

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2216-09T1

HETAL SHAH and
DHAVAL H. SHAH,

Plaintiffs-Appellants,

v.

GEICO INSURANCE COMPANY,

Defendant-Respondent.

Telephonically argued - January 13, 2011
Decided - August 9, 2011

Before Judges Fuentes, Gilroy and Nugent.

On appeal from the Superior Court of New Jersey, Law Division, Morris County, Docket No. L-50-08.

John M. Vlasac, Jr., argued the cause for appellants (Vlasac & Shmaruk, L.L.C., attorneys; Mr. Vlasac, of counsel; Jeffrey Zajac, on the brief).

Peter E. Mueller argued the cause for respondent (Harwood Lloyd, LLC, attorneys; Jeanne O. Marino, of counsel and on the brief).

PER CURIAM

This is a declaratory judgment action. Plaintiffs Hetal Shah and Dhaval Shah, her husband, appeal from the December 18,

2009 order that granted defendant Government Employees Insurance Company's, incorrectly designated in the complaint as Geico Insurance Company, motion for summary judgment. We affirm.

I.

On December 27, 2007, plaintiffs filed a complaint against defendant seeking an "order declaring that Geico insurance company is contractually obligated to provide [underinsured motorists (UIM)] coverage for Plaintiffs['] claim arising out of the accident of July 1, 2007 that resulted in significant personal injury to Hetal Shah." In December 2008, defendant filed a motion for summary judgment. On January 23, 2009, the court entered an order supported by a statement of reasons denying the motion. Specifically, the court determined that "the limitation [on coverage] did not appear on the declaration page and that defendant may have had an obligation to plaintiff to provide information [it] had regarding other household members goes to the issue of [plaintiffs'] reasonable expectations and should be left to the [factfinder]." On March 6, 2009, the court entered an order denying defendant's motion for reconsideration.

In September 2009, plaintiffs filed a motion seeking to confirm UIM coverage. On October 23, 2009, the court entered an order supported by an oral decision denying the motion. In

ruling, the court candidly acknowledged that it had erroneously denied defendant's motion for reconsideration of the January 23, 2009 order denying summary judgment, finding that the terms of the insurance policy had created an ambiguity. The court concluded that upon re-reading the insurance policy, its terms and provisions were clear and unambiguous; and thus, "entirely enforceable." However, because defendant had not filed a cross-motion for affirmative relief, the court determined that it would not "be fair or appropriate to go to the next step and . . . vacate the order denying [defendant's] motion for summary judgment." Having stated that, the court invited the parties to file motions seeking any relief deemed appropriate.

In November 2009, defendant filed a motion seeking to vacate the orders of January 23, and March 6, 2009, and for summary judgment dismissing plaintiffs' complaint. On December 18, 2009, the court entered an order supported by an oral decision granting the motion.

II.

Viewed most favorably to plaintiffs, see R. 4:46-2(c); Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995), the motion record discloses the following. On July 1, 2007, Hetal Shah was injured while a passenger in a 2004 Honda Pilot motor vehicle owned by her brother-in-law Viral Shah and

operated by her father-in-law Harish Shah. The vehicle was insured by defendant for third-party liability coverage in the amounts of \$100,000 per person and \$300,000 per accident. Harish Shah owned a 2002 Toyota Corolla automobile that was insured by defendant under a separate policy for third-party liability coverage in the same amounts as Viral Shah's policy. Plaintiffs owned a 2007 Toyota Rav-4 automobile that was insured by defendant under a third policy of insurance. That policy designated plaintiffs as the named insureds and provided third-party liability coverage, and first-party uninsured motorist (UM) and UIM coverages in the amounts of \$300,000 per person and \$300,000 per accident. At the time the three policies were issued, and at the time of the accident, all of the aforesaid individuals, along with Viral Shah's and Harish Shah's wives, resided in the same residence in Parsippany.

The accident occurred when Harish Shah's motor vehicle struck a second motor vehicle. Following the accident, Hetal Shah settled her personal injury claim with Harish Shah for \$100,000. After so doing, plaintiffs demanded \$200,000 in UIM benefits from defendant. Defendant denied the claim on the basis that Hetal Shah was injured while a passenger in a motor vehicle owned by Viral Shah, a relative of the same household as plaintiffs.

Dhaval Shah had purchased plaintiffs' automobile insurance policy from defendant via the Internet. This was the first time he had purchased an automobile insurance policy. The policy's UM/UIM coverage section provides, in relevant part, that "we will pay damages for bodily injury and property damage caused by an accident which the insured is legally entitled to recover from the owner or operator of an uninsured motor vehicle or underinsured motor vehicle arising out of the ownership, maintenance or use of that vehicle." The policy also contains exclusions from coverage. Exclusion No. 2 states UM/UIM coverage does not apply "to bodily injury sustained by you or your relatives while occupying, or through being struck by, an uninsured motor vehicle or underinsured motor vehicle owned by you or your relatives." Exclusion No. 5 bars claims for bodily injuries "sustained by an insured while occupying a motor vehicle owned by an insured and not described in the Declarations and not covered by the Bodily Injury and Property Damage liability coverages of this policy."

Under the definitions contained in the UM/UIM section of the policy, "insured" is defined as: "a. you and your spouse if a resident of the same household, b. your relative if a resident of your household." "Underinsured motor vehicle" is defined in the policy to exclude "any vehicle or equipment: 1. [o]wned by

or furnished or available for the regular use of you or any relative." "Relative" is defined as "a person related to you who resides in your household."

On December 18, 2009, the trial court granted defendant's motion to vacate the January 23 and March 6, 2009 orders and to grant summary judgment dismissing the complaint. The court found that UIM Exclusions Nos. 2 and 5 applied based on the policy's definitions of "underinsured motor vehicle," "insured," and "relative," because Hetal Shah resided in the same household as Viral Shah, her brother-in-law and owner of the vehicle involved in the accident.

The court rejected plaintiffs' argument that ambiguities and discrepancies existed between the insurance policy and the declarations page, such that the reasonable expectations doctrine applied. The court concluded after reviewing the declarations page and the policy that the policy's terms and provisions were "clear and unambiguous." The court also determined that defendant did not have a duty to affirmatively explain the UIM coverage to plaintiffs, defendant having previously provided plaintiffs with a copy of the buyer's guide.

III.

On appeal, plaintiffs argue that the trial court erroneously granted summary judgment to defendant. Plaintiffs

contend that the policy term "household" is ambiguous and discrepancies existed between the declarations page and the policy, thus entitling them to reasonable expectations of coverage. Plaintiffs assert the court should have denied summary judgment for substantially the same reasons expressed in the court's statement of reasons attached to the January 23, 2009 order that denied defendant's original motion for summary judgment.

A trial court will grant summary judgment to the moving party "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2(c); see also Brill, supra, 142 N.J. at 523. "An issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact." R. 4:46-2(c).

The law governing UIM coverage is found in the same statute that governs UM coverage. See N.J.S.A. 17:28-1.1. "Under N.J.S.A. 17:28-1.1b, UIM coverage is discretionary, not

mandatory." Aubrey v. Harleysville Ins. Cos., 140 N.J. 397, 404 (1995). "UIM coverage provides to an insured a measure of added protection against the risk of being injured by a negligent driver having an inadequate limit of liability insurance to cover the extent of the insured's injuries." French v. N.J. Sch. Bd. Ass'n Ins. Grp., 149 N.J. 478, 480 (1997). "So long as the terms and conditions of coverage are fairly disclosed, no public policy or statute prevents the exclusion of UIM coverage when it is the underinsured vehicle of the resident family member that causes the injury." Id. at 492; see also N.J. Mfrs. Ins. Co. v. Breen, 153 N.J. 424, 429 (1998).

A court's interpretation of an insurance contract is a determination of law. Sealed Air Corp. v. Royal Indem. Co., 404 N.J. Super. 363, 375 (App. Div.), certif. denied, 196 N.J. 601 (2008). We afford no special deference to a trial court's interpretation of the law and the legal consequences that flow from the established facts. Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995). Accordingly, we review a trial court's interpretation of an insurance policy de novo. Sealed Air Corp., supra, 404 N.J. Super. at 375.

Insurance policies are "contracts of adhesion," and as such, they "should be construed liberally in [the insured's] favor to the end that coverage is afforded 'to the full extent

that any fair interpretation will allow.'" Longobardi v. Chubb Ins. Co. of N.J., 121 N.J. 530, 537 (1990) (quoting Kievit v. Loyal Protective Life Ins. Co., 34 N.J. 475, 482 (1961)). Nonetheless, "in the absence of any ambiguity," courts should not use liberal rules of construction of insurance policies to "write for the insured a better policy of insurance than the one purchased." Zacarias v. Allstate Ins. Co., 168 N.J. 590, 595 (2001) (quoting Gibson v. Callaghan, 158 N.J. 662, 670 (1999)). Nor should courts use the liberal rules of construction to "emasculat[e] . . . the clear language of the policy." Stiefel v. Bayly, Martin & Fay of Conn., Inc., 242 N.J. Super. 643, 651 (App. Div. 1990).

The general principles governing interpretation of insurance policies giving effect to an insured's reasonable expectations of coverage were recently reaffirmed by our Supreme Court in Passaic Valley Sewerage Comm'rs v. St. Paul Fire & Marine Ins. Co., ___ N.J. ___, ___ (2011) (slip op. at 13-14).

Contracts for insurance are unique, and we take a particularly vigilant role in ensuring their conformity to public policy and principles of fairness. Generally, when interpreting an insurance policy, we give the policy's words their plain, ordinary meaning.

Critically important to our analysis is the principle that to fulfill the expectations of the parties, we will enforce the terms of an insurance policy as written

if the language is clear. If the policy terms are clear, we interpret the policy as written and avoid writing a better insurance policy than the one purchased.

If the terms are not clear, but instead are ambiguous, we construe them against the insurer and in favor of the insured to give effect to the insured's reasonable expectations.

A genuine ambiguity arises only where the phrasing of the policy is so confusing that the average policyholder cannot make out the boundaries of coverage. Ambiguous policies are those that are overly complicated, unclear, or written as a trap for the unguarded consumer. When construing an ambiguous clause in an insurance policy[,], we consider whether clearer draftsmanship by the insurer would have put the matter beyond reasonable question. Most important, the rule that contracts of insurance will be construed in favor of the insured and against the insurer will not be permitted to have the effect of making a plain agreement ambiguous and then construing it in favor of the insured.

[Ibid. (internal quotations and citations omitted).]

It is against these general principles that we consider plaintiffs' arguments.

IV.

Plaintiffs argue that the trial court erroneously determined that the insurance policy was free of ambiguity. Plaintiffs contend that "the term 'household' contained in the

definition of 'insured' referred to in the exclusionary clause of . . . [their] policy is ambiguous and vague." We disagree.

Although the term "household" is not defined in the insurance policy, courts should give the term its "ordinary meaning" and not engage in a "strained construction to support the imposition of liability." Longobardi, supra, 121 N.J. at 537. The term "household" is defined in Black's Law Dictionary, 666 (Special Deluxe 5th Ed. 1979) as:

A family living together. Those who dwell under the same roof and compose a family. . . .

Term "household" is generally synonymous with "family" for insurance purposes and include those who dwell together as a family under the same roof. Generally, the term "household" as used in automobile policies is synonymous with "home" and "family."

[(Internal citations omitted).]

Accord Webster's II New College Dictionary, 536 (2001) (defining the term as "[a] domestic establishment including the members of a family and others who live under the same roof").

Here, plaintiffs resided in the same residence as Dhaval Shah's father and mother, Harish and Jyoti Shah; and Harish's other son and daughter-in-law, Viral Shah and Jigna Jhaveri. All resided under the same roof in a residence in Parsippany. We conclude that living together within the same dwelling falls within the ordinary meaning of household. Indeed, in their

complaint, plaintiffs apparently agreed stating that "[a]ll family members are resident relatives residing in the same household." The trial court found no reason to depart from plaintiffs' description of their extended family's living arrangement. Nor do we.

In support of their contention that the term "household" is susceptible to different meanings depending upon the facts of the case, plaintiffs cite South v. North, 304 N.J. Super. 104 (Ch. Div. 1997); Smith v. Moore, 298 N.J. Super. 121 (App. Div. 1997); Sperling v. Teplitsky, 294 N.J. Super. 312 (Ch. Div. 1996); and Desiato v. Abbott, 261 N.J. Super. 30 (Ch. Div. 1992). These cases are distinguishable because they refer to the term "household" in the context of the Prevention of Domestic Violence Act of 1991, N.J.S.A. 2C:25-17 to -35.

v.

