STATE OF MICHIGAN

COURT OF APPEALS

HOME OWNERS INSURANCE COMPANY,

Plaintiff-Counter-Defendant-Appellant,

v

LARRY SELFRIDGE and BETTY SELFRIDGE,

Defendants-Counter-Plaintiffs-Appellees,

and

HALLIE SELFRIDGE, PORTER D. SELFRIDGE, Minor, by his Next Friend, HALLIE SELFRIDGE and BRIAN SELFRIDGE,

Defendants-Appellees

UNPUBLISHED
December 18, 2008

No. 280112
Mecosta Circuit Court
LC No. 05-017158-CK

Before: Hoekstra, P.J., and Bandstra and Donofrio, JJ.

PER CURIAM.

Plaintiff Home Owners Insurance Company appeals, by leave granted, the trial court's August 6, 2007 order denying in part its motion for summary disposition. We reverse that portion of the trial court's order denying plaintiff summary disposition of its claims against Betty Selfridge, and remand this case to the trial court for entry of an order granting plaintiff summary disposition as to those claims.

This case arises from severe burns suffered by then 16-month old Porter Selfridge at the home of his grandparents, defendants Larry and Betty Selfridge, on December 24, 2004, during a family Christmas celebration. Porter was injured when he pulled or tipped over a large coffee urn, spilling hot coffee over his upper body. Plaintiff issued a homeowners insurance policy, including personal liability coverage, to Larry and Betty, for the period including the date on which Porter was injured. Porter's parents, defendants Brian and Hallie Selfridge, filed suit against Larry and Betty seeking to recover damages for Porter's injuries.

After Larry and Betty signed a lengthy affidavit, which provides support for the underlying negligence claim against Betty, plaintiff filed the instant action for declaratory judgment against Larry, Betty, Brian and Hallie Selfridge, alleging that they acted in collusion in an attempt to defraud plaintiff, and that, as a result, the insurance policy was void. Plaintiff also asserted that Larry and Betty attempted to commit insurance fraud or made material misrepresentations, voiding the policy. The homeowners' policy plaintiff issued to Larry and Betty provides, in ¶ 2 of its "General Policy Conditions," that:

> This entire policy is void if, whether before, during or after a loss, any insured has:
>
> a. intentionally concealed or misrepresented any material fact or circumstance;
>
> b. engaged in fraudulent conduct; or
>
> c. made false statements;
>
> relating to this insurance.

The policy also provides, specifically regarding the personal liability coverage set forth in part II of the policy:

> Except as to **our** limit of insurance, the coverage provided by SECTION II – PERSONAL LIABILITY PROTECTION applies separately to each **insured** against whom claim is made or **suit** is brought.

Plaintiff moved for summary disposition, seeking a declaration that the policy was void, based on collusion by the parties or because Larry and Betty made material misrepresentations of fact or circumstances. The trial court granted plaintiff's motion for summary disposition in part, concluding based on inconsistencies between the affidavit and Larry's deposition testimony, that Larry made material false statements sufficient to void the policy as to him under General Policy Conditions ¶ 2. The trial court concluded, however, that Betty had not made materially inconsistent statements qualifying as false statements relating to the insurance and, further, that based on the severability provision quoted above, Larry's conduct was insufficient to void the policy as to Betty.

Plaintiff argues on appeal that the trial court erred by failing to declare the entire policy void based on its finding that Larry made false statements as required by the plain language of ¶ 2 of the General Policy Conditions. We agree.

This Court reviews de novo both a trial court's decision on a motion for summary disposition and questions of the construction and interpretation of an insurance contract. *Henderson v State Farm Fire & Casualty Co*, 460 Mich 348, 353; 596 NW2d 190 (1999). Courts are required to enforce insurance contracts in accordance with their terms as written unless there is ambiguity in the contract and are to construe such contracts so as to give effect to every word or phrase contained therein in so far as it is practicable to do so. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 467; 663 NW2d 447 (2003); *Henderson, supra* at 354.

At issue on appeal is simply what affect, if any, the trial court's determination that Larry Selfridge made false statements within the meaning of ¶ 2 of the General Policy Conditions has on continued coverage under the policy for Betty Selfridge.[1] Both Betty and Larry are named insureds under the policy. The plain language of the policy clearly provides that "[t]he entire policy is void" if "any insured" makes false statements relating to the insurance. The trial court determined that Larry made false statements relating to the insurance. Certainly, Larry is "any insured." Therefore, once it determined that Larry made false statements within the meaning of ¶ 2 of the General Policy Conditions, the trial court was required by the plain language of that provision to declare that the "entire policy is void." The phrase "entire policy" is unambiguous and it includes coverage for all insureds; the policy contains no language indicating that the policy is void only as to the insured making the false statements. See, *Michigan Basic Property Ins Assoc v Wasarovich*, 214 Mich App 313, 325 n 2; 542 NW2d 367 (1995) ("In cases where policy language voids the policy because of 'any' or 'an' insured's fraudulent conduct, no other insured, including innocent coinsureds, may recover under that policy.").

Rather than declare the entire policy void as required by the policy's plain language, the trial court relied on the severability provision in the personal liability portion of the policy, quoted above, to find that coverage continued under the policy for Betty. This was error. That the severability clause provides that the personal liability protection portion of the policy applies separately to each insured in no way contradicts or overrides the plain language of ¶ 2 of the General Policy Conditions that the entire policy is void if any insured commits the misconduct cited therein. See, *Gorzon v Westfield Ins Co*, 207 Mich App 575, 577, 579; 526 NW2d 43 (1994). And, any interpretation otherwise would render the phrase "[t]his entire policy is void" a nullity. Courts are not permitted to construe contacts in a manner that renders any part of the contract a nullity. *Klapp, supra* at 468.

Defendants Brian and Hallie Selfridge argue that any false statements made by Larry simply are irrelevant to Betty's liability for Porter's injuries and to her claim for coverage under the insurance policy, because Larry is not responsible for Porter's injuries and no coverage is claimed through him. However, there is nothing in the language of the policy that limits ¶ 2's application to only false statements made by the insured through whom, or on the basis of whose conduct, a claim is being made. Rather, ¶ 2 plainly addresses false statements made by "any insured" and it plainly voids the "entire policy" should any such false statements be made. That Larry is not alleged to be liable for Porter's injuries in the underlying tort action is irrelevant to the determination whether "any insured" made false statements voiding the "entire policy" pursuant to ¶ 2 of the General Policy Conditions.

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[1] Defendants did not cross-appeal the trial court's predicate determination that Larry made false statements sufficient to void the policy as to him. Therefore, we express no opinion as to the factual or legal correctness of this determination.

We reverse that portion of the trial court's order denying plaintiff summary disposition of its claims against Betty Selfridge, and remand this case to the trial court for entry of an order granting plaintiff summary disposition as to those claims. We do not retain jurisdiction.

/s/ Joel P. Hoekstra
/s/ Richard A. Bandstra
/s/ Pat M. Donofrio