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McFarland v. Liberty Insurance Corporation Respondent's Brief Dckt. 45781

IN THE SUPREME COURT FOR THE STATE OF IDAHO

RYAN MCFARLAND and KATHRYN MCFARLAND, Plaintiffs/Appellants, vs. LIBERTY INSURANCE CORPORATION, Defendant/Respondent.	Supreme Court Case No. 45781 Ada County District Court Case No. CV01-17-12546 RESPONDENT'S BRIEF

RESPONDENT LIBERTY INSURANCE CORPORATION'S BRIEF

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE HONORABLE LYNN NORTON, PRESIDING DISTRICT JUDGE

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I.
STATEMENT OF THE CASE

A. Nature of the Case.

This case involves an insurance policy interpretation dispute between the parties. The McFarlands are insureds with respect to a Liberty Mutual homeowner's insurance policy. In February 2017, the McFarlands reported a loss, in the form of water damage, to a detached garage at their property located in Garden Valley, Idaho. Liberty Mutual adjusted the loss and paid the full policy limits under Coverage B, "Other Structures." However, this amount of insurance was allegedly inadequate to repair all of the claimed damage to the garage. The McFarlands have asserted that the loss should have been adjusted under Coverage A, "Dwelling," which provides a higher policy limit.

The McFarlands have vacillated between arguing that the Policy is clear and unambiguous and that Liberty Mutual's adjustment of the loss represented a clear breach of contract, as well as asserting that the Policy's attempt to separate claims falling under Coverages A and B is ambiguous and that the Policy should be construed in favor of the McFarlands for the maximum coverage available. Liberty Mutual moved for summary judgment on the coverage dispute and the District Court agreed that the policy was clear and unambiguous and that Liberty Mutual correctly adjusted the loss under Coverage B. Liberty Mutual asserts that the District Court's decision on summary judgment was well reasoned, accurately stated and applied the law and that the McFarlands' appeal should be denied.

B. Course of Proceedings.

Liberty Mutual agrees with Paragraphs 1-4 and 6-8 of the Appellants' description of the course of proceedings in this matter. The only additional comment Liberty Mutual would make is

that the District Court's November 13, 2017, decision on summary judgment (R., pp. 264-74) fully adjudicated the McFarlands' breach of contract claim with respect to the coverage dispute regarding the damage to the structure of the garage at issue. The McFarlands then agreed to accept a judgment dismissing the bad faith, consumer protection and unjust enrichment claims without prejudice so that they could pursue their appeal on the breach of contract claim. R., p. 282.

C. Statement of Facts

On or about February 17, 2017, the McFarlands reported a loss to Liberty Mutual with regard to their property located at 138 Castle Mountain Drive, Garden Valley, Idaho. R., p. 231. On or around February 15, 2017, a radiant heater located on the second level of the detached garage on the property apparently burst, spreading water on the floor and walls of the second floor space, as well as onto the ceiling of the first level of the garage and space below. R., p. 231.

After the loss was reported, Liberty Mutual immediately began its investigation and adjustment of the claim, including having a field adjuster inspect the loss location. R., p. 231. By March 9, 2017, Liberty Mutual had tendered $10,261.14 to ServPro and $13,206.26 to the McFarlands in connection with the loss. R., p. 231.

On or about March 11, 2017, Liberty Mutual informed the McFarlands of their coverage associated with the loss. R., p. 231. The Policy contains separate areas of coverage for the "dwelling," "other structures" on the property, as well as personal contents located on the property. **Coverage A** under Section I "Property Coverages," defines insurance coverage for the "Dwelling." R., pp. 138-139. This section of the Policy provides that Liberty Mutual covers "the dwelling on the 'residence premises' shown in the Declarations, including structures attached to the dwelling," as well as the "[m]aterials and supplies located on or next to the 'residence premises' used to construct, alter or repair the dwelling or other structures on the 'residence premises.'" R., p. 138.

The "residence premises" is defined as: "(a) the one family dwelling, other structures, and grounds; or (b) that part of any other building where you reside and which is shown as the 'residence premises' in the Declarations." R., p. 138. "'Residence premises' also means a two family dwelling where you reside in at least one of the family units and which is shown as the 'residence premises' in the Declarations." *Id.*

Coverage B defines coverage for "Other Structures." This section provides that Liberty Mutual covers "other structures on the 'residence premises' set apart from the dwelling by clear space. This includes structures connected to the dwelling by only a fence, utility line, or similar connection." R., p. 139.

