

STATE OF MICHIGAN
COURT OF APPEALS

MENASHE AND ALIZA SHEMESH,
Plaintiffs-Appellees,

UNPUBLISHED
December 27, 2012

v

CITIZENS INSURANCE COMPANY OF
AMERICA,

No. 305621
Oakland Circuit Court
LC No. 2011-117656-CK

Defendant-Appellant.

Before: RONAYNE KRAUSE, P.J., and SERVITTO and SHAPIRO, JJ.

PER CURIAM.

Defendant appeals by right the trial court's order granting summary disposition in favor of plaintiffs. Defendant provided an insurance policy to plaintiffs containing a "personal articles floater" (PAF) covering two handmade silk carpets. The carpets were damaged when a lit candelabrum was dropped on them. Defendant undertook to repair the carpets, but plaintiffs contend that the carpets cannot be restored to their original condition and demand that defendant pay for their full appraised value. Defendant contends that the repaired carpets should be appraised. The trial court concluded that defendant was not entitled to an appraisal, did not properly activate its right to repair the carpets, and was obligated to pay plaintiffs the full value of the carpets. We affirm.

A trial court's grant or denial of summary disposition is reviewed de novo. *Joseph v Auto Club Ins Ass'n*, 491 Mich 200, 205; 815 NW2d 412 (2012). Similarly, issues of contract interpretation present questions of law which are reviewed de novo. *Burkhardt v Bailey*, 260 Mich App 636, 646; 680 NW2d 453 (2004). In construing contracts, effect should be given "to every word or phrase as far as is practicable." *Hunter v Pearl Assurance Co, Ltd*, 292 Mich 543, 545; 291 NW 58 (1940) (quotation omitted). Furthermore, an insurance policy should be read as a whole, giving meaning to all terms; the insurance contract includes the policy application, declaration pages, and the policy itself. *Royal Property Group, LLC v Prime Ins Syndicate, Inc*, 267 Mich App 708, 715; 706 NW2d 426 (2005). Finally, specific provisions of a contract will generally override general provisions. *Id.* at 719. "A provision in a contract is ambiguous if it irreconcilably conflicts with another provision[.]" *Id.* at 715. However, "courts cannot simply ignore portions of a contract in order to avoid a finding of ambiguity or in order to declare ambiguity." *Klapp v United Ins. Group Agency, Inc.*, 468 Mich 459, 467; 663 NW2d 447 (2003).

The parties' briefs and pleadings were not as helpful as they could have been. Nevertheless, it is apparent from those briefs and from oral argument that the parties do not dispute the original value of the carpets. Indeed, as the trial court found, the parties contractually agreed to the carpets' value. The gravamen of this matter is whether Citizens had a right to repair the carpets, and if after that repair Citizens had a right to an appraisal.

The insurance contract includes language that provides a right to either the insurer or the insured to demand appraisal in the event of a dispute over the amount of loss:

If you and we fail to agree on the amount of loss, either may demand an appraisal of the loss. In this event, each party will choose a competent and independent appraiser within 20 days after receiving a written request from the other. The two appraisers will choose a competent and impartial umpire. If they cannot agree upon an umpire within 15 days, you or we may request that the choice be made by a judge of a court of record in the state where the "residence premises" is located. The appraisers will separately set the amount of loss. If the appraisers submit a written report of an agreement to us, the amount agreed upon will be the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will set the amount of loss.

The PAF, a part of the insurance contract, says:

1. Loss Settlement: Covered property losses are settled as follows:

a. Fine Arts - We will pay the amount shown for each scheduled article which is agreed to be the value of the article.

...

At our option, we may repair or replace any scheduled article with another of like kind and quality.

That repair language is repeated twice more in the insurance contract, however, with a further limitation: the insurer must provide written notice to the insured of its intent to repair the carpets within thirty days of receiving proof of loss.

There is no record evidence of any such written notice. Citizens' adjuster wrote in his notes that he told the Shemeses that Citizens would try to repair the carpets, and in fact the carpets were picked up from the Shemeses' home to be sent away for repairs. However, despite oral and inferential notice, Citizens' contract explicitly states that it must provide *written* notice to the Shemeses to activate its right to repair. Because the contract does not include any kind of prejudice requirement, the notice provision must be strictly complied with. See *DeFrain v State Farm Mut Auto Ins Co*, 491 Mich 359, 367-368; 817 NW2d 504 (2012). Citizens did not provide written notice and therefore did not comply with the notice requirement. To enforce only the generic right to repair found on the PAF and not the more specific—and applicable—thirty-day, written-notice requirement, would render the latter nugatory, and we must give effect to every word and clause in the contract. *Hunter*, 292 Mich at 545. Therefore, Citizens failed to

comply with its own requirements, and it did not provide timely written notice to the Shemeses in order to activate its right to repair the carpets.

Without a right to repair, Citizens is bound by the express language of its own contract to pay the “scheduled value” of the carpets. As the contract states the scheduled value of the carpets is “agreed to be the value of the article.” Therefore, there is no dispute as to what the value of the carpets is, and there is no dispute as to whether a loss occurred. Thus, the trial court correctly granted summary disposition in favor the Shemeses because Citizens did not provide timely written notice to activate its right to repair the carpets and there is no dispute as to the carpets’ value.

Affirmed.

/s/ Amy Ronayne Krause

/s/ Deborah A. Servitto

/s/ Douglas B. Shapiro