STATE OF MICHIGAN

COURT OF APPEALS

ROBERT THOMAS CROUCHMAN and SUGAR M. CROUCHMAN,

Plaintiffs,

v

MOTOR CITY ELECTRIC COMPANY and CITIZENS INSURANCE COMPANY,

Defendants,

and

KEVIN JAMES WIECZOREK,

Defendant/Third-Party Plaintiff/Appellee,

v

AUTO-OWNERS INSURANCE COMPANY, a/k/a HOME-OWNERS INSURANCE COMPANY,

Third-Party Defendant/Appellant.

UNPUBLISHED
October 28, 2004

No. 248419
Wayne Circuit Court
LC No. 01-112063-NI

Before: Whitbeck, C.J., and Jansen and Bandstra, JJ.

PER CURIAM.

Third-party defendant Auto-Owners Insurance Company appeals as of right from orders of the circuit court granting summary disposition to third-party plaintiff Kevin Wieczorek, and denying Auto-Owners' motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This case stems from a car accident that occurred in Detroit in April 2000. Wieczorek was driving a passenger vehicle owned by his employer, defendant Motor City Electric Company. Wieczorek's vehicle collided with one driven by plaintiff Robert Crouchman, who suffered personal injuries in the matter.

Plaintiffs brought suit against Wieczorek and Motor City. The latter's insurer initially provided the defense, but then became insolvent. Wieczorek then asked his own insurer, Auto-Owners, to assume his defense. Auto-Owners refused, and Wieczorek responded with a third-party complaint against it, seeking a declaration requiring the insurer to take up his defense.

The trial court found for Wieczorek on cross-motions for summary disposition. The remaining issues in the case were resolved by settlement and stipulation. The sole issue in this appeal is whether the trial court correctly interpreted the insurance contract between the parties to this appeal to provide coverage for Wieczorek under these facts.

The construction and interpretation of an insurance contract is a question of law that is reviewed de novo. *Henderson v State Farm Fire & Casualty Co*, 460 Mich 348, 353; 596 NW2d 190 (1999). The various parts of a contract should be read together. See, e.g., *JAM Corp v AARO Disposal, Inc*, 461 Mich 161, 170; 600 NW2d 617 (1999). But exclusions limiting insurance coverage should be read independently, and an exception contained within an exclusion does not itself create coverage. *Hawkeye-Security Ins Co v Vector Constr Co*, 185 Mich App 369, 385; 460 NW2d 329 (1990). Ambiguities in contracts should be construed against the drafter. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 470; 663 NW2d 447 (2003). However, that rule is applicable only where all conventional means of contract interpretation fail to resolve the ambiguity. *Id.* at 471.

There is no dispute that Wieczorek would not be covered under the main part of the agreement. However, § IV of the contract sets forth extensions of coverage, and it reads in pertinent part as follows (boldface type omitted):

> If the first named insured in the Declarations is an individual and the automobile described in the Declaration is a private passenger automobile the following extensions of coverage apply.
>
> 1. LIABILITY COVERAGE—BODILY INJURY AND PROPERTY DAMAGE
>
> a. The Liability Coverage provided for your automobile . . . also applies to an automobile . . . not:
>
> (1) owned by or furnished or available for regular use to you . . . .
>
> * * *
>
> c. We do not cover:
>
> (1) the owner of the automobile . . . .
>
> (2) an automobile used in your business or occupation . . . unless it is:
>
> (a) a private passenger automobile; and
>
> (b) used by you . . . .

There is also no dispute that Wieczorek is the first-named insured, who was driving a private passenger automobile, for purposes of this provision. Nor is it disputed that the vehicle

in question was owned by Motor City Electric, that it was regularly made available to Wieczorek, and that Wieczorek was driving it within the scope of his employment with Motor City.

In a letter to the parties, the trial court concluded that "[t]he clear implication of the phrase 'unless it is: (a) a private passenger automobile; and used by you . . . ,' is that liability coverage is afforded if the vehicle used in the business happens to be a private passenger automobile." The court continued, "to put it another way, the vehicles excluded from coverage when used in one's business are all automobiles other than private passenger automobiles."

Auto-Owners complains that the trial court erred in reading an exception to an exclusion as creating coverage. See *Hawkeye-Security, supra*. However, § IV of the contract announces that certain "extensions of coverage" apply. Subsection 1a, then, sets forth a general extension of coverage, subject to the exceptions that follow. Again, that provision states that coverage "also apples to an automobile . . . not . . . owned by or furnished or available for regular use to you . . . ." Auto-Owners recasts this passage so as to "not provide liability coverage for automobiles not owned by, and which are furnished or available for regular use to him and available for his regular use." We cannot accept this artful reading. Auto-Owners first implies that 1a sets forth an exclusion, and that the exclusion then applies to vehicles not one's own, but that are furnished or made available to one. The passage in fact introduces an extension of coverage, not an exclusion. Next, Auto-Owners presents the negative indicator "not" as applying only to the first of the three terms set off from, and following, it. Auto-Owners then also changes the first "or" to "and which," substituting the subordinate conjunction "which" for the coordinating conjunction "or."

In fact, the passage extends coverage to automobiles that do not meet certain criteria, then lists three, set off by "or." This, for present purposes, indicates that coverage is extended to an automobile not owned by Wieczorek, or not furnished to Wieczorek, or not available for Wieczorek's regular use, subject to the exceptions that follow.

The car in question was both furnished to Wieczorek and made available for his regular use, and so those terms do not extend coverage to him. But Wieczorek did *not* own the car, which triggers coverage under the first of the three terms, subject to the exceptions that follow. Bearing on this issue is subsection 1c(2), "We do not cover . . . an automobile used in your business or occupation . . . unless it is . . . a private passenger automobile . . . used by you . . . ." Thus coverage is initially extended because Wieczorek did not own the vehicle involved in the accident; coverage is then withdrawn because the car was used in his occupation; coverage is then restored because the car was indeed a private passenger automobile used by Wieczorek.

Although the contract language in dispute was not entirely clear, we are satisfied, on review de novo, that the trial court properly resolved the ambiguity in favor of coverage. *Klapp, supra* at 470.

Affirmed.

/s/ William C. Whitbeck
/s/ Kathleen Jansen
/s/ Richard A. Bandstra