Liberty Mutual determined that since the damage occurred to a detached garage on the property, coverage available for the loss was under Coverage B, "Other Structures." R., p. 231. As a result, coverage for the loss was limited to the $22,350 (plus 5% for debris removal) available under Coverage B, as set forth in the Declarations. *Id.* Liberty Mutual further informed the McFarlands that, as a result of the payments already made in connection with the loss, their coverage under Coverage B, including debris removal, had been exhausted. *Id.* On or about March 11, 2017, the McFarlands sent a letter to Liberty Mutual disputing the payment, asserting that coverage for the loss should have been under Coverage A, associated with the "Dwelling." R., p. 128. The McFarlands claim that the amounts paid by Liberty Mutual under Coverage B were inadequate to fully repair the damage to the detached garage as a result of the water loss. *Id.*

II.

ARGUMENT

A. The District Court Correctly Found that the "Dwelling" is a Singular Structure, which is the House in which the McFarlands Live

In their opening brief, the McFarlands argue that Coverage A under the Policy does not specifically preclude considering the garage (which included a second level "bonus room") as part of the "dwelling" for purposes of adjusting their loss. The McFarlands assert that since the term "dwelling" is not defined under the policy, they should be given the benefit of the most expansive definition of the term available. As a result, the McFarlands believe that since they used the garage as living space, it should be considered part of their dwelling and Coverage A applies to their loss. In essence, the McFarlands argue that the term "Dwelling" under Coverage A should be interpreted so broadly that any structure utilized for any daily living activity (i.e., recreation, sleeping) should be covered under Coverage A. This argument ignores the clear terms of the policy, as well as established case law regarding insurance policy interpretation.

In construing an insurance policy, the Court must look to the plain meaning of the words to determine if there are any ambiguities. ***Cascade Auto Glass, Inc. v. Idaho Farm Bureau Ins. Co.***, 141 Idaho 660, 662–63, 115 P.3d 751, 753–54 (2005). "Where the policy language is clear and unambiguous, coverage must be determined, as a matter of law, according to the plain meaning of the words used." ***Clark v. Prudential Property and Cas. Ins. Co.***, 138 Idaho 538, 541, 66 P.3d 242, 245 (2003) (citing ***Mutual of Enumclaw Ins. Co. v. Roberts***, 128 Idaho 232, 235, 912 P.2d 119, 122 (1996)).

In resolving this question of law, the Court must construe the policy "as a whole, not by an isolated phrase." ***Selkirk Seed Co. v. State Ins. Fund***, 135 Idaho 434, 437, 18 P.3d 956, 959 (2000).

An insurance policy provision is ambiguous only if "it is reasonably subject to conflicting interpretations." ***North Pac. Ins. Co. v. Mai,*** 130 Idaho 251, 253, 939 P.2d 570, 572 (1997) (citing ***City of Boise v. Planet Ins. Co.,*** 126 Idaho 51, 55, 878 P.2d 750, 754 (1994)). "A contract is not rendered ambiguous on its face because one of the parties thought that the words used had some meaning that differed from the ordinary meaning of those words." ***Swanson v. Beco Const. Co.***, 145 Idaho 59, 63, 175 P.3d 748, 752 (2007).

The District Court soundly rejected the McFarlands' interpretation of the Policy. The District Court found that there was a clear distinction between Coverage A and Coverage B. Initially the District Court noted that Coverage A applied to a singular dwelling on the residence premises, including any structures attached to the dwelling. R., p. 270; see also R. pp. 138-39. The District Court noted that Coverage B provided a stark contrast to the coverage provided under Coverage A, since Coverage B applies to other structures on the premises "set apart from the dwelling by clear space." R., p. 270.

As a result, the District Court found that the determination of coverage for any particular loss was not dependent on the use put to a particular structure by the insured. Rather, there is a distinct and singular dwelling which falls under Coverage A and every other structure on the premises which is detached from that singular dwelling falls under Coverage B. R., pp. 270-71. Ultimately, the District Court ruled that:

> ...the policy indicates "dwelling" is a singular structure and Coverage A provides for coverage of a singular dwelling. This dwelling is not covered by subsection b of the amended Coverage A because it is not a two-family residence (which this court would view as a duplex under the plain meaning of the terms of the Policy).

R., p. 271.

It was certainly important to the District Court's decision to note that the term "dwelling" had a clear and unambiguous meaning synonymous with "house." R., p. 271. The District Court found that the garage, even with the existence of a second floor Bonus Room, did not fit within this meaning. The Court found:

> Although the Bonus Room and Garage are used for recreation and sleeping, the structure does not function as a house does. The Bonus Room/Garage do not provide a means to cook and to bathe. To expand on the definition to include any structure in which an insured spends recreational time or sleeps occasionally, unreasonably expands the definition of dwelling. Therefore, the term dwelling is subject to only one reasonable interpretation which is the house in which the McFarlands live or reside.

