IN THE COURT OF APPEALS OF IOWA

No. 0-211 / 98-1911
Filed July 26, 2000

BALZER BROTHERS and E-Z STRIP CORPORATION,
Plaintiffs-Appellants,

vs.

UNITED FIRE & CASUALTY CO.,
Defendant-Appellee.

FILED
JUL 26 2000
CLERK SUPREME COURT

Appeal from the Iowa District Court for Des Moines County, David Fahey, Judge.

Plaintiffs appeal the district court's grant of summary judgment to defendant on plaintiffs' claim seeking insurance coverage. **AFFIRMED.**

Steven S. Hoth of Hoth, Ellerhoff, Haessler, Hoth & Monroe, Burlington, for appellants.

Craig D. Warner of Aspelmeier, Fisch, Power, Warner & Engberg, P.L.C., Burlington, for appellee.

Heard by Streit, P.J., and Zimmer and Hecht, JJ.

ZIMMER, J.

Plaintiffs appeal the district court's grant of summary judgment to defendant United Fire and Casualty Co. on plaintiffs' claim seeking insurance coverage. We affirm.

United Fire and Casualty Co. ("United Fire") sold a general commercial liability policy to E-Z Strip. United Fire contracted to pay "those sums that the insured becomes legally obligated to pay as damages because of . . . 'property damage' to which this insurance applies." Plaintiff Balzer Brothers ("Balzer") contracted with a non-party, J.I. Case Co. ("Case"), to clean and repair four of Case's oil tube coolers. Balzer in turn contracted with E-Z Strip to have it clean those oil coolers. The coolers were delivered to the E-Z Strip shop. On June 27, 1990, when an E-Z Strip employee was in the process of moving the coolers with a forklift to begin cleaning them, the coolers were dropped, causing damage to them.

E-Z Strip notified United Fire, seeking coverage for the damage. United Fire asserted the loss was excluded under two provisions of the policy. In April of 1992, Balzer sued E-Z Strip to recover the damage done to the coolers. On January 26, 1993, E-Z Strip confessed judgment for the full amount sought by Balzer--$9,579.04. That same date, E-Z Strip assigned to Balzer its rights "to enforce any insurance coverage, claim, or cause of action that may exist arising out of the damage to the oil coolers, and pursuant to a commercial insurance policy . . . issued by . . . United Fire and Casualty Co. . . . ."

On April 1, 1998, Balzer filed suit against United Fire. United Fire moved for summary judgment. The trial court granted the motion and dismissed

Balzer's suit. Balzer appeals, arguing the district court erred by concluding the two exclusionary provisions invoked by United Fire were not ambiguous.

I. Scope of Review. We review a district court's ruling on a motion for summary judgment for corrections of errors at law. See Iowa R. App. P. 4; *LeMars Mut. Ins. Co. v. Joffer,* 574 N.W.2d 303, 306 (Iowa 1998). On review, we examine the record before the district court to decide whether any material fact is in dispute, and if not, whether the district court correctly applied the law. *General Car & Truck Leasing System, Inc. v. Lane & Waterman,* 557 N.W.2d 274, 276 (Iowa 1996). In considering the record, we view the facts in the light most favorable to the party opposing the motion for summary judgment. *Joffer,* 574 N.W.2d at 306. The "genuine issue as to any material fact" requirement means the evidence is such that reasonable minds could differ on how the issue should be resolved. *Fouts ex rel. Jensen v. Mason,* 592 N.W.2d 33, 35 (Iowa 1999). To decide if the moving party has met this burden, we review the record in the light most favorable to the nonmoving party, in this case the plaintiffs. *See id.*

II. The Merits. The exclusionary provisions that United Fire invoked read:

> . . .
>
> 2. Exclusions.
>
> This insurance does not apply to:
>
> . . .
>
> j. "Property damage" to:
>
> . . .
>
> (4) Personal property in your care, custody or control;
>
> . . .
>
> (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

The phrase "your work" is defined as:

a. Work or operations performed by you or on your behalf; and
b. Materials, parts or equipment furnished in connection with such work or operations.

'Your work' includes warranties or representations made at any time with respect to the fitness, quality, durability or performance of any of the items included in a. or b. above.

A. Care, Custody and Control Exclusion. Balzer contends on appeal that in order for the 'care, custody and control' exclusion to apply, E-Z Strip had to have *exclusive* care, custody or control of the coolers when they were damaged. Case bailed the coolers to Balzer which in turn bailed them to E-Z Strip. Balzer contends the exclusion was inapplicable because the coolers were not owned by E-Z Strip and Case could have demanded their return at any time.

The district court properly rejected this argument. There was no ambiguity. When the terms of an insurance policy are ambiguous, we will construe them against the insurer. *Morgan v. American Family Mut. Ins. Co.*, 534 N.W.2d 92, 99 (Iowa 1995) (citation omitted). However, the mere fact that the parties disagree on the meaning of a particular term does not establish an ambiguity. *Id.* We will not give a strained or unnatural reading to the words of the policy to create ambiguity where there is none. *Id.* In order for this exclusion to apply, the policy does not require that the insured be the owner of the property or have *exclusive* care, custody and control. Balzer cites no authority for the proposition that 'control' has to be tantamount to ownership. If we were to agree with Balzer, we would be rewriting the policy.

Furthermore, the trial court found, and Balzer conceded, a bailment existed regarding the coolers. *See Rutledge v. Des Moines Flying Service*, 254 Iowa 809, 199 N.W.2d 262, 264 (1963) (finding flying service which had taken possession of airplane for repairs was bailee). As the trial court pointed out, E-Z

Strip cannot be a bailee yet *not* have had exclusive possession—a bailment entails the bailee having, temporarily, sole custody of property. *Id.* As the trial court pointed out, Balzer defeats its own argument by conceding there was a bailment and yet claiming exclusive possession is required. There is no ambiguity in this exclusionary clause. The damage done by E-Z Strip is excluded from coverage by the 'care, custody and control' provision.

B. "Your Work" Exclusion. Balzer next argues an ambiguity is found in the 'your work' provision. Balzer claims the specific task or job contemplated by the parties' contract should be the only work to which the phrase 'your work' extends. According to Balzer, in the contract between Balzer and E-Z Strip, the only work contemplated was E-Z Strip's cleaning of the oil coolers, not their handling. The policy excludes coverage for damage stemming from "work that was incorrectly performed." Since it was not the stripping and cleaning that were incorrectly performed by E-Z Strip, but rather activity outside that work (namely handling the coolers), the exclusion does not apply to damage caused by the handling.

The trial court correctly found there were no facts which would tend to show that the moving of the coolers with a forklift did not fall within the 'your work' exclusion. We find no basis to divorce E-Z Strip's incidental handling of the bailed property from its stripping and cleaning of the coolers. Presumably it would have to move the coolers from the location where they were delivered to a location where they could be stripped and back again. Balzer made no showing that this movement was not a necessary part of the contracted-for work. This was not a case where in the process of moving other property that was part of a

different job, the forklift operator hit the coolers and damaged them. The forklift operator was actually moving the coolers. The trial court correctly concluded there were also no ambiguities in this policy exclusion. We affirm the grant of summary judgment to United Fire.

AFFIRMED.