Plaintiffs argue next that various discrepancies exist between the declarations page and the provisions contained in the body of the policy; and that the declarations page failed to alert them to the exclusions contained in the policy. Plaintiffs contend that the declarations page does not state with particularity that UIM coverage was subject to exclusions, thus, creating an ambiguity, and as such, under Lehrhoff v. Aetna Cas. & Sur. Co., 271 N.J. Super. 340 (App. Div. 1994),

reasonable expectations of coverage prevail over the policy exclusions. Plaintiffs assert that the contract code "A30NJ" on the declarations page was ambiguous and did not sufficiently alert them to the UIM exclusions in the policy. The trial court rejected these contentions. The court found that, although the code on the declarations page referring to the "Contract Type" and "Contract Amendments" as "A30NJ" was not identical to the contract reference number "A-30-NJ (7-04)" found on the lower left-hand corner of the policy pages containing the UIM exclusions, the designation was sufficient enough to have placed plaintiffs on notice of the exclusions, and plaintiffs had an obligation to review the policy terms and conditions.

In Lehrhoff, we reversed an order that had dismissed a complaint seeking UM coverage because the fine print exclusion in the policy was insufficient to overcome the reasonable expectations of the insured's reliance on the declarations page. Supra, 271 N.J. Super. at 342. In determining that the insured was entitled to reasonable expectations of coverage, we stated:

We are persuaded, therefore, that a conscientious policyholder, upon receiving the policy, would likely examine the declaration[s] page to assure himself that the coverages and their amounts, the identity of the insured vehicle, and the other basic information appearing thereon are accurate and in accord with his understandings of what he is purchasing. We deem it unlikely that once having done

so, the average automobile policyholder would then undertake to attempt to analyze the entire policy in order to penetrate its layers of cross-referenced, qualified, and requalified meanings. Nor do we deem it likely that the average policyholder could successfully chart his own way through the shoals and reefs of exclusions, exceptions to exclusions, conditions and limitations, and all the rest of the qualifying fine print, whether or not in so-called plain language. We are, therefore, convinced that it is the declaration[s] page, the one page of the policy tailored to the particular insured and not merely boilerplate, which must be deemed to define coverage and the insured's expectation of coverage. And we are also convinced that reasonable expectations of coverage raised by the declaration[s] page cannot be contradicted by the policy's boilerplate unless the declaration[s] page itself clearly so warns the insured.

[Id. at 346-47.]

Plaintiffs, citing the above holding of Lehrhoff, contend that because the declarations page did not specifically reference the UIM exclusions, they are entitled to reasonable expectations of coverage. Not so.

The Supreme Court in Zacarias, limited Lehrhoff's breadth, explaining "[w]e do not, however, interpret Lehrhoff to require an insurer to include an intra-family exclusion on the policy's declarations sheet in all cases." Supra, 168 N.J. at 602. Indeed, the Court stated that "an insurance contract is not per

se ambiguous because its declarations sheet, definition section, and exclusion provisions are separately presented." Id. at 603.

The Zacarias Court discerned two rules of construction informing trial courts when they should apply the reasonable expectations doctrine.

First, in enforcing an insurance policy, courts will depart from the literal text and interpret it in accordance with the insured's understanding, even when that understanding contradicts the insurer's intent, if the text appears overly technical or contains hidden pitfalls, cannot be understood without employing subtle or legalistic distinctions, is obscured by fine print, or requires strenuous study to comprehend. Second, the plain terms of the contract will be enforced if the entangled and professional interpretation of an insurance underwriter is [not] pitted against that of an average purchaser of insurance, or the provision is not so confusing that the average policyholder cannot make out the boundaries of coverage.

[Id. at 601 (internal citations and quotations omitted).]

Applying those above principles, the Court enforced the insurance contract as written, finding "no ambiguity, inconsistency, or contradiction between the declarations sheet and the body of plaintiff's policy" because "the declarations sheet alerts the insured that the coverages and limits of liability are subject to the provisions of the policy" and "the exclusion itself is written in direct and ordinary terms." Id.

at 602-03. The declarations sheet indicated the coverages and limits of liability and included the language "SUBJECT TO THE FOLLOWING FORMS AND ENDORSEMENTS." Id. at 593.

