STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1755

Hometown America, LLC,
Appellant,

vs.

Liberty Insurance Corporation, et al.,
Respondents.

Filed June 22, 2010
Affirmed
Ross, Judge

Dakota County District Court
File No. 19-C6-08-006822

John F. Bonner, III, Robert J. Borhart, Bonner & Borhart, LLP, Minneapolis, Minnesota (for appellant)

Jeanne H. Unger, Jessica Schulte Williams, Bassford Remele, Minneapolis, Minnesota (for respondent)

Considered and decided by Stauber, Presiding Judge; Stoneburner, Judge; and Ross, Judge.

U N P U B L I S H E D O P I N I O N

ROSS, Judge

In this insurance-coverage dispute, appellant Hometown America LLC challenges the district court's grant of summary judgment to respondent insurers, arguing that the insurers had a duty to defend and to indemnify appellant under a commercial-general-

liability policy covering injury sustained by an organization. Because the underlying lawsuit did not involve injury sustained by an organization, we affirm.

FACTS

Hometown America LLC owned and operated Rosemount Woods, a manufactured-home community. Hometown's leases with the residents of Rosemount Woods stated that Hometown would provide sewer, water, and trash services at no extra charge. But in 1998, Hometown entered the rental lots to install water meters on each home to facilitate charging its residents for utilities. And in March 1999, Hometown began charging the residents an additional amount for their individual sewer and water usage.

Residents of Rosemount Woods brought a class action against Hometown in 2004, asserting that Hometown had violated the Manufactured Home Park Lot Rentals Act, Minn. Stat. §§ 327C.01–.15 (2004), and breached the terms of the lease agreements. The district court granted a permanent injunction and partial summary judgment against Hometown, and this court affirmed. *Renish v. Hometown Am., L.L.C.*, No. A05-2384 (Minn. App. Aug. 29, 2006). As part of a settlement agreement, Hometown paid the residents' attorney fees and repaid the improperly assessed utility charges.

This case is the insurance-coverage aftermath of that litigation. Hometown brought a declaratory-judgment action against its insurers, Liberty Insurance Corporation and Liberty Mutual Fire Insurance Company (collectively Liberty) for refusing to defend or indemnify Hometown in *Renish*. Hometown asserted that Liberty had been required to defend and indemnify it under a commercial-general-liability policy providing coverage

for "[i]njury to intangible property sustained by any organization arising out of . . . [w]rongful entry."

The district court granted summary judgment in Liberty's favor, and Hometown appeals. Liberty filed a notice of review, challenging the district court's conclusion that the *Renish* plaintiffs constituted an "organization" within the meaning of the policy.

D E C I S I O N

Hometown contends that Liberty was required to defend and indemnify Hometown in *Renish* because the residents corporately alleged personal injury within the scope of the policy's coverage. On appeal from summary judgment, we review de novo whether a genuine issue of material fact exists and whether the district court erred in its application of the law. *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 77 (Minn. 2002). The interpretation of an insurance policy, including whether an insurer has a duty to defend or indemnify, is subject to de novo review. *Wakefield Pork, Inc. v. Ram Mut. Ins. Co.*, 731 N.W.2d 154, 159 (Minn. App. 2007), *review denied* (Minn. Aug. 7, 2007).

Our task in interpreting an insurance contract is to give effect to the parties' intentions as evidenced by the terms used in their contract. *Minn. Mining & Mfg. Co. v. Travelers Indemnity Co.*, 457 N.W.2d 175, 179 (Minn. 1990). We construe the insurance policy as a whole and give unambiguous words their plain, ordinary, and popular meaning. *Gen. Cas. Co. of Wis. v. Wozniak Travel, Inc.*, 762 N.W.2d 572, 575 (Minn. 2009); *Mitsch v. Am. Nat'l Prop. & Cas. Co.*, 736 N.W.2d 355, 358 (Minn. App. 2007), *review denied* (Minn. Oct. 24, 2007). If the policy language is reasonably open to more

than one interpretation, ambiguity exists. *Minn. Mining & Mfg. Co.*, 457 N.W.2d at 179. We resolve ambiguous terms against the insurer and according to the insured's reasonable expectations. *Id.*

The policy here covers "personal injury," defined only as follows:

> a. Injury to the feelings or reputation of a natural person other than "bodily injury" or "property damage"; and
> b. Injury to intangible property sustained by any organization arising out of one or more of the following offenses:
> (1) False arrest, detention, or imprisonment;
> (2) Malicious prosecution;
> (3) Wrongful entry into, or eviction of a person from, a room, dwelling or premises that the person occupies;
> (4) Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services; or
> (5) Oral or written publication of material that violates a person's rights of privacy.

Hometown acknowledged at oral argument that its appeal fails if the *Renish* plaintiffs did not constitute an "organization." For the reasons that follow, we conclude that the *Renish* plaintiffs did not allege "injury to intangible property sustained by any organization."

Hometown's theory that the *Renish* plaintiffs are an "organization" teeters on unstable logic. The primary problem with Hometown's interpretation is that it renders a provision of the policy meaningless. Although the policy does not define "organization," its definition of "personal injury" distinguishes between injury to natural persons and injury to organizations. Treating several natural persons as an injured organization

merely because they have been injured would obliterate the policy's distinction between injured natural persons and injured organizations. *See Chergosky v. Crosstown Bell, Inc.*, 463 N.W.2d 522, 525–26 (Minn. 1990) (stating that courts must attempt to harmonize all clauses of a contract and must avoid interpreting a contract in a way that would render a provision meaningless).

We also note that Hometown's theory disregards common language. The plain, ordinary, and popular meaning of "organization" is an association formed for a common purpose, not merely a group of similarly purposed individuals. *Compare The American Heritage Dictionary of the English Language* 800 (3d ed. 1992) (defining "group" as "[a] number of individuals or things considered together because of similarities"), *with id.* at 1275 (defining "organization" as "[a] group of persons organized for a particular purpose; an association"), *and Black's Law Dictionary* 1210 (9th ed. 2009) (defining "organization" as "[a] body of persons (such as a union or corporation) formed for a common purpose"). We are not inclined to put ordinary terms through gymnastics just to conclude that one or more injured individuals constitutes an organization as a result of being injured.

Hometown argues that a single organization was created from the group of plaintiffs when the district court certified the *Renish* class action—that is, that the plaintiffs *as a class* constitute an injured organization. The argument fails. The policy covers injury arising out of wrongful entry where the organization as an entity has sustained injury. But the class of plaintiffs in *Renish* did not exist until after the individual plaintiffs sustained injuries that gave rise to the class-action lawsuit. And the

policy's unambiguous requirement that coverage exist when an injury is sustained by an organization necessarily implies that the organization it refers to is a unit that existed before the injury, not because of the injury. The *Renish* class was certified because the individuals were so similarly injured that they are deemed an injured group, or "class," merely to facilitate their lawsuit arising from and remedying their injuries. *See* Minn. R. Civ. P. 23.02(c) (providing that a class action may be maintained if the district court finds "that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy"). So Hometown's argument is doomed once it is reduced to its foundation, which is essentially this: *The Renish plaintiffs are a covered injured organization because they are an injured group*.

We hold that the *Renish* class is not an injured organization as contemplated by the policy. Because the parties agree that the injuries alleged by the injured natural persons who formed the class in *Renish* are not covered by the policy's personal-injury endorsement, Liberty had no duty to defend or indemnify Hometown in the *Renish* litigation. And because this holding resolves the appeal, we need not address Hometown's alternative arguments.

Affirmed.