IN THE COURT OF APPEALS OF IOWA

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CLERK SUPREME COURT

No. 1-050 / 00-1452
Filed April 27, 2001

LOREN MILLIGAN, SIDNEY MILLIGAN and SALEM ENTERPRISES,
Appellants,

vs.

GRINNELL MUTUAL REINSURANCE COMPANY,
Appellee.

Appeal from the Iowa District Court for Jasper County, Jerrold W. Jordan, Judge.

Loren Milligan, Sidney Milligan and Salem Enterprises appeal the summary judgment ruling entered on their breach of contract claim against Grinnell Mutual Reinsurance Company. **AFFIRMED.**

Lee M. Walker of Walker, Knopf & Billingsley, Newton, for appellants.

Douglas A. Haag of Patterson, Lorentzen, Duffield, Timmons, Irish, Becker & Ordway, L.L.P., Des Moines, for appellee.

Considered by Huitink, P.J., and Vogel and Mahan, JJ.

VOGEL, J.

Loren Milligan, Sidney Milligan and Salem Enterprises (Insureds) appeal the summary judgment ruling dismissing their breach of contract claim against Grinnell Mutual Reinsurance Company (Grinnell). Because we find the policy's internal statute of limitations barred the Insureds' suit, we affirm the district court.

Background Facts and Proceedings. The Insureds were owners of certain real property covered under a fire insurance policy issued by Grinnell. That policy stated "No one may bring a legal action against us under the insurance unless . . . [t]he action is brought within 2 years after the date on which the direct physical loss or damage occurred." The policy was in full force and effect when the property was damaged by fire on October 15, 1997. The Insureds signed a proof of loss statement on January 22, 1998, and received the $53;751.11 the statement listed as the actual cash value of the amount claimed to repair to the structure. This, and subsequent documentation, listed October 5, 1997 as the "date of loss."

The Insureds felt the damage was more extensive than that accounted for by the claim payment, and expressed those concerns to an adjuster, Rob Deedrick. They were told to document any additional costs and submit that documentation for Deedrick's review. The Insureds then elected to gut and reconstruct the building, which was completed in October 1998. Grinnell proceeded to investigate the claim, but paid out only an additional $6,000.13 reserved as a supplemental claim on the January 22 proof of loss statement, and

$3,817 for some previously undisclosed floor damage. The Insureds claim the reconstruction cost exceeded the payments from Grinnell by more than $54,000.

Grinnell notified the Insureds in a June 30, 1999, letter that no further payments would be forthcoming:

> Please be advised that we have made all the disbursements we are going to make associated with your claim from the loss of October 15, 1997. If you indeed feel you have an additional claim for more monies because of your loss, I would suggest the civil justice system.
>
> I'm sorry we can be of no further assistance to you in this matter.

It is unclear if the Insureds were represented by counsel at this juncture, but they had retained counsel by July 22, 1999. They did not file suit for breach of contract until November 16, 1999. The Insureds' petition was dismissed on summary judgment after the district court ruled it was barred by the policy language. The court determined the date of damage or loss was the date of the actual fire and that ample time remained for filing suit after Grinnell denied the claim. It is from this decision the Insureds now appeal.

Scope of Review. Summary judgment rulings are reviewed for correction of errors at law. Iowa R. App. P. 4; *General Car & Truck Leasing Sys., Inc. v. Lane & Waterman,* 557 N.W.2d 274, 276 (Iowa 1996). Where no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law, summary judgment is appropriate. Iowa R. Civ. P. 237(c); *City of West Branch v. Miller,* 546 N.W.2d 598, 600 (Iowa 1996). All facts are viewed in the light most favorable to the party opposing the summary judgment motion. *Bearshield v. John Morrell & Co.,* 570 N.W.2d 915, 917 (Iowa 1997).

Ambiguity of the Suit-Limitation Provision. The Insureds argue the words "the date on which the direct physical loss or damage occurred" are ambiguous and subject to multiple interpretations. Pointing to the fact that "physical loss or damage" has no independent definition within the policy itself, they contend the date of loss is either the date they received their repair estimates, the date the building was gutted or the date the repairs commenced. They can cite no authority or extrinsic evidence in support of this position, however.

