STATE OF MICHIGAN

COURT OF APPEALS

BORIS NENOFF,

Plaintiff-Appellant,

v

TRANSPORTATION STATION AUTO SALES, L.L.C., and CHARLES DEVINE,

Defendants-Appellees,

and

MICHIGAN MILLERS MUTUAL INSURANCE COMPANY,

Garnishee Defendant-Appellee.

UNPUBLISHED
November 20, 2012

No. 300300
Shiawassee Circuit Court
LC No. 08-007659-NO

AUTO-OWNERS INSURANCE COMPANY,

Plaintiff-Appellee,

v

BORIS NENOFF,

Defendant-Appellant,

and

TRANSPORTATION STATION AUTO SALES, L.L.C., and CHARLES DEVINE,

Defendants-Appellees.

No. 300301
Shiawassee Circuit Court
LC No. 09-008657-CK

Before: TALBOT, P.J., and BECKERING and M. J. KELLY, JJ.

PER CURIAM.

In these consolidated cases, Boris Nenoff appeals as of right from the trial court's order granting summary disposition in favor of garnishee-defendant Michigan Millers Mutual Insurance Company ("Michigan Millers") in LC No. 08-007659-NO and in favor of plaintiff Auto-Owners Insurance Company ("Auto-Owners") in LC No. 09-008657-CK. We affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

Charles Devine is the sole owner of Transportation Station Auto Sales, L.L.C. ("Transportation Station"), a used-car dealership. In August 2006, Devine purchased a 2004 Four Winns powerboat for personal use. Devine used both personal funds and funds from Transportation Station to purchase the boat. Devine had the seller, Timothy Tromp, leave the name of the purchaser blank on the title—as Devine did with Transportation Station cars in his inventory—because he intended to treat the boat as being owned by Transportation Station for insurance and tax purposes. According to Devine's and Nenoff's deposition testimony, title was kept at Transportation Station. Devine stored the boat at various times at the car lot, his house, and his cottage, and he kept the keys in the center console of his car. He never needed to get permission from anyone to use the boat, and when it was used, he was at least one of the people on the boat.

In July 2007, Nenoff, who worked for Transportation Station, was injured while fishing on the boat with Devine. Nenoff brought a negligence action against Transportation Station and Devine, which resulted in a consent judgment that allowed Nenoff to recover up to $250,000 from any applicable insurance policy. Michigan Millers, Devine's insurer under a homeowners policy, was named as a garnishee-defendant but denied liability for coverage under its policy. Auto-Owners, the insurer for Transportation Station under a commercial liability policy, filed a separate declaratory-judgment action, seeking a determination that it was not liable for coverage under its policy.[1]

The two cases were consolidated below, and each insurance company filed a motion for summary disposition. After examining the submitted evidence, the trial court determined that coverage was not available under either policy and granted summary disposition in favor of both insurance companies.

II. ANALYSIS

A. STANDARD OF REVIEW

This Court reviews a trial court's summary-disposition decision de novo. *Spiek v Dep't of Transp*, 456 Mich 331, 337; 572 NW2d 201 (1998). The trial court granted summary

[1] The boat in question was not listed as a scheduled, insured item in the homeowners policy issued to Devine by Michigan Millers, the garage keeper's liability policy issued to Transportation Station by Auto-Owners, or the commercial general liability policy issued to Transportation Station by Auto-Owners. Auto-Owners denied coverage under the garage keeper's policy because the boat had been taken off Transportation Station's premises. Nenoff concedes that the garage keeper's policy does not provide coverage in this matter.

disposition under MCR 2.116(C)(10). A motion under MCR 2.116(C)(10) tests the factual support for a claim. *Babula v Robertson*, 212 Mich App 45, 48; 536 NW2d 834 (1995). "The court must consider the affidavits, pleadings, depositions, admissions, and other documentary evidence submitted by the parties in the light most favorable to the party opposing the motion." *Liparoto Constr, Inc v Gen Shale Brick, Inc*, 284 Mich App 25, 29; 772 NW2d 801 (2009). Summary disposition should be granted if, except as to the amount of damages, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Babula*, 212 Mich App at 48; see also *Smith v Globe Life Ins Co*, 460 Mich 446, 454-456 & n 2; 597 NW2d 28 (1999). "There is a genuine issue of material fact when reasonable minds could differ on an issue after viewing the record in the light most favorable to the nonmoving party." *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 425; 751 NW2d 8 (2008).

B. APPLICABLE LEGAL PRINCIPLES

Insurance policies are construed by applying this state's well-established rules of contract construction. *Liparoto Constr*, 284 Mich App at 35. The policy must be enforced in accordance with its terms, and a court may not hold an insurer liable for a risk it did not assume. *Id*. When interpreting an insurance contract, this Court reads it as a whole and accords its terms their plain and ordinary meaning. *Hastings Mut Ins Co v Safety King, Inc*, 286 Mich App 287, 292; 778 NW2d 275 (2009). Courts will enforce an insurance contract as written if no ambiguity exists. *Farm Bureau Mut Ins Co v Nikkel*, 460 Mich 558, 566; 596 NW2d 915 (1999).

When reviewing an exclusionary clause, courts will read the contract as a whole to effectuate the overall intent of the parties. *Hayley v Allstate Ins Co*, 262 Mich App 571, 575; 686 NW2d 273 (2004). Where the language of the exclusionary clause is clear and unambiguous, it must be enforced as written. *Id*. The guidelines for enforcing exclusionary clauses are summarized in *Century Surety Co v Charron*, 230 Mich App 79, 83; 583 NW2d 486 (1998), as follows:

> Exclusionary clauses in insurance policies are strictly construed in favor of the insured. Coverage under a policy is lost if any exclusion in the policy applies to an insured's particular claims. Clear and specific exclusions must be given effect because an insurance company cannot be liable for a risk it did not assume.

C. MICHIGAN MILLERS'S POLICY

Nenoff argues that the trial court erred in ruling that coverage was not available under Devine's homeowners policy with Michigan Millers. That policy contained an endorsement for "Personal Boat Liability Coverage," which provided the following liability coverage:

> "We" will pay, up to "our" limit, all sums for which an "insured" is liable by law, because of "bodily injury" or "property damage" caused by an "occurrence" arising out of "insured property" or a "non-owned" boat.

The definition of "insured property" referred to a boat described in the policy. Although the Watercraft Schedule for Devine's homeowners policy described a "1997 Four Winns Boat" that Devine also owned, it did not describe the 2004 Four Winns boat that was involved in this accident.

The policy defined a "non-owned boat" as follows:

> 9. "Non-Owned" boat means:
>
> a. a boat not over 26 feet in length;
>
> b. its motor; and
>
> c. its boat trailer
>
> used by "you"; "your" relatives if residents of "your" household; or persons under the age of 21 in "your" care or the care of "your" resident relatives.
>
> This does not include "insured property" that is owned by or furnished for the regular use of an insured.

The personal boat liability coverage also contained the following exclusion:

> Liability Coverage and Medical Payments do not apply to:
>
> * * *
>
> 11. "bodily injury" or "property damage" arising out of the ownership, maintenance or use of a boat, other than a boat described in this policy, which is:
>
> a. owned by "you," . . . ; or
>
> b. furnished or available for "your" regular use.

Under these provisions, Michigan Miller's homeowners policy provided coverage for liability arising out of either "insured property" or a "non-owned boat." For a boat to qualify as "insured property," it was required to be described in the policy. Because it is undisputed that the 2004 Four Winns boat involved in this accident was not described in the policy, it does not qualify as "insured property."

Nenoff correctly asserts that coverage is also available under the homeowners policy for a boat that was not owned by Devine. Although Nenoff argues that there is a question of fact concerning ownership of the boat, coverage is still excluded for liability arising from the use of a boat not described in the policy that is furnished or available for the insured's regular use. Viewing the record evidence in a light most favorable to Nenoff, reasonable minds could not disagree that the boat was available for Devine's regular use. See *Allison*, 481 Mich at 425. Devine retained possession of the boat's keys; he was not required to obtain anyone's permission to use it; no one else had access to the boat or regularly used it, even when it was stored on Transportation Station's lot; and Devine and others considered the boat Devine's personal boat. Even if Devine did not place the boat in his own name, there is no genuine issue of material fact that it was acquired and available for his regular use.

Accordingly, because the boat was not described on the Watercraft Schedule and there is no genuine issue of material fact that the boat was available for Devine's regular use, the trial court properly ruled that coverage was not available under Michigan Millers's policy. Thus, the trial court did not err in granting Michigan Millers's motion for summary disposition.

D. AUTO-OWNERS'S POLICY

Nenoff initially argues that the trial court erred by focusing on an issue that had not been raised by the parties: whether he was using the boat in the course of his employment duties with Transportation Station at the time of his injury. Viewed in context, however, it is apparent that the trial court's discussion of that issue was not a basis for its decision to grant summary disposition in favor of Auto-Owners. Thus, this argument does not provide a basis for relief.

At the time of the subject accident, Transportation Station was insured under a commercial general liability policy that excluded liability coverage for owned watercraft as follows:

> **2. Exclusions**
>
> This insurance does not apply to:
>
> * * *
>
> **g. Aircraft, Auto or Watercraft**
>
> "Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading and unloading".
>
> This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

The policy exclusion originally provided that it did not apply, however, to non-owned boats as follows:

> This exclusion does not apply to:
>
> * * *
>
> **(2)** A watercraft you do not own that is:
>
> **(a)** Less than 26 feet long; and

(b) Not being used to carry persons or property for a charge . . . .

Auto-Owners issued an endorsement that modified this exclusion to provide limited coverage as follows at the time of this accident:

> **1. EXTENDED WATERCRAFT COVERAGE**
>
> Under **Section I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions, g.** exclusion **(2)** is deleted and is replaced by the following:
>
> **(2)** A watercraft you do not own that is:
>
> **(a)** Less than 50 feet long; and
>
> **(b)** Not being used to carry persons or property for a charge . . . .

Under these provisions, insurance coverage was available for bodily injury arising from a boat that was not owned by the insured, provided the additional criteria were met. Coverage was available only if (1) the boat involved was not owned by Transportation Station, (2) it was less than 50 feet long, and (3) it was not being used to carry either persons or property for a charge. Otherwise, the policy excluded coverage for bodily injury arising from a boat.

Although Nenoff argues that there is a question of fact whether Devine is the owner of the boat, the coverage issue depends on Transportation Station's status as an owner. Even if there is evidence from which a trier of fact could find that Devine was an owner, the evidence clearly showed that Transportation Station also had an ownership claim to the boat.

The terms "own," "owned," and "ownership" are not defined in the policy. Therefore, the commonly understood meanings of those terms apply. See *Doe v Citizens Ins Co*, 287 Mich App 585, 587; 792 NW2d 80 (2010). As explained in *Twichel v MIC Gen Ins Corp*, 469 Mich 524, 534-535; 676 NW2d 616 (2004):

> An insurance policy is enforced in accordance with its terms. Where a term is not defined in the policy, it is accorded its commonly understood meaning. *Allstate Ins Co v McCarn*, 466 Mich 277, 280; 645 NW2d 20 (2002). Reference to dictionary definitions indicates that *possession*, *control*, and *dominion* are among the primary features of ownership. See, e.g., *Merriam Webster's Collegiate Dictionary* (10th ed., 1977) (defining "owned" as to "have or possess"); *Webster's Encyclopedic Unabridged Dictionary of the English Language* (Deluxe ed., 1994) (listing various definitions of "owned," such as "to acknowledge as one's own; recognized as having full claim, authority, power, dominion, etc."); *American Heritage Dictionary of the English Language* (3d ed., 1993) (defining "own" as "[t]o have or possess" and "ownership" as "[l]egal right to the possession of a thing").

Furthermore, this Court has recognized that there may be more than one owner of an object in the context of insurance law. See e.g., *Iqbal v Bristol West Ins Group*, 278 Mich App 31, 38;

748 NW2d 574 (2008); *Ardt v Titan Ins Co*, 233 Mich App 685, 692; 593 NW2d 215 (1999); *Stanke v State Farm Mut Auto Ins Co*, 200 Mich App 307, 323-324; 503 NW2d 758 (1993).

The evidence in this case showed facts consistent with ownership by Transportation Station. Transportation Station contributed some of the funds to purchase the boat. Furthermore, Devine testified as follows regarding ownership of the boat:

> *Q.* So you put [the boat] to the lot. You're treating it as owned by Transportation Station so it would be picked up as inventory on the auto owner's policy; right?
>
> *A.* Correct; correct.
>
> * * *
>
> *Q.* Okay. And so you're assuming that that's how it's going to be insured; as a Transportation Station vehicle, and you're not putting it in your name personally so you're treating it like an auto dealer that you've got a title from Tromp. And as long as you've got the title from Tromp, you as the auto dealer can hold that and not transfer the title to anybody; right?
>
> *A.* Bingo; yes.
>
> *Q.* Okay. And Boris said the certificate of title was at Transportation Station for that 2004 boat. If he said it, is that right?
>
> *A.* I would say yes.
>
> *Q.* And the reason is because to have that vehicle on the lot, you've got to have a certificate of title to be straight with the Secretary of State; correct?
>
> *A.* Correct.
>
> *Q.* All right. And so you're keeping it as a lot vehicle for Transportation Station -- right? -- the 2004?
>
> *A.* Correct.
>
> * * *
>
> *Q.* Okay. And do you understand that if you're taking title personally to a boat like any other purchaser, if it's going to go into your name personally, you would have to file with the Secretary of State for an application for title within 15 days?
>
> *A.* Yeah.
>
> *Q.* And you never did that with this 2004 boat . . . because you're treating it as Transportation Station's boat; correct?

A. Correct.

As Devine's testimony demonstrates, Devine used Transportation Station's status as a vehicle dealer to avoid placing the boat in his own name because a dealer need not place the title to a vehicle in its name shortly after purchase, unlike an individual owner who is required to do so. Devine believed that he could avoid the transfer requirements for title to the boat by maintaining that Transportation Station was the actual owner or temporarily held title. Devine chose not to put the boat in his name and allowed Transportation Station to hold title to it.

Although Nenoff argues that there is a question of fact whether Devine also is an owner, the exclusion in Auto-Owners's policy does not require that there be only one owner. Regardless of whether Devine can be considered an owner, coverage is still excluded if the insured (Transportation Station) was also an owner. Nenoff did not come forward with any evidence to show that Devine was the sole owner of the boat. Thus, he failed to establish a genuine issue of material fact regarding that issue, and the trial court did not err in granting summary disposition in favor of Auto-Owners.

Affirmed.

/s/ Michael J. Talbot
/s/ Jane M. Beckering
/s/ Michael J. Kelly