DATE FILED: October 20, 2015 4:02 PM

Colorado Court of Appeals
2 East 14th Avenue
Denver, CO 80203

District Court, Jefferson County, Colorado
The Honorable Todd Vriesman
Case No. 2014CV32056

Appellant/Defendant: MABEL GARCIA

v.

Appellee/Plaintiff: STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

▲ **COURT USE ONLY** ▲

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Case No.:

NOTICE OF APPEAL

Appellant/Defendant, Mabel Garcia, through her attorneys, LEVIN ROSENBERG PC, HILLYARD, WAHLBERG, KUDLA, SLOANE & WOODRUFF, LLP, and THE LAW OFFICES OF DANIEL J. CAPLIS, PC, files the following Notice of Appeal pursuant to C.A.R. 4(a):

I. TRIAL COURT INFORMATION

CASE TITLE: State Farm Mutual Automobile Insurance Company v. Mabel Garcia and Susan Lynette Leavitt

COURT: Jefferson County District Court

JUDGE: Hon. Todd L. Vriesman

INITIATING PARTY: Mabel Garcia

TRIAL COURT CASE NO.: 2014CV32056

II. NATURE OF THE CASE

A. General Statement of the Nature of the Case

This appeal arises out of a motor vehicle collision on November 25, 2012, involving Appellant/Defendant Mabel Garcia ("Garcia") and Susan Lynette Leavitt ("Leavitt"). When the collision occurred, Leavitt was operating a 2007 Volvo XC70, which she owned. State Farm Mutual Automobile Insurance Company ("State Farm") insured the Volvo under Policy No. 058520006G, which provided $100,000 in liability coverage ("Policy No. 1"). Leavitt also owned a 2004 Ford Explorer that State Farm insured under Policy No. 043113806H, which provided

$500,000 in liability coverage to Leavitt as an insured ("Policy No. 2"). Both policies were in effect when the collision occurred.

Following the collision, Garcia sued Leavitt for negligently causing the collision. Leavitt tendered the lawsuit to State Farm and asked it to defend and indemnify her under both policies of insurance. State Farm defended Leavitt and tendered $100,000 in indemnity coverage under Policy No. 1, but refused to provide any coverage under Policy No. 2.

State Farm then filed a declaratory relief action, seeking a judicial determination as to whether Policy No. 2 insured Leavitt for the collision with Garcia. State Farm and Garcia moved for summary judgment on stipulated facts, which included, among others, the following: (1) Policy No. 2 names Terry J. Leavitt and S. Lynette Leavitt as insureds on the declaration page; (2) Policy No. 2 was in force on the date of the collision; and (3) State Farm agreed that, if it is finally determined that Policy No. 2 provides coverage for the collision, State Farm will pay Garcia $400,000 under Policy No. 2. The district court entered judgment in State Farm's favor, finding, as a matter of law, that Policy No. 2 provided no coverage to Leavitt for the collision with Garcia.

B. Orders Appealed From and Basis for Jurisdiction

1. The district court's Order re: Motions for Summary Judgment dated September 1, 2015.

Jurisdiction exists under C.R.S. § 13-4-102(1), and C.A.R. 3(a) and 4(a).

C. Whether the Judgment or Order Being Appealed Resolved All Issues Pending Before the Trial Court, Including Attorneys' Fees and Costs

Other than issues related to costs, all issues between the parties to this appeal have been resolved by the district court's Order re: Motions for Summary Judgment dated September 1, 2015.

D. Whether the Judgment Was Made Final for Purposes of Appeal Pursuant to C.R.C.P. 54(b)

The district court's Order re: Motions for Summary Judgment dated September 1, 2015, constitutes a final judgment for purposes of C.R.C.P. 54(b).

E. Date the Judgment or Order was Entered and the Date of Service to Counsel.

The district court's Order re: Motions for Summary Judgment dated September 1, 2015, was electronically served on counsel that same day.

F. Date of Any Extensions Granted for Post-Trial Relief Motions

None.

G. Date of Any Motion for Post-Trial Relief

None.

H. Date Any Motion for Post-Trial Relief Was Denied or Deemed Denied

None.

I. Whether Any Extensions Were Granted to File Notice of Appeal

No.

III. ADVISORY LISTING OF ISSUES TO BE RAISED ON APPEAL

Appellant's opening brief may raise any supportable issue in the record, including: Whether the district court erred when it concluded, as a matter of law, that Policy No. 2 provided no coverage to Leavitt for Garcia's claims against her.

