IN THE COURT OF APPEALS OF IOWA

FILED
JAN 26 1989
CLERK SUPREME COURT

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GENERAL CASUALTY COMPANY OF WISCONSIN,

Plaintiff-Appellant/ Cross-Appellee,

vs.

SPECIALTY CONTRACTORS, INC. and HARRIS GRAIN, INC.,

Defendants-Appellees/ Cross-Appellants.

8-543
87-1487

Appeal from the Iowa District Court for Dickinson County (Law No. 16154), Edwin L. Mitchell, Judge.

Insurer appeals district court declaratory judgment that a liability insurance policy covers the underlying lawsuit. **AFFIRMED IN PART AND REVERSED IN PART.**

Francis Fitzgibbons and Ned A. Stockdale of Fitzgibbons Brothers, Estherville, for plaintiff-appellant/cross-appellee.

Daniel D. DeKoter of Corcoran, Skiver, Zito, DeKoter & Thole, Sibley, for defendants-appellees/cross-appellants.

Considered by Oxberger, C.J., and Donielson and Schlegel, JJ. Sackett, J., takes no part.

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Insurer appeals the district court declaratory judgment that a liability insurance policy covers a certain lawsuit against the insured. The insurer has appealed, contending its policy does not provide coverage because the underlying lawsuit falls within two of the policy's exclusions.

The plaintiff in the underlying lawsuit has cross-appealed from the declaratory judgment, contending the district court should have found coverage on the additional ground that one of the exclusions is invalid because it conflicts with other parts of the policy. In addition, the cross-appellant contends that one part of the declaratory judgment cannot be appealed because it does not meet the $3,000 amount-in-controvery requirement of Iowa Rule of Appellate Procedure 3.

Specialty Contractors, Inc. built a grain storage facility for Harris Grain, Inc. During construction, a portion of the facility collapsed, and Harris Grain ultimately had to pay replacement costs of nearly $29,000. Also, after the construction was completed, Harris Grain discovered that a railroad load spout would not function. Harris Grain had to replace this load spout at a cost of $1,091.19.

Harris Grain later sued Specialty Contractors to recover for the two replacement costs noted above. Specialty Contractors looked to its liability insurer,

General Casualty Company of Wisconsin, to defend it against the Harris Grain suit. However, General Casualty took the position that its policy did not cover the Harris Grain claims because of two exclusions in the policy. These exclusions provided that the insurer was not liable for faulty workmanship by Specialty Contractors or defective products used or sold by Specialty Contractors.

General Casualty filed the present petition for declaratory judgment, seeking a declaration that its liability policy did not cover the Harris Grain lawsuit against Specialty Contractors. However, the district court denied the relief requested; instead, the district court issued a declaratory judgment that the policy did cover the Harris Grain lawsuit.

I. General Casualty has appealed from the adverse declaratory judgment. It reiterates its contention that its policy provides no coverage because the Harris Grain lawsuit falls within the "workmanship" and "product" exclusions of the policy. General Casualty contends the applicability of these exclusions is conclusively established by certain judicial admissions of Harris Grain made during pretrial discovery procedures. Specialty Contractors argues that the trial court correctly focused on interpretation of the policy language and found coverage.

Construction of a contract, the process of determining its legal effect, is always a matter of law to be resolved

by the court. Interpretation is the process of determining the meaning of words used and is also a matter for the court to decide unless it depends upon extrinsic evidence or a choice among reasonable inferences. Farm Bureau Mut. Ins. Co. v. Sandbulte, 302 N.W.2d 104, 107-08 (Iowa 1981). Because the trial court determined this issue as a matter of law, the trial court's interpretation is not binding on appeal. Id. at 108.

The insurance policy in question is a comprehensive general liability policy with a broad form endorsement issued by General Casualty to Specialty Contractors. The policy provides:

> I. COVERAGE A - BODILY INJURY LIABILITY
> COVERAGE B - PROPERTY DAMAGE
>
> The company will pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of
>
> A. bodily injury or
>
> B. property damage
>
> to which this insurance applies, caused by an occurrence, and the company shall have the right and duty to defend any suit against the insured seeking damages on account of such bodily injury or property damage, even if any of the allegations of the suit are groundless, false or fraudulent, and may make such investigation and settlement of any claim or suit as it deems expedient, but the company shall not be obligated to pay any claim or judgment or to defend any suit after the applicable limit of the company's liability has been exhausted by payment of judgments or settlements.
>
> **Exclusions**
>
> This insurance does not apply:

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(a) to liability assumed by the insured under any contract or agreement except an incidental contract; but this exclusion does not apply to a warranty that work performed by or on behalf of the named insured will be done in a workmanlike manner;

* * *

(n) to property damage to the named Insured's products arising out of such products or any part of such products;

(o) to property damage to work performed by or on behalf of the named Insured arising out of the work or any portion thereof, or out of materials, parts or equipment furnished in connection therewith;

