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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

JIM LAMB,	)	
Appellee,	)	Filed March 29, 1978
vs.	)	
LeMARS MUTUAL INSURANCE COMPANY OF IOWA,	)	434 / 2-60261
Appellant.	)	

Appeal from Union District Court - M. J. V. Hayden, Judge.

Defendant appeals from an adverse judgment on a fire insurance policy, alleging error in the interpretation of a specific policy provision. AFFIRMED.

Paul J. Boysen, Jr., of Camp, Harsh & Boysen, of Creston, counsel for appellant.

Thomas Mullin, of Mullin, Mullin, McLaughlin & Harvey, of Creston, counsel for appellee.

Sumitted to Allbee, C. J., Donielson, Snell, Oxberger and Carter, JJ.

DONIELSON, J.

Defendant Le Mars Mutual Insurance Company of Iowa appeals from a $1300 judgment on a fire insurance policy entered in favor of plaintiff Jim Lamb, asserting that the trial court erred in its interpretation of a specific policy provision.

Lamb filed his petition at law on November 19, 1975, alleging that he had a fire insurance policy with defendant which contained coverage limits of $300 on silage and $1000 on hay, that he had a fire which burned both the hay and silage and caused damages in excess of the policy limits, and that defendant had wrongfully refused to pay plaintiff pursuant to the terms of the policy. Lamb requested $1300 in actual and $6500 in punitive damages. Defendant admitted the existence of the policy and the amount of plaintiff's loss in excess of $1300, but it denied all liability.

Pursuant to plaintiff's request, defendant filed a copy of plaintiff's insurance policy with the court. Paragraph 17 of the policy provided $300 in coverage on grain, threshed seed, threshed beans, ground feed, silage, and manufactured and compounded stock foods. Paragraph 18 provided $1000 in coverage on hay, straw and fodder, while in barns and outbuildings on the premises. Paragraph 19 provided that there was to be no coverage on hay, straw and fodder in stacks, windows and bales. However, nowhere in the policy itself was there any definition of such terms as "outbuilding" and "hay" which were used in the policy, nor was there any reference to baled hay in Paragraph 17.

Plaintiff had mowed and chopped some hay and placed it in his silo on top of some corn silage. The silo's contents burned, apparently from spontaneous combustion, and were destroyed. Defendant's claim adjuster examined the damage at the Lamb farm and recommended payment of $300 for the material destroyed in the silo. Although he conceded that a silo could be considered an outbuilding on the premises, he testified that he had only observed chopped silage during his inspection, not hay. After reviewing the claim adjuster's report and recommendation, defendant's claim examiner made the same recommendation to the insurance company. Consequently, defendant offered coverage to plaintiff in the amount of $300 as set forth in Paragraph 17, but Lamb refused to accept and filed the instant petition.

At the trial to the court, Lamb testified that he bought the insurance to cover his half-interest in 2000 bales of hay and the corn silage remaining in the silo, and that he assumed that the policy covered the hay in the silo. He further testified that he did not

change the policy after blowing hay into the silo because he did not feel it was necessary. Defendant's claim examiner, who had nothing to do with the sale of the policy to Lamb, testified that he believed both parties intended that the policy cover only baled hay.

The trial court found that the policy should be liberally construed in favor of the insured, as the insurer is the expert in drafting and drawing insurance policies. The court also found that there did exist hay which was the subject of the loss, that the material constituted hay at the time it was cut, chopped and blown into the silo and therefore was hay when it was burned. Further, the court concluded that it saw nothing which would prevent the silo from being an "outbuilding", although it did not constitute a barn.[1] Consequently, the court held that the loss was covered by Paragraph 18 of the policy and that plaintiff was entitled to have judgment for $1300 entered in his favor.