IV. TRANSCRIPTS

None.

V. PRE-ARGUMENT CONFERENCE

Not requested.

VI. COUNSEL

Counsel for Appellant Mabel Garcia: Bradley A. Levin and Timothy M. Garvey, LEVIN ROSENBERG PC, 1512 Larimer St., Suite 650, Denver, Colorado 80202; Michael Nimmo, HILLYARD, WAHLBERG, KUDLA, SLOANE & WOODRUFF, LLP, 4601 DTC Blvd., Suite 950, Denver, Colorado 80237; and Daniel J. Caplis, THE

LAW OFFICES OF DANIEL J. CAPLIS, PC, 4601 DTC Blvd., Suite 950, Denver, Colorado 80237.

Counsel for Appellee State Farm Mutual Automobile Insurance Company: Franklin Patterson and Brian Kennedy, FRANK PATTERSON & ASSOCIATES, P.C., 5613 DTC Parkway, Suite 400, Greenwood Village, Colorado 80111.

VII. APPENDIX

1. The district court's Order re: Motions for Summary Judgment dated September 1, 2015.

DATED this 20th day of October 2015.

Respectfully submitted,

LEVIN ROSENBERG PC

s/Bradley A. Levin
Bradley A. Levin
Timothy M. Garvey

Attorneys for Appellant

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of October 2015, a true and correct copy of the foregoing **NOTICE OF APPEAL** was served via ICCES on the following:

Franklin Patterson
Brian Kennedy
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/s/ Nicole R. Peterson
Nicole R. Peterson

APPENDIX

DISTRICT COURT, JEFFERSON COUNTY, COLORADO 100 Jefferson County Parkway Golden, CO 80401 (720) 772-2500	DATE FILED: September 1, 2015 4:40 PM CASE NUMBER: 2014CV32056
STATE FARM MUTUAL AUTOMOBILE INSURANCE, Plaintiff v. **MABEL GARCIA, et al.,** Defendants.	▲ COURT USE ONLY ▲ Case No. 14-CV-32056 Division 11

ORDER RE: MOTIONS FOR SUMMARY JUDGMENT

THIS MATTER comes before the Court on Plaintiff's May 18, 2015 Motion for Summary Judgment ("Plaintiff's Motion") and Defendant Mabel Garcia's ("Garcia") June 9, 2015 Motion for Summary Judgment ("Defendant's Motion"), which included a response to Plaintiff's Motion. Plaintiff filed a response to Defendant's Motion and a reply in support of Plaintiff's Motion on June 30, 2015, and Garcia filed a reply in support of Defendant's Motion on July 14, 2015. Defendant Susan Leavitt ("Leavitt") did not submit a response to either Motion. The Complaint asserts a claim for declaratory relief against Garcia. Both parties seek summary judgment as a matter of law.

1. This case arises out of a motor vehicle collision on November 25, 2012 (the "Collision"), between Garcia and Leavitt that resulted in damages and bodily injury to Garcia. The undisputed facts are as follows:

a. At the time of the Collision, Leavitt was operating a 2007 Volvo XC70 owned by her. Leavitt resides in Colorado. The Collision occurred in Colorado.

b. State Farm issued a policy of automobile insurance to Leavitt, policy number 058520006G ("State Farm Policy #1"). State Farm Policy #1 covered a 2007 Volvo XC70. State Farm Policy #1 contained liability limits of $100,000, and was in force and effect at the time of the Collision.

c. Leavitt also owned a 2004 Ford Explorer, also insured with State Farm, at the time of the Collision. State Farm Policy 043113806H ("State Farm Policy #2") covers Leavitt's 2004 Ford Explorer, and names Leavitt and her husband, Terry J. Leavitt, as insureds on the declarations page. State Farm Policy #2 contained liability limits of $500,000, and was in force and effect on the date of the Collision.

d. The 2004 Ford Explorer was not involved in the November 25, 2012 Collision.

e. State Farm has been called upon to defend and to indemnify Leavitt as a result of Garcia's claims under both State Farm Policy #1 and State Farm Policy #2.

f. There is no dispute that State Farm Policy #1 affords bodily injury liability coverage for the Collision. State Farm has agreed to pay to Garcia the applicable policy limit under State Farm Policy #1.

g. Garcia claims damages in an amount exceeding State Farm Policy #1's liability limits. Garcia claims she is entitled to be paid an additional $400,000 in damages from State Farm Policy #2.

h. State Farm has denied coverage under State Farm Policy #2 for the Collision, alleging that the policy does not afford coverage based upon the facts of the accident and upon the language contained in the insurance policy. State Farm agrees to pay Garcia $400,000 under State Farm Policy #2 in addition to the $100,000 it has already agreed to pay under State Farm Policy #1 if it is finally determined that State Farm Policy #2 provides coverage for the Collision.

