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This opinion shall not "constitute precedent or be binding upon any court."
Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0457-15T1

DONG I. SHIN,

Plaintiff-Appellant,

v.

CNA¹ and VALLEY FORGE INSURANCE
COMPANY,

Defendants-Respondents.

Argued January 24, 2017 — Decided March 10, 2017

Before Judges Reisner and Koblitz.

On appeal from Superior Court of New Jersey,
Law Division, Bergen County, Docket No. L-
2342-15.

John F. Golden argued the cause for appellant
(Albert Buzzetti & Associates, LLC, attorneys;
Mr. Golden, on the brief).

Edward M. Napierkowski argued the cause for
respondent (CNA Coverage Litigation Group,
attorneys; Charles G. Carluccio, III, on the
brief).

PER CURIAM

¹ Plaintiff incorrectly named "CNA" as a defendant. CNA is a service mark and not an insurer of the policy at issue.

In this declaratory judgment action, plaintiff Dong I. Shin appeals from the August 21, 2015 orders granting summary judgment to defendant Valley Forge Insurance Company (VFIC) and denying plaintiff's motion for summary judgment. The motion judge determined that plaintiff was not entitled to underinsured motorist (UIM) coverage under the business policy issued by VFIC for an accident that occurred while he was driving his wife's car from church on a Sunday. Because the policy lists plaintiff individually as the named insured, the UIM endorsement covers his personal car, and some of the language in the UIM endorsement indicates coverage, we agree with plaintiff and reverse both orders.

The facts are not in dispute and the parties agree summary judgment is appropriate. Plaintiff obtained commercial insurance from VFIC for his wholesale florist business. He leases a 2007 Mitsubishi refrigerator truck that he uses to carry flowers for his business. Plaintiff, rather than his business entity, is the only named insured on a business automobile insurance policy issued by VFIC for UIM coverage with a \$1,000,000 limit. The Mitsubishi truck is listed on the policy as a "covered 'auto'" and plaintiff's personal cars, without description, are listed as covered in the UIM endorsement.

On August 5, 2012, plaintiff was driving his three children and a friend home from church in a BMW X5 owned by his wife when he was rear-ended by another vehicle. Plaintiff sustained injuries and filed three insurance claims in connection with the accident. He settled with the company that insured the vehicle that hit him, for the full policy limit of \$25,000. Plaintiff also asserted a claim under his wife's personal insurance policy for the BMW that he was driving the day of the accident. Plaintiff settled for \$25,000, which was the remaining balance of the \$50,000 policy after the previous \$25,000 settlement was deducted.

Plaintiff filed a third claim under his business auto insurance policy with VFIC. After taking plaintiff's deposition, VFIC denied his claim on the basis that at the time of the accident, plaintiff was driving his wife's BMW, a car not covered by the policy. Plaintiff then filed a declaratory judgment action seeking a determination that VFIC was required to provide him with UIM coverage for the August 5 motor vehicle accident.

We review the trial court's grant of summary judgment de novo and apply the same standard as the trial court. Cypress Point Condo. Ass'n v. Adria Towers, LLC, 226 N.J. 403, 414 (2016). Summary judgment must be granted if a review of the record shows "that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a

matter of law." R. 4:46-2(c). No special deference is afforded to the legal determinations of the trial court when no issue of fact exists. Templo Fuente De Vida Corp. v. Nat'l Union Fire Ins. Co. of Pittsburg, 224 N.J. 189, 199 (2016).

Insurance policies are generally interpreted according to their plain and ordinary meaning. Progressive Cas. Ins. Co. v. Hurley, 166 N.J. 260, 273-74 (2001). However, when the policy is ambiguous, "courts should interpret the contract in accordance with the 'reasonable expectations' of the insured." Shotmeyer v. N.J. Realty Title Ins. Co., 195 N.J. 72, 82 (2008). "Only where there is a genuine ambiguity, that is, 'where the phrasing of the policy is so confusing that the average policyholder cannot make out the boundaries of the coverage,' should the reviewing court read the policy in favor of the insured." Templo Fuente De Vida Corp., supra, 224 N.J. at 200 (quoting Progressive Cas. Ins. Co., supra, 166 N.J. at 274); see also Zacarias v. Allstate Ins. Co., 168 N.J. 590, 601 (2001) (policies will be read according to insured's understanding when they contain overly technical text, hidden pitfalls, obscure fine print or require strenuous study to comprehend).