Lehrhoff's reach was again constricted by this court in Morrison v. Am. Int'l Ins. Co. of Am., 381 N.J. Super. 532 (App. Div. 2005), where we affirmed the grant of summary judgment dismissing the plaintiff's declaratory judgment action for UIM benefits. At the time of the accident, plaintiff was a permissive driver operating an automobile owned by her parents and insured by American International Insurance Co. Id. at 535. Plaintiff neither lived with her parents, nor was she a named insured on the insurance policy. Ibid. After settling with the tortfeasor, plaintiff filed a complaint for UIM benefits against American International. Ibid.

The insurer moved for summary judgment contending that plaintiff was not a resident relative and even, if covered, she was subject to a step-down provision contained in the insurance policy. Id. at 536. Plaintiff opposed, contending that the policy provisions were ambiguous because the step-down provision was "hidden in the fine print of the uninsured motorist endorsement and was not included on the policy's declarations page" and because "the step-down clause referenced only uninsured motorists, not underinsured motorists." Ibid. The

trial court, although acknowledging some facial ambiguity in the insurance provisions, determined that the ambiguity was not so meaningful as to cause confusion; and thus, granted summary judgment. Ibid.

We affirmed, holding that Lehrhoff "does not establish a bright[-]line rule that the declaration page controls where important additional terms of the policy are not included on the declaration page but are reflected elsewhere." Id. at 539. We concluded that even though there was no asterisk or other signal on the declarations page to direct the insured to a step-down clause in the policy, the insured was chargeable with knowledge of the step-down provision. Id. at 538, 542. We explained that "while it may have been more prudent to specifically direct the insured to the step-down language" because the policy only consisted of fifteen pages, the definitions section was written in clear and simplistic terms, and the step-down language clearly stated the exclusion in a section with the capitalized heading, "LIMITS OF LIABILITY," that the average insured would have been alerted to the limitation. Id. at 543. We determined that "when the policy is read in its entirety, it clearly places the insured on notice of the coverage limitations." Ibid.

[T]he question of whether an insurance policy is ambiguous is not resolved by focusing upon the language in one section of the contract. Instead, the offending

section should be read in the context of the entire policy in order to determine whether harmony can be found between the alleged ambiguous language and the remainder of the policy.

[Id. at 541 (citations omitted.)]

Here, the declarations page states the UM/UIM coverage is \$300,000.00 per person and \$300,000.00 per accident, but there is no indication on the declarations page that it is subject to any exclusions. However, under Morrison even though the declarations page was devoid of any reference to the UIM exclusions, the definitions section is clear and straightforward, the exclusions are clearly stated, the exclusions are found in the UM/UIM section with the capitalized heading, "EXCLUSIONS," and a simple reading of the policy would have alerted plaintiffs to this exclusion. Accordingly, the trial court did not err in determining that plaintiffs' claim was barred by the UIM exclusions of the policy.

Plaintiffs further argue that defendant's failure to specifically inform them of the exclusions added to the ambiguity of the contract such that there were reasonable expectations that there would be full UIM coverage when traveling in a car with other family members. Not so.


"Insurance companies have an obligation to supply insureds with a copy of their policy." Edwards v. Prudential Prop. &

Cas. Co., 357 N.J. Super. 196, 204 (App. Div.), certif. denied, 176 N.J. 278 (2003). There is "no authority for the proposition that a duty exists to make the insureds aware of specific provisions after the policy has been received." Ibid. Rather, "[o]ur courts have held fast to the general rule that an insured is chargeable with knowledge of the contents of an insurance policy in the absence of fraud or inequitable conduct on the part of the carrier." Ibid; see also Morrison, 381 N.J. Super. at 542. Insureds are expected to read their policies and exclusions may be imposed by the clear terms in the policy. Edwards, supra, 357 N.J. Super. at 204-05.

Plaintiffs should have read their policy. The UIM provisions are unambiguous. They alert the insured in clear and specific terms of the UIM coverage and the exclusions therefrom.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION