STATE OF MICHIGAN

COURT OF APPEALS

EASTSIDE WHOLESALE SUPPLY CO., d/b/a SIDING WORLD,

Plaintiff-Appellant,

v

LUMBER MUTUAL INSURANCE CO.,

Defendant-Appellee.

UNPUBLISHED
April 8, 1997

No. 186992
Wayne Circuit Court
LC No. 94-421065

Before: Holbrook, Jr., P.J., and White and S. J. Latreille*, JJ.

PER CURIAM.

Plaintiff appeals as of right from the order granting summary disposition in favor of defendant in this breach of contract and negligence action. We affirm.

On January 1, 1990, defendant issued a policy of insurance to plaintiff that provided coverage for loss of, and damage to, plaintiff's real and personal property in relation to plaintiff's lumber and building supply business. Accompanying this policy was an endorsement that rendered plaintiff a member of the Safety Group Plan, which was developed exclusively for the building materials dealers industry. In 1992, plaintiff discovered a loss of inventory as a result of employee theft. Plaintiff filed a timely proof of loss with defendant. The claim was denied on the basis that the contract of insurance excluded payment of benefits for loss caused by dishonest acts of employees. Thereafter, plaintiff filed this action against defendant for breach of contract and negligence. The trial court granted summary disposition, dismissing plaintiff's action in its entirety pursuant to MCR 2.116(C)(8) and (10).

On appeal, plaintiff first contends that the trial court erred in granting summary disposition with regard to its breach of contract claim because an endorsement placed plaintiff in the Safety Group Plan, thus rendering the contract ambiguous because the Safety Group Plan was not defined in the contract. Plaintiff claims that this Court must look to the extrinsic evidence/promotional material to define the Safety Group Plan, and that these materials constitute promises and undertakings on the part of defendant on which plaintiff relied.

* Circuit judge, sitting on the Court of Appeals by assignment.

An insurance policy must be enforced in accordance with its terms. *Arco Industries v American Motorists Insurance Co*, 448 Mich 395, 402; 531 NW2d 168 (1995). Courts will not hold an insurance company liable for a risk it did not assume. *Id.* If an insurance contract's language is clear, its construction is a question of law for the court. *Taylor v Blue Cross & Blue Shield of Michigan*, 205 Mich App 644, 649; 517 NW2d 864 (1994). Generally, an endorsement to an insurance contract becomes part of the contract. *Tiano v Aetna Casualty & Surety*, 102 Mich App 177, 184; 301 NW2d 476 (1980). Under Michigan law, when a conflict arises between the terms of an endorsement and the form provisions of an insurance contract, the terms of the endorsement prevail. *Hawkeye-Security Ins. Co v Vector Construction*, 185 Mich App 369, 380; 460 NW2d 329 (1990).

On its face, the endorsement does not conflict with the provision excluding coverage for employee theft. Therefore, looking to the plain language, there is no conflict and the exclusion for employee theft contained in the contract would apply. However, plaintiff also argues that this Court should look to the promotional materials for interpretation of the Safety Group Plan.

If a term of a contract is unambiguous, extrinsic evidence is not admissible to contradict its meaning. *Michigan Millers Insurance v Bronson Plating*, 197 Mich App 482, 494; 496 NW2d 373 (1992). However, extrinsic evidence is admissible to show the existence of an ambiguity. *Id.* at 495. Here, plaintiff claims an ambiguity exists because the contract does not define the Safety Group Plan.

Even if we look to the promotional material to determine whether an ambiguity exists, plaintiff's argument still fails. The promotional material does not create an ambiguity. It does not state anything about employee theft. Moreover, it provides no guarantees about the coverage included in the insurance policy. Plaintiff purchased a policy that specifically defined the terms of plaintiff's insurance coverage and employee theft was expressly precluded from coverage. As such, defendant did not breach the terms of the existing contract by failing to provide benefits for employee theft.

Plaintiff also contends that the trial court erred in granting summary disposition with regard to plaintiff's breach of contract claim because the promotional material distributed by defendant, in which defendant represented that it specialized in insurance to lumber supply companies and was knowledgeable in that area of insurance, and that it would make certain services available, was a part of the contract for the purposes of interpretation. Even if we were to follow *Craver v Union Fidelity Life Insurance Co*, 307 NE2d 265, 269 (Ohio App, 1973), which plaintiff cites for the proposition that when an insurance company advertises certain coverage or makes representations in its promotional material, such promises and representations may become part of the contract, plaintiff is not entitled to relief. Here, the promotional material only contained representations that defendant would provide plaintiff with knowledgeable personnel and certain loss prevention services and expertise, and that defendant had experience in lumber supply insurance. There were no promises regarding the terms of plaintiff's insurance coverage. Unlike *Craver*, there were no representations made about the coverage that would become part of plaintiff's contract of insurance. Therefore, the promotional material does not support plaintiff's claim. Further, the exclusion is clear and explicit and had the contract been read, plaintiff would have been aware that it was not covered for employee theft. One who signs a contract

cannot seek to avoid it on the basis that he did not read it or that he supposed it was different in its terms. *Stopczynski v Ford*, 200 Mich App 190, 193; 503 NW2d 912 (1993). Finally, plaintiff has not shown that it would have obtained the coverages or avoided the loss had defendant performed the services plaintiff maintains defendant promised to perform.

Next, plaintiff argues that the trial court erred in dismissing its negligence claim on the basis that a special relationship did not exist between the parties. We disagree. Generally, an insurance agent does not have an affirmative duty to advise a client regarding the adequacy of a policy's coverage. *Bruner v League General Insurance*, 164 Mich App 28, 31; 416 NW2d 318 (1987). Instead, the insured is obligated to read the policy and raise questions concerning coverage. *Id.* "However, a duty to advise may arise when a 'special relationship' exists between the insurance company or its agent and the policyholder. Where such a duty has been breached, liability may be based thereon." *Id.* at 31-32. The existence of a special relationship is a question of fact. *Stein v Continental Casualty*, 110 Mich App 410, 417; 313 NW2d 299 (1981).

To determine whether a special relationship exists each case must be decided on its own facts. *Id.* at 417 (quoting *Hardt v Brink*, 192 F Supp 879, 880 (WD Wash 1961)). In *Bruner, supra*, 164 Mich App 34, the Court noted:

> [I]t is apparent that something more than the standard policyholder-insurer relationship is required in order to create a question of fact as to the existence of a "special relationship" obligating the insurer to advise the policyholder about his or her insurance coverage. There must be, in a long-standing relationship, some type of interaction on a question of coverage, with the insured relying on the expertise of the insurance agent to the insured's detriment.

Here, plaintiff had recently switched insurance agents and companies and had only been with defendant for 1 1/2 years. This does not constitute a long-standing relationship as required under the above stated test. In addition, there is no indication that there was any interaction between the parties regarding the specifics of coverage with regard to employee theft, or that plaintiff previously had this coverage. Although plaintiff does provide evidence that defendant advertised its expertise in this type of insurance and that plaintiff relied on the expertise, this factor alone does not satisfy the criteria set forth in *Bruner*. Summary disposition was properly granted.

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Helene N. White
/s/ Stanley J. Latreille