After oral argument, the motion court stated in its reasons that "the BMW at the time of the accident was not a covered vehicle, and was not a substitute for the covered vehicle when it

was being used on a Sunday for personal family activities, to wit driving from church, and therefore not engaged in the business as a florist. See [Dickson] v. Selective Insurance Company, 363 N.J. Super. 344 (App. Div. 2003) in support of this position." In Dickson, we found no UIM coverage for an individual injured in his private vehicle being driven for non-business reasons. We stated: "Because he was neither a specifically named or covered driver, nor a person listed as insured or covered in the 'drive other' endorsement, he was not entitled to UIM protection under the employer's policy for an accident occurring in a vehicle not owned and insured by his employer, and having no relation to his business." Dickson, supra, 363 N.J. Super. at 353.

The VFIC policy states:

Schedule of Coverages and Covered Autos

This policy provides only those coverages where a charge is shown in the premium column below. Each of these coverages will apply only to those "autos" shown as covered "autos". "Autos" are shown as covered "autos" for a particular coverage by the entry of one or more of the symbols from the Covered Auto Section of the Business Auto Coverage Form next to the name of the Coverage.

[Emphasis added.]

Unlike in Dickson, here plaintiff was the one named insured on the policy and both the leased truck used for flower deliveries as well as his privately "Owned 'Autos' Subject to A Compulsory

Uninsured Motorist Law" were specifically listed as covered autos on the UIM endorsement. The UIM endorsement begins with the statement, "For a covered 'auto'. . . this endorsement modifies insurance" The UIM endorsement, however, also contains the following language:

B. Who Is An Insured

If the Named Insured is designated in the Schedule or Declarations as:

1. An individual, then the following are "insureds":

a. The Named Insured and any "family members."

b. Anyone else "occupying" a covered "auto" or a temporary substitute for a covered "auto." The covered "auto" must be out of service because of its breakdown, repair, servicing, "loss" or destruction.

c. Anyone for damages he or she is entitled to recover because of "bodily injury" sustained by another "insured."

2. A partnership, limited liability company, corporation or any other form of organization, then the following are "insureds":

a. Anyone "occupying" a covered "auto" or a temporary substitute for a covered "auto." The covered "auto" must be out of service because of its breakdown, repair, servicing, "loss" or destruction.

b. Anyone for damages he or she is entitled to recover because of "bodily injury" sustained by another "insured."


c. The Named Insured for "property damage" only.

This language requires that all persons occupy a "covered 'auto'" to be included in the UIM coverage except for the named insured, when an individual, and his or her family members. VFIC argues that because plaintiff's wife's car, which was involved in the accident, was not a covered business or personal vehicle under the UIM endorsement, UIM coverage is not available. In the endorsement, however, the "Who Is An Insured" language establishes coverage for the individually named insured, regardless of the vehicle he or she is occupying at the time of the accident.

"As to insurance contracts specifically, 'the general rule of construction [is] that if the controlling language of a policy will support two meanings, one favorable to the insurer and the other to the insured, the interpretation favoring coverage should be applied.'" Cypress Point Condo. Ass'n, supra, 226 N.J. at 416 (quoting Mazzilli v. Accident & Cas. Ins. Co., 35 N.J. 1, 7 (1961)). Applying the unambiguous language in the portion of the UIM endorsement concerning "Who Is An Insured," plaintiff is entitled to coverage.

Reversed. We remand for the entry of an order denying defendant's summary judgment motion and granting plaintiff's summary judgment motion. We do not retain jurisdiction.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION