STATE OF MICHIGAN

COURT OF APPEALS

PAMELA SUE TOTH,

Plaintiff-Appellee,

v

AUTO-OWNERS INSURANCE COMPANY,

Defendant-Appellant.

UNPUBLISHED
June 15, 1999

No. 208735
Montcalm Circuit Court
LC No. 96-000553 CK

Before: Sawyer, P.J., and Murphy and Talbot, JJ.

PER CURIAM.

Defendant appeals as of right from a judgment entered in favor of the plaintiff after a bench trial. We reverse the decision of the trial court and remand for entry of a judgment in favor of defendant.

Resolution of this case turns on the interpretation of a "Garage Liability Policy" issued by defendant to Robert McKay, doing business as McKay Repair Service. The trial court determined that the insurance policy (including a declarations page incorporated into the policy by reference) was ambiguous and could be read to provide coverage in this case. On appeal, defendant argues that the trial court's interpretation was erroneous. We agree.

"An insurance policy is much the same as any other contract. It is an agreement between the parties in which a court will determine what the agreement was and effectuate the intent of the parties." *Auto-Owners Ins Co v Churchman*, 440 Mich 560, 566; 489 NW2d 431 (1992). A clause in an insurance contract is valid so long as it is clear, unambiguous, and not in contravention of public policy. *Id.* A court may not read ambiguities into a policy where none exist. *Id.* If an insurance contract is clear, it will be enforced as written no matter how inartfully worded or clumsily arranged. *Raska v Farm Bureau Mut Ins Co*, 412 Mich 355, 361-362; 314 NW2d 440 (1982). The construction of a contract with clear language is a question of law. *Auto Club Ins Ass'n v Lozanis*, 215 Mich App 415, 418-419; 546 NW2d 648 (1996).

Section I of the insurance policy at issue clearly provided that defendant would cover certain liabilities "arising out of the hazards defined in Section II of this policy." Section II of the policy, labeled

"DEFINITION OF HAZARDS," was divided into two divisions: "Division I," entitled "Premises - Operations - Automobiles," and Division II, entitled "Premises - Operations - Automobiles Not Owned Or Hired." The trial court observed that "[f]or purposes of this case, Division I covers the operations of motor vehicles owned by the business and Division II covers the operation of 'any automobile not hired, registered or owned in whole or in part by the named insured, any partner or officer thereof.'" Division II provided as follows:

> The insurance under this division covers the ownership, maintenance, occupation or use of the premises for the purposes of an automobile repair shop, service station, storage garage or public parking place and all operations which are necessary or incidental thereto, including the use for any purpose in connection with the foregoing of any automobile *not hired, registered or owned in whole or in part by the named insured, any partner or officer thereof*. (Emphasis added.)

Finally, the declarations page (which was incorporated into the policy by reference) described the "ITEM INSURED" as "GARAGE LIABILITY - DIVISION 2."

It is undisputed that McKay (the insured) owned the automobile involved in the accident. Accordingly, defendant argues that the policy did not provide coverage because, as noted on the declarations page, McKay had only purchased the coverage available under "Division II." Considering the language of the policy as a whole and the language of the declarations page, we think this is the only fair interpretation of the insurance contract.

Three factors led the trial court to conclude that the policy was ambiguous. First, the trial court noted that neither the policy itself, nor the declarations page, specifically provided that coverage under one "division" necessarily excluded coverage under the other. This is not so. The very first clause of the policy specifically provided that defendant would be liable only for those "coverages for which a premium is charged," and the declarations page indicated that defendant purchased "GARAGE LIABILITY - DIVISION 2." Second, the trial court surmised that the notation "GARAGE LIABILITY - DIVISION 2" on the declarations page might have referred to condition number "2" of the policy rather than to "Division II." Again we disagree. While the policy itself uses Roman numerals to set off the two divisions, use of the word "DIVISION" on the declarations page could only refer to the "Divisions" in the policy. Finally, the trial court referred to a dictionary definition of "hazard" and reasoned that "the ownership of a vehicle is not a 'hazard' which a reasonable person would expect to be used as a determining factor in whether there is coverage under the policy." Because Section II of the policy defined the "hazards" covered under each of the two "divisions," there was no reason for the trial court to refer to the dictionary.

For the reasons stated, we hold that defendant is entitled to judgment as a matter of law.

Reversed and remanded for entry of judgment in favor of defendant. We do not retain jurisdiction.

/s/ David H. Sawyer
/s/ William B. Murphy
/s/ Michael J. Talbot