

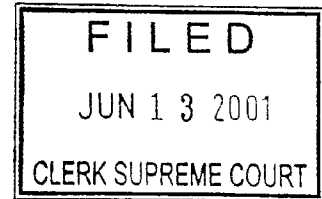
IN THE COURT OF APPEALS OF IOWA

No. 1-200 / 00-1130
Filed June 13, 2001

**BAILEY TRAVEL CORPORATION,
d/b/a AMERICAN TRAVEL & TOUR,
Plaintiff-Appellee,**

vs.

**GENERAL CASUALTY COMPANY OF
WISCONSIN,
Defendant-Appellant.**



Appeal from the Iowa District Court for Linn County, William L. Thomas,
Judge.

Defendant appeals from a district court ruling granting the plaintiff's motion
for summary judgment and denying its motion for summary judgment in plaintiff's
action for breach of an insurance contract following the loss of fifty-three airline
tickets. **REVERSED AND REMANDED.**

Sean M. O'Brien and David J. W. Proctor of Bradshaw, Fowler, Proctor &
Fairgrave, P.C., Des Moines, for appellant.

William H. Roemerman of Crawford, Sullivan, Read & Roemerman, P.C.,
Cedar Rapids, for appellee.

Heard by Mahan, P.J., and Miller and Vaitheswaran, JJ.

MILLER, J.

The defendant, General Casualty Company of Wisconsin (General Casualty), appeals from a district court ruling granting plaintiff, Bailey Travel Corporation, d/b/a American Travel & Tour (American), summary judgment and denying it summary judgment in American's lawsuit for breach of an insurance contract following the loss of fifty-three airline tickets. General Casualty contends: (1) the insurance policy's "exchange or purchase" exclusion precludes coverage for the loss; (2) the "false pretense" exclusion precludes coverage for the loss; and (3) if neither exclusion applies and coverage does exist under the contract, then the loss of the tickets constitutes a single occurrence. We reverse and remand.

I. BACKGROUND FACTS

American is a travel agency and acts as a broker between various airlines and the traveling public. General Casualty sold American a casualty insurance policy which was in effect at all relevant times. The policy provided for coverage up to \$10,000 for a loss of "money and securities" due to "wrongful abstraction from any described premises." It defined "securities" as including "tickets." However, an exclusion applicable to money and securities provided that General Casualty would not pay for loss, "Resulting from the giving or surrendering of property in any exchange or purchase." In addition a "false pretense" exclusion, applicable to all property losses, provided that General Casualty would not pay for loss or damage resulting from "[v]oluntary parting with any property . . . if induced to do so by any fraudulent scheme, trick, device or false pretense." The policy further provided that General Casualty would "not pay for loss or damage

in any one occurrence until the amount of loss or damage exceeds the Deductible shown in the Declarations,” and “the most we will deduct from any loss or damage under . . . the Money and Securities Additional Coverages . . . in any one occurrence is \$250.” The policy does not provide definitions for the terms “exchange,” “purchase,” “voluntary,” or “occurrence.”

The facts stipulated to by both parties for purposes of summary judgment are as follows: Beginning in July of 1998 American brokered the sale of a series of airline tickets to an individual or individuals identifying themselves as Dr. Charles Phillips or Dr. John Allen of the Associated Doctors Group, with a number of different individuals named as the travelers on the tickets. The sales were conducted over the telephone through the use of American Express credit card numbers provided by the caller. The tickets were purchased electronically, meaning the traveler received a credit on the airline’s computer system rather than a physical ticket. To redeem a credit the traveler merely had to present identification at the airport gate prior to boarding the plane. After each sale American mailed written confirmation of the transaction to the address provided by the caller. In August of 1998 several of the purchase confirmations were returned to American with a postmark noting no such person resided at the listed address. American became suspicious and contacted American Express to verify the charges. American Express confirmed that although none of the credit cards had been reported stolen, the names of neither the purchaser nor the traveler matched the name of the credit card holder. American then contacted “Dr. Allen” to inquire about the discrepancy and left a phone message. When “Dr. Allen” returned the call American suggested that for his own financial safety

and security he should go to the police department and telephone them again from there. "Dr. Allen" has never been heard from since. It now appears that the names "Dr. Charles Phillips" and "Dr. John Allen," were fictitious and no organization known as "Associated Doctors Group" exists. American promptly reported the credit card scheme to federal authorities but no suspects have been apprehended and the case remains unsolved. American promptly cancelled all unclaimed tickets, however, after accounting for all refunds credited by the airlines it was determined the perpetrators had been able to wrongfully acquire fifty-three tickets, with total losses to American of \$48,308.72. When American Express and the airlines held American responsible for the unauthorized charges, American filed a claim with General Casualty seeking insurance benefits under the above mentioned policy to cover the loss. General Casualty denied coverage and claimed the loss was excluded by the terms of the policy.