This action was tried at law and therefore our review is on errors assigned and not de novo. Spilman v. Board of Directors of Davis County, 253 N.W.2d 593, 595 (Iowa 1977); Laing v. State Farm Fire & Cas. Co., 236 N.W.2d 317, 319 (Iowa 1975). Findings of fact by the trial court will not be disturbed on appeal if supported by substantial evidence and not induced by erroneous views of law. Connie's Const. v. Fireman's Fund Ins. Co., 227 N.W.2d 207, 209 (Iowa 1975); Rule 14(f)(1), Rules of Appellate Procedure. Furthermore, we view the evidence in the light most favorable to the judgment and in case of ambiguity construe to uphold, rather than defeat the judgment. Spilman v. Board of Directors of Davis County, supra; Nora Springs Co-Op Co. v. Brandau, 247 N.W.2d 744, 747 (Iowa 1976). In the construction of written contracts, the cardinal principle is that the intent of the parties must control, and, except in cases of ambiguity, this is determined by what the contract itself says. Rule 14(f)(14), R. App. P. If there is any ambiguity in an insurance policy, it is to be construed adversely to the

[1] Although there is no definition of terms in the policy, "silo," "outbuilding," and "barn" have accepted meanings. A "silo" has been defined as a receptacle intended to preserve and store forage in an edible condition. Ryder v. Schlichter, 126 F. 487, 488 (3 Cir. 1903). An "outbuilding" has been defined as a building adjoining or belonging to a dwelling house which is used or intended for use in connection therewith. Firth v. Marovich, 160 Cal. 257, 262, 116 P. 729, 731 (1911); Bennett v. Haerlin, 107 N.J.Eq. 224, 228, 152 A. 164, 165 (1930). Further, a "barn" has been described as a covered building designed for the storage of grain, hay, or other farm produce. State v. Smith, 28 Iowa 565, 568 (1870); Jackson v. State, 145 Ala. 54, 56, 40 So. 979, 980 (1906); Washington v. Arizona, 46 Ariz. 446, 449, 52 P.2d 476, 478 (1935). Consequently, we agree with the trial court that a silo is an "outbuilding" and also conclude that it constitutes a "barn" as well.

drafter and favorably to the insured. Westhoff v. American Interinsurance Exchange, 250 N.W.2d 404, 410 (Iowa 1977); Steinbach v. Continental Western Ins. Co., 237 N.W.2d 780, 782 (Iowa 1976); Dublinske v. Pacific Fid. Life Ins. Co., 230 N.W.2d 924, 926 (Iowa 1975). In the construction and application of a standardized insurance contract, the courts strive to effectuate the reasonable expectation of the average member of the public who accepts it. Steinbach v. Continental Western Ins. Co., supra at 782.

Defendant contends for the first time in its brief that the intent of the parties was not clearly and unambiguously reflected in the language of the policy and that the provision regarding "hay" was ambiguous. LeMars did not raise the ambiguity issue in the pleadings. It is well settled that one may not raise an issue or defense for the first time on appeal, Gordon v. Pfab, 246 N.W.2d 283, 289 (Iowa 1976); Foods, Inc. v. Leffler, 240 N.W.2d 914, 920 (Iowa 1976). Consequently, not only should defendant have raised the issue of ambiguity below, it probably should have specifically pleaded the issue as well. See Rules 101 and 103, Rules of Civil Procedure.

However, even if we may consider the ambiguity question, we need not decide whether the contractual provision regarding "hay" is ambiguous because we will not resort to rules of construction where the intent of the parties is expressed in clear and unambiguous language, Allen v. Highway Equipment Co., 239 N.W.2d 135, 139 (Iowa 1976); Kinney v. Capitol-Strauss, Inc., 207 N.W.2d 574, 576 (Iowa 1973); see Rule 14(f)(14), R. App. P., and only where the language is of doubtful meaning will there be resort to such rules. Mopper v. Circle Key Life Insurance Co., 172 N.W.2d 118, 124 (Iowa 1969).

The trial court found that hay had been blown into the silo and had been destroyed. Paragraph 18 did not distinguish between types of hay. Since there is substantial evidence in the record to support the trial court's findings of fact, we will not disturb them. Rule 14(f)(1), R. App. P. Implicit in those findings is the conclusion that the intent of the parties is expressed in clear and unambiguous language in the policy. However, assuming arguendo that the language used is not clear and unambiguous and is of doubtful meaning, the policy will be strictly construed against Le Mars, the party drafting or furnishing the instrument containing the ambiguous language. Westhoff v. American Interinsurance Exchange, supra at 410; Rector v. Alcorn, 241 N.W.2d 196, 202 (Iowa 1976); Pappas v. Bever, 219 N.W.2d 720, 722 (Iowa 1974). Consequently, under either theory advanced by defendant, we affirm the district court.

AFFIRMED.