STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2062

Living Challenge, Inc.,
Appellant,

vs.

Foremost Insurance Group,
Respondent.

Filed August 10, 2010
Affirmed
Kalitowski, Judge

Hennepin County District Court
File No. 27-CV-09-8155

Susanne M. Glasser, Christensen & Laue, P.A., Minneapolis, Minnesota (for appellant)

John R. Crawford, Amber M. Krause, Johnson & Lindberg, P.A., Minneapolis, Minnesota (for respondent)

Considered and decided by Wright, Presiding Judge; Kalitowski, Judge; and Muehlberg, Judge.*

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

KALITOWSKI, Judge

Appellant Living Challenge, Inc. appeals from the district court's grant of summary judgment to respondent Foremost Insurance Group. Appellant argues that the

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

district court erred in determining by summary judgment that water damage to appellant's property caused by a broken shower valve did not fall within the insurance policy's coverage for loss caused by explosions. We affirm.

D E C I S I O N

Appellant purchased an insurance policy from respondent to insure a property that appellant was converting into a group home. The policy covered, among other things, direct physical losses to the property caused by any of eight enumerated perils, including "explosions." Appellant submitted a claim to respondent for water damage to the property caused by a broken shower valve. Respondent denied coverage on the basis that the broken shower valve was the result of water freezing in the pipes, and the policy specifically excluded coverage for loss resulting from freezing pipes. Appellant brought suit, claiming that respondent breached the insurance contract by denying the claim because the damage was caused by "the explosion or bursting" of the shower valve, and thus it fell within the policy's coverage of loss caused by explosions. The district court granted summary judgment for respondent.

On appeal from a summary judgment, this court asks whether there are any genuine issues of material fact and whether the district court erred in its application of the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). And we must view the evidence in the light most favorable to the party against whom judgment was granted. *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993).

The language of an insurance policy, selected by the insurer and intended for the insurer's benefit in limiting the scope of coverage, "must be clear and unambiguous, and

any reasonable doubt as to its meaning must be resolved in favor of the insured." *Cement, Sand & Gravel Co. v. Agricultural Ins. Co. of Watertown*, 225 Minn. 211, 215, 30 N.W.2d 341, 345 (1947); *see also Caledonia Cmty. Hosp. v. St. Paul Fire & Marine Ins. Co.*, 307 Minn. 352, 354, 239 N.W.2d 768, 770 (Minn. 1976) (stating that ambiguities are to be resolved against the insurer and in favor of the insured). But the district court may not read an ambiguity into plain language of an insurance contract in order to provide coverage for the insured. *Bobich v. Oja*, 258 Minn. 287, 294, 104 N.W.2d 19, 24 (1960). If the terms are unambiguous, then the district court must give the language its plain and ordinary meaning. *Id.*

Appellant argues that the district court erred by granting summary judgment to respondent because (1) the insurance policy's provision on explosions is not ambiguous, and (2) applying the correct definition of "explosion," there is a genuine issue of material fact as to whether the water damage was caused by an explosion. We disagree.

Ambiguity

The language of an insurance contract is ambiguous if it is reasonably subject to more than on interpretation. *Progressive Cas. Ins. Co. v. Metcalf*, 501 N.W.2d 690, 692 (Minn. App. 1993). A word or phrase may be ambiguous as applied to a set of facts and unambiguous as applied to other facts. *See, e.g., id.* (providing that the term "fee" was ambiguous as applied to the facts, where the automobile policy excluded coverage for liability arising out of driving a vehicle for a fee and the accident occurred when insured was delivering pizzas for a pizzeria that did not charge for delivery).

The insurance policy at issue provides:

> We insure risk of direct physical loss to [property] caused by any of the following perils unless the loss is excluded elsewhere in this policy:
> . . . .
> 4. Explosion
>
> But we do not insure:
> a. a bursting of water pipes;
> b. breakage or operation of pressure relief devices; or
> c. explosion of steam boilers or steam pipes.

The policy does not define the term "explosion." And caselaw from other jurisdictions defines "explosion" differently. *See Pre-Cast Concrete Prods., Inc. v. Home Ins. Co.*, 417 F.2d 1323, 1329 (7th Cir. 1969) (noting that "vigorous contention exists over the definition of ['explosion']"); *see also Minnesota Mining & Manf. Co. v. Travelers Indemnity Co.*, 457 N.W.2d 175, 180 (Minn. 1990) (providing that language may be ambiguous when it has been interpreted in contradictory ways among jurisdictions).

But the term "explosion" is not ambiguous as applied to the facts here. The district court properly determined that it is not reasonable to construe the broken shower valve resulting from water freezing in the pipes as an explosion. Appellant argues that the bursting of the shower valve must have been forceful because a piece of the valve was never found. But an affidavit submitted by appellant's general contractor provides only that the valve "failed resulting in a constant flow of water from the broken valve." And the record lacks any compelling evidence that an explosion occurred. Moreover, damage caused by the bursting of a shower valve due to freezing water is more like damage resulting from the "bursting of water pipes" that is explicitly excluded from coverage by the policy. *See Bobich*, 258 Minn. at 294-95, 104 N.W.2d at 24 (providing that the

district court must construe an insurance contract as a whole, and if possible, give effect to all its provisions). Thus, we conclude that because the term "explosion" was not ambiguous, the district court did not err by declining to construe the term in favor of appellant.

Plain meaning

Because the term "explosion" was unambiguous, the district court was required to give the term its usual and accepted meaning, with the purpose of effectuating the parties' intent. *See Carlson v. Allstate Ins. Co.*, 734 N.W.2d 695, 699 (Minn. App. 2007). "The terms of an insurance policy should be construed according to what a reasonable person in the position of the insured would have understood the words to mean rather than what the insurer intended the language to mean." *Canadian Universal Ins. Co. v. Fire Watch, Inc.*, 258 N.W.2d 570, 572 (Minn. 1977).

Citing *Honeymead Prods. Co. v. AETNA Cas. & Sur. Co.*, the district court stated that "Minnesota case law supports the . . . definition of 'explosion' requiring a sudden or violent build-up of internal pressure and a sudden or violent release thereof." *See* 275 Minn. 182, 193, 146 N.W.2d 522, 529 (1966) (defining "explosion"). Appellant argues that the district court erred in adopting this definition because *AETNA Cas. & Sur. Co. v. Osborne-McMillan Elevator Co.*, a Wisconsin case that discusses the *Honeymead* definition, requires only the sudden release of an internal force, and provides that the internal force "need not . . . be unusual, abnormal, or suddenly produced." *See* 151 N.W.2d 113, 116-18 (Wis. 1967). And appellant contends that under this definition,

there is a genuine issue of material fact as to whether the water damage to appellant's house was caused by an explosion.

We conclude that the district court did not err in not relying on Wisconsin caselaw and in applying the *Honeymead* court's definition of "explosion." Moreover, even under the definition proposed by appellant, appellant failed to provide sufficient evidence showing that an explosion occurred to defeat summary judgment.

In conclusion, the district court properly defined "explosion" to reflect the plain and ordinary understanding of the term. And because appellant failed to provide evidence that an explosion occurred consistent with this definition, the district court did not err in granting summary judgment to respondent.

Affirmed.