American filed suit against General Casualty alleging breach of contract. The parties each filed a motion for summary judgment. The district court granted American's motion and denied General Casualty's. General Casualty appealed, claiming the coverage for the loss is precluded by certain exclusions in the insurance policy or, if coverage does exist for the loss of the tickets, then it constitutes only a single occurrence, not fifty-three separate occurrences as the district court found.

II. STANDARD OF REVIEW

We review a grant or denial of summary judgment for correction of errors at law. Iowa R. App. P. 4; *Wright v. American Cyanamid Co.*, 599 N.W.2d 668, 670 (Iowa 1999). On appeal from a district court summary judgment ruling, our

task normally is to determine whether a genuine issue of material fact exists and whether the law was correctly applied. *Employers Mut. Cas. Co. v. Cedar Rapids Television Co.*, 552 N.W.2d 639, 641 (Iowa 1996). However, when as here no facts are in dispute we need only address assignments of legal error. *Id.*

III. MERITS

Construction of an insurance policy – the process of determining its legal effect – is a question of law for the court. Interpretation – the process of determining the meaning of words used – is also a question of law for the court unless it depends on extrinsic evidence or a choice among reasonable inferences to be drawn.

Iowa Comprehensive Petroleum Underground Storage Tank Fund Bd. v. Farmland Mut. Ins. Co., 568 N.W.2d 815, 817 (Iowa 1997) (quoting *Allied Mut. Ins. Co. v. Costello*, 557 N.W.2d 284, 286 (Iowa 1996)).

An insurer has a duty to define any limitations or exclusionary clauses in clear and explicit terms. *Id.* The burden of establishing an exclusion rests on the insurer. *Id.*

When words or phrases are undefined in a policy *we do not given them a technical or legal meaning*. Rather, undefined words are given their *ordinary meaning*. If the words are susceptible to two reasonable interpretations, the interpretation favoring the insured is adopted. However, a mere disagreement between the parties regarding the meaning of undefined terms does not automatically establish an ambiguity. In determining the *ordinary meaning of undefined terms* in a policy, we commonly refer to dictionaries.

LeMars Mut. Ins. Co. v. Joffer, 574 N.W.2d 303, 307 (Iowa 1998) (emphasis added and citations omitted).

In interpreting a contract, we give effect to language of the entire contract in accordance with its *commonly accepted and ordinary meaning*. Because we give effect to the language of the entire contract, *it is assumed that no part of it is superfluous and an*

interpretation that gives a reasonable meaning to all terms is preferred to one that leaves a term superfluous or of no effect.

Dickson v. Hubbell Realty Co., 567 N.W.2d 427, 430 (Iowa 1997) (emphasis added and citations omitted).

The parties agree that the relevant loss falls within the scope of the insurance policy's coverage provisions. The principal dispute is over whether the policy's exclusionary provisions preclude coverage. General Casualty argues that both of two separate policy exclusions apply and preclude coverage. The first states that General Casualty will not pay for the loss of "securities" when the loss is the result of any "giving or surrendering of property in any exchange or purchase." The second excludes coverage for loss caused by "False Pretense" which is defined in the policy as: "Voluntary parting with any property by you or anyone else to whom you have entrusted the property if induced to do so by any fraudulent scheme, trick, device or false pretense." The "false pretense" exclusion has a broader scope than the "exchange or purchase" exclusion because the former applies to all losses while the latter applies only to losses of money and securities. We will deal with the "false pretense" exclusion first.

The policy does not define the word "voluntary." The district court turned to a legal dictionary, Black's Law Dictionary (Black's) for a definition.¹ Based on that definition the court found,

[T]he word may be susceptible to various meanings in the context of the exclusion at issue in this case. Voluntary could mean acting

¹ As quoted by the district court, Black's in part defines voluntary as:
Unconstrained by interference; unimpelled by another's influence; spontaneous, acting of oneself. Done by design or intention. Proceeding from the free and unrestrained will of the person. The word, especially in statutes, often implies knowledge. See Black's Law Dictionary 1413 (5th ed. 1979).

with knowledge of essential facts, as Plaintiff urges, or it could mean simply that Plaintiff's employees made the ticket reservations voluntarily, in the sense that they were not forced to do so under physical threat or duress.