Interpretation of an insurance policy term, where such interpretation is not dependent on extrinsic evidence, is a question of law for the court. *See A.Y. McDonald Indus., Inc. v. Insurance Co. of N. Am.*, 475 N.W.2d 607, 618 (Iowa 1991). When interpreting policy terms, courts are controlled by the intent of the parties. *Id.* Unless a term is ambiguous, intent is determined by the policy language. *Id.* Ambiguity is not established merely because the parties disagree on the meaning to be given the term. *Gracey v. Heritage Mut. Ins. Co.*, 518 N.W.2d 372, 373 (Iowa 1994). For ambiguity to exist the word or term must be fairly and objectively susceptible to more than one meaning. *See United Fire & Cas. Co. v. Victoria,* 576 N.W.2d 118, 121 (Iowa 1998). In that event the meaning favorable to the insured is adopted. *See id.*

Undefined insurance policy terms are given their ordinary and reasonable connotations. *A.Y. McDonald Indus., Inc.*, 475 N.W.2d. at 619. In searching for an ordinary meaning it is common and permissible to refer to dictionary definitions. *Id.* An undefined policy term does not automatically equate to an

ambiguous term, particularly if the dictionary meaning is the one commonly understood by the average person. *See, e.g., Hofco, Inc. v. National Union Fire Ins. Co. of Pittsburgh, Pa.*, 482 N.W.2d 397, 401 (Iowa 1992).

Here, the dictionary gives the word "loss" its commonly understood meaning of "damage" or "destruction." Black's Law Dictionary 945 (6th ed. 1990). Damage is in turn defined as "injury to property." *Id.* at 393. Given the foregoing, it appears that loss or damage as used in the suit-limitation provision unambiguously referred to injury to or destruction of the realty owned by the Insureds. This conclusion finds further support in the fact that the loss or destruction must be physical in nature, that policy references to loss and damage clearly indicate the necessity of a destructive act or occurrence and that the proof of loss statements, signed by the Insureds, explicitly refer to the date of the fire as being the date of loss.

This common and ordinary meaning of loss or damage does not comport in any way with the Insureds' position that loss is measured by the time of claim estimates or repairs. Nor is the phrase objectively open to that interpretation on another basis. The district court correctly found the date of physical loss or damage was the date of the fire, and we affirm its decision in this regard.

Denial of the Claim. The Insureds also claim that Grinnell and/or its agents mislead them into believing their claims were still being considered two years after the fire, and that it was reasonable for them to believe they should not file suit until it was clear that their claims would not be paid. In support of this

position they cite to *Thomas v. United Fire and Cas. Co.*, 426 N.W.2d 396 (Iowa 1988), and its discussion of the reasonable expectations doctrine. *Id.* at 399.

There a one-year limitation provision was held not to violate the reasonable expectations doctrine, as nothing before the court suggested those insureds expected more than a year to commence suit. *Id.* The court noted:

> We are impressed by the straightforward manner in which the plaintiffs' claims were rejected, at a point when there remained ample time to commence suit within the limitation. The insurer did nothing to mislead the plaintiffs about its rejection of the claims or the twelve-month limitation provision. Finally, plaintiffs make no claim they were unrepresented by counsel at the time their claims were rejected.

Id.

The Insureds focus on the "misleading" language in *Thomas*, and contend they were given the "run around" by Deedrick. However, the last allegedly misleading statement the Insureds can point to occurred in February 1999, when Deedrick responded to complaints about the settlement amount with directions to compile and submit for his review documentation of any further damage. Putting aside the issue of whether this statement can be fairly categorized as misleading, any additional payment requests were unequivocally rejected by Grinnell's June 30 letter. The Insureds and their attorney had approximately three months after this rejection in which to commence suit and failed to do so. The reasonable expectations doctrine has no application to this case, and the district court was correct in rejecting this argument.

Even viewing this matter in the light most favorable to the Insureds, no disputed issues of material facts arose, and the district court ruling was strictly

limited to questions of law. In this regard the court correctly found the date of loss or damage unambiguously referred to the date of the fire, and that the Insureds' claims were unambiguously denied in sufficient time to commence suit under the policy terms. Accordingly, the court's ruling that the suit was barred by the insurance policy's internal statute of limitations must be affirmed.

AFFIRMED.