R., p. 271.

The McFarlands' primary disagreement with the District Court's decision on summary judgment is the District Court's determination that a "dwelling" must be a single structure. The McFarlands assert that multiple structures may constitute part of a "dwelling." However, such an argument tends to nullify the purpose of Coverage B. Further, the argument, taken on its face, is nonsensical and represents an exercise of circular reasoning. Since the McFarlands believe that the determination of coverage should be based on the specific use to which a structure is put, perhaps every structure on the property is a dwelling and, perhaps, none of the structures would fall under Coverage A. The Policy clearly defines how coverage is applied to an insured location. As a result, it is completely unnecessary (and inconsistent with established legal principles) to utilize an insured's subjective belief as to the use of a particular structure to define coverage.

The Policy, as a whole, provides various areas of insurance coverage for a "residence premises," a broad concept which includes the "dwelling, other structures and the grounds or that part of any other building.... where the insureds reside." R., pp. 134, 138. If there was one, singular

limit to be applied to any claim occurring on the premises, the analysis of coverage would stop there. However, the Policy splits coverage for structures built on the residential premises into two separate sections, Coverages A and B. The Coverage A section of the insuring agreement makes it crystal clear that Coverage A only applies to a portion of the "residence premises," that being the dwelling located on the "residence premises" shown in the Declarations, including structures attached to the dwelling. R., pp. 138. Whereas, Coverage B is clear that it applies to another portion of the 'residence premises," that being the other structures on the "residence premises" set apart from the dwelling by clear space. R., pp. 139.

There is no language in Coverage B which dictates what use the structure must have (other than certain specified exclusions which define what the structure cannot be used for). As a result, "other structures" can constitute garages, storage sheds, barns, pool houses, etc., regardless of whether such separate structures are utilized by the insureds as additional living space. The use of a particular structure does not dictate coverage. Rather, the primary analysis for determining coverage between Coverages A and B is to locate the dwelling and then determine if the structure which suffered damage was attached to the dwelling. If it is not (as in the case with the McFarlands' garage), coverage unambiguously falls under Coverage B.

On appeal, the McFarlands also had the opportunity to support their coverage argument with specific citation to authority whereby other courts or legal scholars had advanced a similar position. The McFarlands raised no such legal authority on appeal and Liberty Mutual has also found nothing in its own research to suggest that the term "dwelling" should be interpreted to include multiple structures set apart by clear space. This Court should apply the clear and unambiguous terms of the policy to the loss at issue and find that Liberty Mutual correctly adjusted the loss at issue under Coverage B.

B. There is no Evidence in the Record that the McFarlands Negotiated with Liberty Mutual for Coverage A to Include the Cabin and Garage

The McFarlands also argue on appeal that they specifically advised Liberty Mutual, prior to buying insurance, that they considered the Garage, with its second floor Bonus Room, to be part of the "dwelling" and procured insurance coverage based on reliance that Liberty Mutual would provide coverage for both structures as a "dwelling." Appellant's Brief, pp. 12-13. The argument is not supported by the record on appeal and merely represents a red herring.

First, at most the McFarlands made self-serving statements in an affidavit on summary judgment indicating they informed Liberty Mutual that they "regularly and continuously" used the detached garage as a space to sleep, inhabit and engage in recreation activities. R., pp. 122-23. There is no evidence that any representative of Liberty Mutual made promises or assurances that claims related to the detached garage would fall under Coverage A, that the McFarlands relied on any such statements or that the McFarlands purchased the insurance based on any negotiations or statements by Liberty Mutual regarding coverage.

Rather, the McFarlands' argument appears to follow the contours of the doctrine of reasonable expectations, a concept long rejected by this Court. In construing an insurance policy, the Court does not ascertain the meaning of the policy language by the meaning the insured may expect, but rather, intent is to be solely determined from the from language of contract itself. ***Casey v. Highlands Ins. Co.***, 100 Idaho 505, 600 P.2d 1387 (1979). In the absence of ambiguity, contracts for insurance are to be construed as any other and understood in their plain, ordinary and proper meaning. *Id.* Since the Policy terms and differentiation of coverage between Coverages A and B are clear and unambiguous, the Court should apply coverage based on the written terms of the agreement, rather than what coverages the McFarlands "thought" they were purchasing.

Of note, the McFarlands had a full and fair opportunity to increase the limit of coverage under Coverage B for the garage. An Endorsement under the Policy allows an insured, for additional premium, to increase the limit of liability for structures which fall under Coverage B. R., p. 171. In fact, the McFarlands made use of the provision to increase coverage for an "appurtenant structure" in the amount of $3,500. *Id.* Ultimately, the McFarlands were underinsured on their garage because they chose not to purchase additional coverage limits for this structure.

C. The Term "Dwelling" is not Ambiguous Merely Because it is not Defined Under the Policy

Finally, the McFarlands raise an alternative argument on appeal that the term "dwelling" is ambiguous and, as such, the Policy should be construed strongly against Liberty Mutual. The McFarlands assert that it is important to the analysis of this case that the term "dwelling" is not specifically defined in the Policy, while also arguing that the term has "no settled legal meaning." As set forth above, Liberty Mutual asserts that the term is not the subject of reasonably conflicting interpretations.

To support their ambiguity argument, the McFarlands rely heavily on this Court's decision in ***Arreguin v. Farmers Ins. Co. of Idaho***, 145 Idaho 459, 180 P.3d 498 (2008). In that case, the insurer had denied coverage for a fire claim associated with a detached garage based almost exclusively on the application of an "outbuilding" exclusion. The analysis in ***Arreguin*** focused on whether the term "outbuildings" in the exclusion was ambiguous. The primary issue this Court identified was that the term "outbuildings" could reasonably encompass all structures on the property, including those structures covered under the "dwelling" or the "separate structures" sections of the policy. *Id.*, at 462. As a result, this Court found that the term was "not necessarily subject to a single reasonable definition." *Id.*

Another important consideration to the Court's decision in Arreguin was the point that, if the insurer had intended the "Outbuildings" provision to exclude coverage for the detached garage, it could have used more precise language, such as when the insurer defined the "separate structures" covered under the contract. *Id.* Ultimately, the Court found that it was compelled to strictly construe the exclusionary provision in favor of the insured and refused to apply the exclusion in a manner which would have resulted in no coverage for the loss. *Id.*, at 463.

The coverage issue in this matter is not similar to that identified in ***Arreguin***. First, this case does not involve the interpretation of an exclusion. Under Idaho law, a provision in an insurance contract is strictly construed in favor of the insured only where the provision seeks to exclude coverage. *See, e.g.*, ***Moss v. Mid-America Fire & Marine Ins. Co.***, 103 Idaho 298, 300, 647 P.2d 754, 756 (1982). Otherwise, clear and unambiguous policy language must be determined according to its plain meaning. ***Clark v. Prudential Property and Cas. Ins. Co.***, 138 Idaho 538, 541, 66 P.3d 242, 245 (2003).

Next, the decision in ***Arreguin*** was driven by this Court's determination that the policy term "outbuildings" was ambiguous. This Court correctly determined that the term "outbuildings" was a highly generic term which can be used to describe any building at all. The completely non-specific nature of the term necessitated a finding that it was subject to conflicting interpretations. The term "dwelling" clearly defines a specific type of structure.

Further, the mere fact that a term is undefined in an insurance policy does not make that term ambiguous. ***Melichar v. State Farm Fire & Cas. Co.***, 143 Idaho 716, 721, 152 P.3d 587, 592 (2007). The Policy makes it clear that there can be only "one family dwelling" on the residence premises and Coverage A and B are clearly differentiated such that Coverage A can only apply to the dwelling, while Coverage B only applies to structures set apart from the dwelling by clear space.

Ultimately, it appears that the McFarlands' argument on appeal represents an attempt to create an ambiguity in the insuring agreement where none actually exists. There is no legal basis for finding that the McFarlands' claim for damage to their garage should have been adjusted under Coverage A. As a result, the District Court properly granted summary judgment in favor of Liberty Mutual on the McFarlands' breach of contract claim.

D. Liberty Mutual is Entitled to its Costs and Fees on Appeal

Liberty Mutual hereby requests an award of attorney's fees on appeal pursuant to I.C. § 12-120(3), as well as § 12-121. Liberty Mutual specifically asserts that the McFarlands did not raise any new argument or authority than that previously considered by the District Court and has provided inadequate argument and analysis as to why the District Court's decision represented error. As a result, this appeal have been frivolously pursued. Liberty Mutual also requests the right to attorney fees and costs on appeal as a prevailing party based on I.A.R. 40, 41.

III.
CONCLUSION

For the reasons set forth above, the ruling of the District Court granting Liberty Mutual summary judgment on the McFarlands' breach of contract claim should be affirmed.

RESPECTFULLY SUBMITTED this 28th day of June, 2018.

ANDERSON, JULIAN & HULL LLP

By _____
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of June, 2018, I served a true and correct copy of the foregoing RESPONDENTS' BRIEF by delivering the same to each of the following attorneys of record, by the method indicated below, addressed as follows:

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