The district court reasoned that the thief had "influenced or impelled" American's employees to complete the transactions by falsely presenting himself as a legitimate customer providing accurate information to American, and that the employees' parting with the tickets was thus not "voluntary" within the meaning of that term as defined in Black's. It found that the meaning of the term, as defined in Black's, was thus inconsistent with being induced to part with the tickets by pretenses. It concluded that the "false pretense" exclusion did not apply to preclude coverage. We disagree with the district court's analysis and conclusion.

As a preliminary matter, for several reasons we find misplaced any reliance on that part of the definition in Black's that states or implies knowledge of essential facts is necessary in order for an act to be voluntary. First, when a word is undefined in a policy we give it its ordinary meaning, not a technical or legal meaning. *LeMars*, 574 N.W.2d at 307. The part of the definition in Black's relied on by the trial court appears to involve a technical or specialized meaning, applicable primarily to statutes. Second, the definition of "voluntary" in more recent editions of Black's no longer suggests that the word may imply knowledge of essential facts, even in statutes. See Black's Law Dictionary 1569 (7th ed. 1999). Third, no "standard" dictionary definition cited to us or found by us suggests that knowledge of essential facts is an element of any of the numerous alternative definitions of "voluntary." See Webster's Third New International Dictionary 2564 (1986). Our decision does not, however, turn on this point.

The trial court initially focused on the word “voluntary.” After finding that acting with knowledge of essential facts in selling the tickets was one possible meaning of the term, it concluded the exclusionary clause was ambiguous because acting with knowledge of essential facts was inconsistent with having been “induced to do so by . . . false pretense.” It concluded the ambiguity must be resolved in favor of American, and the “false pretense” exclusion therefore did not apply and preclude coverage. Our disagreement is with the first step of the trial court’s analysis.

In interpreting contracts, words and phrases are not interpreted in isolation. *Hartig Drug Co. v. Hartig*, 602 N.W.2d 794, 498 (Iowa 1999). Instead, they are interpreted in the context in which they are used. *Id.* In relevant part, the exclusionary clause in which the term “voluntary” appears precludes coverage for loss or damage caused by, “Voluntary parting with any property . . . if induced to do so by any fraudulent scheme, trick, device or false pretense.” The terms “fraudulent scheme, trick, device or false pretense” all clearly indicate a lack of knowledge of essential facts. The clause therefore clearly indicates that acts, here the parting with tickets, can be without knowledge of essential facts, even influenced, induced or impelled by false and fraudulent representations, and still be “voluntary.” We find support for this conclusion in a case involving similar facts and very similar language in an exclusionary clause of an insurance policy. See *U.S. Fid. & Guar. Co. v. J.D. Johnson Co., Inc.*, 438 So. 2d 917, 921 (Fla. Dist. Ct. App. 1983) (holding that false pretense clause precluded coverage where insured’s employees intentionally delivered equipment to persons despite the fact the employees were induced to do so by fraudulent misrepresentations

as to the identity of the recipients or their authority to receive the property.). Therefore, when the term “voluntary” is appropriately interpreted, not in isolation but in the context in which it appears, it cannot have the meaning found possible by the trial court, a meaning which would engender ambiguity and lead to the result reached by the trial court. We conclude that the “false pretense” exclusion is not ambiguous and does preclude coverage.

A second, somewhat related principle of contract interpretation leads us to the same result. We give effect to all the language of a contract, assume no part is superfluous, and prefer an interpretation that gives meaning to all terms. *Dickson*, 567 N.W.2d at 430. The meaning of “voluntary” found possible by the district court, acting with knowledge of essential facts, would give no effect to the remainder of the exclusionary clause in which that word appears. This would violate the principle of interpretation set forth in *Dickson*.

IV. CONCLUSION

We conclude the district court erred in determining the “false pretense” exclusion did not preclude coverage for the wrongfully abstracted tickets. We need not address the question of whether the “exchange or purchase” exclusion also precludes coverage, or the question of whether one or more “occurrences” are involved. We reverse the district court’s decision and remand for further proceedings consistent with this opinion.

REVERSED AND REMANDED.