during the policy period.

¶ 11 Under the Policy's "Coverage Agreements," plaintiff agreed to pay:

"All DAMAGES and CLAIM EXPENSES in excess of the DEDUCTIBLE up to the Limit of Liability which the INSURED becomes legally obligated to pay as a result of a CLAIM first made against the INSURED and reported to the COMPANY in writing during the POLICY TERM."

¶ 12 Thus, defendants contend that this coverage agreement went to the heart of the Policy, and regardless of any formal notice provision, plaintiff is legally obligated to pay damages on any claims reported during the policy period and cannot evade its duty on the basis of procedural deficiencies. We disagree. In construing an insurance policy, the court must ascertain the intent of the parties to the contract by construing the policy as a whole. See *Outboard Marine Corp.*,

154 Ill. 2d at 108. Here, defendants are essentially asking us to simply ignore Condition N, but given the clear and unambiguous language of the Policy, both parties contracted to include this notice requirement. In addition, courts have long recognized that, where both a general and a specific provision in a contract address the same subject, the more specific clause controls. See *Grevas v. U.S. Fidelity and Guar. Co*. 152 Ill. 2d 407, 411 (1992). Therefore, ignoring the specific notice provision would be an unreasonable construction of the policy. Furthermore, since the purpose of a claims-made policy is to allow the insurance company to know in advance the extent of its claims exposure and compute its premiums, it requires that claims be reported during the policy period and defendants failed to meet the agreed upon notice requirements. See *Uhlich Children's Advantage Network v. National Union Fire Co. of Pittsburgh, PA*, 398 Ill. App. 3d 710, 716 (2010). We note that unlike lay persons, as attorneys, defendants have sophistication in commerce and insurance matters, and as such, should have had a clear understanding of their contractual obligations and reporting requirements under the Policy.

¶ 13 Moreover, it is clear that Condition N was intended to be a condition precedent, not a mere promise, under the Policy. Condition N is located in the "Conditions" section of the Policy and its unambiguous language specifically reads "as a condition of insurance coverage." See *Catholic Charities of Archdiocese of Chicago v. Thorpe*, 318 Ill. App. 3d 304, 309 (2009) (a condition precedent will be found where the intent to create such a condition is apparent from the face of the agreement); *Aetna Cas. & Sur. Co. of Illinois v. Allsteel, Inc.*, 304 Ill. App.3d 34, 41 (1999) (notice provisions in insurance policies are considered valid conditions precedent to coverage and not mere technical requirements); *Lytel Products, Inc. v. Alcan Aluminum Corp.*, 107 Ill. App. 3d 176, 180 (1981) (failure of a condition precedent will invalidate the contract and relieve both parties of their obligations to perform). Further, defendants cite no authority to

support their contentions that Illinois courts disfavor condition precedents or an insured's communications of the claim to the insurer do not need to substantially comply with the policy's form of notice requirement, and we need not consider these matters further. See Ill. S. Ct. R. 341(h) (eff. Feb. 6, 2013) (an appellant's brief shall contain the contentions of the appellant and the reasons therefor with citation to authority). Moreover, Illinois case law is clear that courts do enforce notice requirements. See *Federal Insurance Co. v. Lexington Insurance Co.*, 406 Ill. App. 3d 895, 899 (2001); *Continental Casualty Co.*, 316 Ill. App. 3d at 1069; *Aetna Cas. & Sur. Co. of Illinois*, 304 Ill. App. 3d at 42. Accordingly, since defendants failed to give plaintiff proper notice under the Policy, plaintiff was relived of its duty to defend defendants.

¶ 14 CONCLUSION

¶ 15 Based on the foregoing, we affirm the judgment of the circuit court of Cook County.

¶ 16 Affirmed.