2. Summary judgment is appropriate when the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." C.R.C.P. 56(c); *Gibbons v. Ludlow*, 304 P.3d 239, 243-44 (Colo. 2013). A material fact is one that will affect the outcome of the case. *Peterson v. Halstead*, 829 P.2d 373, 375 (Colo. 1992).

3. The party seeking summary judgment bears the initial responsibility of informing the court of the basis for his motion and identifying those portions of the record and of the affidavits, if any, which the movant believes demonstrate the absence of a genuine issue of material fact. *Civil Service Comm'n v. Pinder*, 812 P.2d 645, 649 (Colo. 1991). The movant may satisfy this burden by showing there is no record evidence supporting the nonmoving party's case. *Schultz v. Wells*, 13 P.3d 846, 848 (Colo. App. 2000). Once the moving party has met this initial burden of production, the burden shifts to the nonmoving party to show that a triable issue of fact exists. *Cont'l Air Lines, Inc. v. Keenan*, 731 P.2d 708, 713 (Colo. 1987). A factual issue cannot be raised by argument through counsel without a reasonable basis in admissible facts. *Schultz*, 13 P.3d at 848.

4. State Farm seeks a declaratory judgment to determine whether State Farm Policy #2 provides coverage for the Collision. Defendant agrees that the underlying facts are undisputed, but argues that Policy #2 language provides coverage for the Collision with the Volvo or, alternatively, the policy is ambiguous and should be construed against State Farm. The Court looks first at the language of the policy.

5. The court applies principles of contract law when interpreting an insurance policy. *American Family Mutual Ins. Co. v. Allen*, 102 P.3d 333, 340 (Colo. 2004). Words in an insurance policy are to be given their plain, ordinary meaning, unless otherwise indicated by the parties' intent. *Id*.

6. In this case, State Farm has given certain words a meaning other than the plain, ordinary meaning by providing a general "Definitions" section, as well as additional definitions within each specific coverage section in the policy booklet. The Court can therefore conclude that where a word is not specifically defined within the policy booklet, the intent is for that word to carry its plain, ordinary meaning.

7. The outline under "This Policy" in the policy booklet includes a description of what the policy entails, the parties agreeing to the policy, and the provisions of coverage under the policy. Plaintiff's Motion, Exh. A Pt. 1, p. 10. The Court notes the frequent use of the phrase "this policy" in the policy booklet, and applies the plain, ordinary meaning of the term; in particular, it signifies to the policy holder that the policy being described is a specific one, namely, State Farm Policy #2. Based upon the "This Policy" section of the policy booklet, the Court finds that State Farm Policy #2 has a particular Declarations Page associated with it, which identifies the policy by its policy number, and that Declarations Page identifies, *inter alia*, the named insureds on State Farm Policy #2, the vehicle identified as "YOUR CAR," the policy's coverage levels, the premiums to be paid, and the documents that make up the policy. Plaintiff's Motion, Exh. A Pt. 1, p. 1. The "This Policy" section also provides that State Farm "agrees to provide insurance according to the terms of this policy." Plaintiff's Motion, Exh. A Pt. 1, p. 10. Conversely, the Court reads this to say that State Farm does not agree to provide insurance according to the terms of any other policy, whether issued by State Farm or anyone else.

8. The Declarations Page of State Farm Policy #2 identifies the named insured as "Leavitt, Terry J & S Lynette" and indicates that "YOUR CAR" is a 2004 Ford Explorer. Plaintiff's Motion, Exh. A Pt. 1, p. 1.

9. In the "Definitions" section of the policy booklet, State Farm specifies that "***We*** means the Company issuing this policy as shown on the Declarations Page." Plaintiff's Motion, Exh. A Pt. 1, p. 13. The next definition indicates that "***You*** or ***Your*** means the named insured or named insureds shown on the Declarations Page." *Id*. The definition that follows provides that "***Your car*** means the vehicle shown under 'YOUR CAR' on the Declarations Page." *Id*. For the purposes of liability coverage, additional definitions in the "Liability Coverage" section indicate that "***Insured*** means ***you*** and ***resident relatives*** for the ownership, maintenance, or use of ***your car***" (internal numbering and punctuation omitted). *Id*. The Court finds that, based on these definitions, "***you***" includes Leavitt, and "***your car***" refers only to the 2004 Ford Explorer.

10. The "Insuring Agreement" in the "Liability Coverage" section states that "[State Farm] will pay damages an ***insured*** becomes legally liable to pay because of ***bodily injury*** to others and damage to property caused by an accident that involves a vehicle for which that ***insured*** is provided Liability Coverage by this policy." Plaintiff's Motion, Exh. A Pt. 1, p. 14.

11. Defendant claimant argues that because State Farm here uses the term "a vehicle" in the insuring agreement rather than a defined term such as "your car," that any vehicle, including the 2007 Volvo XC70 is covered by State Farm Policy #2. Defendant also argues that Ms. Leavitt meets the definition of an "insured" under State Farm Policy #2 and that, because she was the driver of the car involved in the Collision, State Farm is obligated to provide coverage under State Farm Policy #2. The Court is not persuaded by either of these arguments.

12. "The primary goal of contract interpretation is to determine and effectuate the intent and reasonable expectations of the parties." *Copper Mountain, Inc. v. Indus. Sys. Inc.*, 208 P.3d 692, 697 (Colo. 2009). "To determine the intent of the parties, the court should give effect to the plain and generally accepted meaning of the contractual language." *Id*. "The court should interpret a contract 'in its entirety with the end in view of seeking to harmonize and to give effect to all provisions so that none will be rendered meaningless.'" *Id*. (quoting *Pepcol Mfg. Co. v. Denver Union Corp.*, 687 P.2d 1310, 1313 (Colo. 1984)). The Court should not view clauses or phrases in isolation, but should examine the entire contract as a whole to determine its meaning. *Copper Mountain*, 208 P.3d at 697 (citing *U.S. Fidelity & Guar. Co. v. Budget Rent–A–Car Sys., Inc.*, 842 P.2d 208, 213 (Colo. 1992)).

13. The Court must enforce the plain language of a policy unless it is ambiguous. *Hoang v. Assurance Co. of Am.*, 149 P.3d 798, 801 (Colo. 2007), *as modified* (Mar. 5, 2007). "An insurance policy is ambiguous if it is susceptible to more than one reasonable interpretation." *Id*. "A mere disagreement between the parties regarding the interpretation of the policy does not create an ambiguity." *Union Ins. Co. v. Houtz*, 883 P.2d 1057, 1061 (Colo. 1994). "A court may not rewrite an unambiguous policy nor limit its effect by a strained construction." *Terranova v. State Farm Mut. Auto. Ins. Co.*, 800 P.2d 58, 60 (Colo. 1990).

14. Defendant has singled out two terms from the Insurance Agreement and taken them out of context in order to give the provision new meaning. When taken in context, however, the provision qualifies that both the covered vehicle and the insured are specific to "this policy." Looking at the definition of "insured," the Court finds the policy unambiguous as to the fact that Leavitt is not an insured under State Farm Policy #2 as it pertains to the vehicle involved in the Collision, the Volvo XC70. That vehicle is not listed as "YOUR CAR" on the Declarations Page of State Farm Policy #2, and the parties stipulate through their pleadings that it does not qualify as one of the other exceptions listed in the definition of an "insured" in State Farm Policy #2.

15. Because the definition of "insured" specifies the types of vehicles included in that term, and those vehicles are previously defined in the "Definitions" section of the policy booklet, the Court finds that State Farm was not required to reiterate which vehicles were covered by the Insurance Agreement. Further and importantly, the inclusion of the phrase "this policy" in the Insurance Agreement unambiguously restricts the vehicles covered.

16. The Court finds that the policy is unambiguous as written, and that State Farm Policy #2 does not apply to the Collision. Accordingly, State Farm's request for summary judgment is Granted, and Garcia's request for summary judgment is Denied.

IT IS SO ORDERED.

DATED: September 1, 2015

BY THE COURT:

Todd L. Vriesman
District Court Judge