* * *

II. BROAD FORM PROPERTY DAMAGE (Including Completed Operations)

The insurance for **property damage** liability applies, subject to the following additional provisions:

A. The exclusions relating to **property damage** to (1) property owned, occupied or used by or rented to the **insured** or in the care, custody or control of the **insured** or as to which the **insured** is for any purpose exercising physical control and (2) work performed by or on behalf of the **named insured** arising out of the work or any portion thereof, or out of materials, parts or equipment furnished in connection therewith, are replaced by the following exclusions (y) and (z):

(y) to **property damage**

* * *

(2) except with respect to liability under a written sidetrack agreement or the use of elevators to

* * *

(c) property in the custody of the **insured** which is to be installed, erected or used in construction by the **insured**;

(d) that particular part of any property, not on premises owned by or rented to the **insured**

(i) upon which operations are being performed by or on behalf of the **insured** at the time of the **property damage** arising out of such operations, or

(ii) out of which any **property damage** arises, or

(iii) the restoration, repair or replacement of which has been made or is necessary by reason of faulty workmanship thereon by or on behalf of the **insured.**

(z) with respect to the **completed operations hazard,** to **property damage** to work performed by the **named insured** arising out of the work or any portion thereof, or out of materials, parts or equipment furnished in connection therewith.

We find the facts surrounding the damages are not in dispute. They were summarized by the district court as follows: On July 10, 1976, Specialty entered into a contract with Harris to erect grain bins, a catwalk, and a grain leg on Harris's premises. On November 8, 1977, prior to completion of the project, the grain bins, catwalk, grain leg, and supporting cables were damaged. The damages were caused by the inappropriate placement of the supporting cables. The cables are a separate, particular part of the grain storage system. There was no faulty workmanship in the grain bins, the catwalk, or the grain leg. Harris is seeking recovery for the damages incurred to all these parts.

We agree with the trial court that coverage is afforded under the policy for damage caused to property other than the cables. The exclusion in the endorsement is controlling over the standard policy. Where the standard policy would exclude all of the damages here, the broad form adds coverage for damages except for the "particular part" the "repair or replacement of which has been made or is necessary by reason of faulty workmanship thereon." The cables need to be replaced because of faulty workmanship on them; therefore, coverage for them is excluded. However, damages to the grain bins, catwalk, and grain leg do not fall within exclusion (y) and are therefore covered damages.

Additionally, during the policy period, Specialty designed, constructed, and installed a railroad load spout for Harris. The spout was defective and had to be replaced by Harris at a cost of $1,091. Harris is also claiming damages for this property.

This court may consider the appeal on the railroad load spout even though the damages claimed for the spout are less than $3,000. Where there is a single plaintiff who seeks to aggregate two or more of its own claims against a single defendant, aggregation is usually permitted to achieve the statutory minimum. See Albion Elevator v. Chicago & North Western Transportation Co., 254 N.W.2d 6, 12 (Iowa), cert. denied, 434 U.S. 904, 98 S. Ct. 301, 54 L.

Ed. 2d 190 (1977). Furthermore, the test under Iowa Rule of Appellate Procedure 3 asks whether the trial court could have entered judgment against any party for that amount. Ackerman v. International Business Machines Corp., 337 N.W.2d 486, 488 (Iowa 1983). The trial court could have entered such a judgment against General Casualty. Appellate jurisdiction is proper in this case.

Damages to the railroad load spout are not covered. One applicable exclusion is the same one which excludes the cables. Property damage to that particular part of any property the replacement of which is necessary because of faulty workmanship thereon is excluded from coverage pursuant to exclusion (y). The spout had to be replaced because it was defective; therefore, it is excluded.

The trial court found coverage for the spout under the additional declarations which list coverage for products--"if any." However, we disagree with this result. "Products" are listed under the heading "Description of Hazards" for this liability policy. The policy says that the company will pay on behalf of the insured all sums which the insured shall become legally obligated to pay because of bodily injury or property damage resulting from one of the insured's products. The product itself is excluded under exclusion (y).

Summary judgment is proper where there is no genuine issue of fact and the moving party is entitled to judgment

as a matter of law. Knapp v. Simmons, 345 N.W.2d 118, (Iowa 1984). Coverage is provided under this broad form endorsed general liability policy for all damages for which the named insured is legally liable except for damages to the particular part that was defective. We hereby affirm the declaratory judgment that General Casualty Company of Wisconsin is liable for claims for damages to the grain bins, catwalk, and grain leg, together with any other damages directly caused by defendant Specialty Contractors faulty workmanship on and in connection with the cables. General Casualty is not liable for claims for damages to the cables in question.

However, with respect to the load spout, we reverse the trial court and issue a declaratory judgment that General Casualty Company is not liable for claims for damages to the load spout.

AFFIRMED IN PART AND REVERSED IN PART.