# STATE OF MICHIGAN

# COURT OF APPEALS

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CHERYL LUTZ and KEN LUTZ,

Plaintiffs-Appellants,

v

AUTO-OWNERS INSURANCE COMPANY,

Defendant-Appellee.

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UNPUBLISHED
September 30, 1997

No. 195925
Ingham Circuit Court
LC No. 95-080590-CK

Before: Sawyer, P.J., and Hood and Hoekstra, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm.

Plaintiffs, who had a homeowners policy that was issued by defendant, were sued by a "John Doe" for refusing to rent to him because he had AIDS. Doe alleged that plaintiffs had violated § 502 of the Michigan Handicappers' Civil Rights Act, MCL 37.1502; MSA 3.550(502), and § 3604(f)(2) of the Fair Housing Amendments Act, 42 USC 3604(f)(2). Plaintiffs requested that defendant provide a defense for them, asserting that defendant had a duty to do so under the policy. When defendant refused, plaintiffs brought this action for a declaratory judgment.

The Personal Liability Protection section of the policy provides:

> We will pay all sums which an insured person becomes legally obligated to pay as damages because of bodily injury, personal injury (libel, slander or defamation of character; false arrest, detention or imprisonment or malicious prosecution; invasion of privacy, wrongful eviction or wrongful entry) or property damage covered by this policy.
>
> If a claim is made or suit is brought against the insured person for liability under this coverage, we will defend the insured person at our expense, using lawyers of our choice.

The definitions section of the policy defines "bodily injury" as "bodily injury, sickness or disease and includes resulting care, loss or services or death." It defines "property damage" as "physical injury to, destruction of, or loss of use of tangible property." Other than the parenthetical included after the phrase in the Personal Liability Protection section, the policy does not provide a definition of "personal injury."

Plaintiffs contend that the term "personal injury" must be given its ordinary meaning and that the parenthetical following the term is ambiguous. "An insurance policy is much the same as another contract; it is an agreement between the parties. When presented with a dispute, a court must determine what the parties' agreement is and enforce it." *Fragner v American Community Mutual Ins Co*, 199 Mich App 537, 542-543; 502 NW2d 350 (1993). In determining the parties' agreement and intent, the court must examine the contract as a whole, *Auto-Owners Ins Co v Churchman*, 440 Mich 560, 566; 489 NW2d 431 (1992), giving each term its ordinary and plain meaning unless the term is clearly defined in the policy, *Group Ins Co v Czopek*, 440 Mich 590, 596; 489 NW2d 444 (1992). As long as a clause is clear, unambiguous and not against public policy, it is valid and must be enforced. *Auto-Owners*, *supra* at 567. "A policy is ambiguous when, after reading the entire document, its language can be reasonably understood in different ways." *Royce v Citizens Ins Co*, 219 Mich App 537, 542; 557 NW2d 144 (1996). An ambiguous policy is to be construed against the insurer and in favor of coverage. *Id*. at 542-543.

The policy defines the term "personal injury" within the parenthetical that follows the term. Thus, this term must be construed as written in the policy and not by its ordinary meaning. *Group Ins Co*, *supra* at 596. The phrase indicates that defendant's coverage of damages for personal injury is limited to suits for "libel, slander or defamation of character; false arrest, detention or imprisonment or malicious prosecution; invasion of privacy, wrongful eviction or wrongful entry." Because this phrase may only be understood in this way, the phrase is unambiguous. *Royce*, *supra* at 542. Plaintiffs' assertion that the policy's use of the term requires defendant to provide coverage for all suits that can be construed as actions involving personal injury is unreasonable in light of the parenthetical that follows the term "personal injury." Thus, the trial court did not err in concluding that the policy did not require defendant to provide a defense to Doe's suit.

Affirmed.

/s/ David H. Sawyer
/s/ Harold Hood
/s/ Joel P. Hoekstra