

STATE OF MICHIGAN
COURT OF APPEALS

MICHIGAN MUTUAL INSURANCE
COMPANY,

UNPUBLISHED
January 4, 2005

Plaintiff-Appellant,

v

No. 249107
Oakland Circuit Court
LC No. 2002-037861-CK

MASCO CORPORATION,

Defendant-Appellee,

and

MASCO TECH,

Defendant-Not Participating.

Before: Cavanagh, P.J., and Jansen and Fort Hood, JJ.

PER CURIAM.

Plaintiff Michigan Mutual Insurance Company appeals as of right the order granting defendant Masco Corporation summary disposition under MCR 2.116(C)(10). This case involves the interpretation of the rights and obligations of the parties under an insurance policy executed between the parties. We reverse and remand.

Michigan Mutual first argues that the trial court erred in ruling that the insurance policy at issue was ambiguous. We disagree. This Court reviews de novo a trial court's ruling on a motion for summary disposition to determine whether the moving party was entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999); *Spiak v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Whether contract language is ambiguous is also a question of law subject to de novo review. *Farm Bureau Mut Ins Co v Nikkel*, 460 Mich 558, 563; 596 NW2d 915 (1999).

Plaintiff argues that despite a 1994 language change, the parties still intended to include uninsured/underinsured motorist coverage in the insurance policy because that coverage is a form of liability coverage. Defendant argues that the language unambiguously applies only to third-party liability coverage, and uninsured/underinsured motorist coverage is not a form of liability coverage. The trial court concluded that after 1994, the insurance contract was

ambiguous with respect to whether the deductible continued to apply to uninsured/underinsured motorist coverage. We agree.

“An insurance policy is an agreement between parties that a court interprets ‘much the same as any other contract’ to best effectuate the intent of the parties and the clear, unambiguous language of the policy.” *Auto-Owners Ins Co v Harrington*, 455 Mich 377, 381; 565 NW2d 839 (1997), quoting *Auto-Owners Ins Co v Churchman*, 440 Mich 560, 566; 489 NW2d 431 (1992). Thus, “the court looks to the contract as a whole and gives meaning to all its terms.” *Harrington, supra*. A contract is ambiguous, however, if the words may reasonably be understood in different ways. *Universal Underwriters Ins Co v Kneeland*, 464 Mich 491, 496; 628 NW2d 491 (2001). Where ambiguity may exist in a contract, relevant extrinsic evidence is admissible. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 469; 663 NW2d 447 (2003).

The insurance policy at issue is ambiguous. The parties reasonably understand the policy language in different ways. Plaintiff understands it to apply to first-party uninsured/underinsured coverage, while defendant understands it to apply to third-party liability coverage only. Both parties presented substantial documentary evidence in support of their positions regarding the parties’ intent after entering into the 1994 policy. This extrinsic evidence establishes that there is an ambiguity regarding whether the deductible was still intended to apply to uninsured/underinsured coverage. See *Maiden, supra*. Thus, the trial court did not err in concluding that the policy at issue was ambiguous with respect to whether the deductible applied to uninsured/underinsured motorist coverage.

Plaintiff next argues that even if the court was correct in finding the policy ambiguous, the court nevertheless erred in ruling as a matter of law that the policy did not apply to uninsured/underinsured coverage. We agree.

“Where a written contract is ambiguous, a factual question is presented as to the meaning of its provisions, requiring a factual determination as to the intent of the parties in entering the contract. Thus, the fact finder must interpret the contract’s terms, in light of the apparent purpose of the contract as a whole, the rules of contract construction, and extrinsic evidence of intent and meaning.” [*Klapp, supra* at 469, quoting 11 Williston, *Contracts* (4th ed), § 30:7, pp 87-91.]

Our Supreme Court has made it clear that once a court finds ambiguity in a contract, the contract and any relevant extrinsic evidence should be submitted to a jury for determination of the parties’ intent and resolution of the ambiguity. *Klapp, supra*, quoting *O’Connor v March Automatic Irrigation Co*, 242 Mich 204, 210; 218 NW 784 (1928) (observing that where the meaning of a contract is “‘obscure and its construction depends [on] extrinsic facts in connection with what is written, the question of interpretation should be submitted to the jury, under proper instructions.’”) Here, after ruling that the extrinsic evidence supported ambiguity in the contract, the court went on to rule that there was no question of fact that the contract did not apply to the uninsured/underinsured coverage. This ruling was in error. The extrinsic evidence submitted by both parties presents a question of fact with respect to the parties’ intent, and a finder of fact should review the evidence. See *id*.

Because the trial court concluded that there was no question of fact that the contract did not apply to uninsured/underinsured motorist coverage, it was not error for the court to disregard

plaintiff's reformation argument. In other words, there was no reason to reform the contract in light of the court's ruling. However, the case should have been submitted to a jury for resolution of the parties' intent. Thus, the issue of reformation will not be ripe until a fact finder determines what the parties' intent was when entering the contract. If the jury determines that the contract does not in fact reflect the intent of the parties, then the jury should be instructed on reformation of the contract.

Unjust enrichment is applicable where, even though there may be no contract between the parties, one party has an equitable obligation to reimburse the expenses of the other. *Michigan Educational Employees Mut Ins Co v Morris*, 460 Mich 180, 198; 596 NW2d 142 (1999). However, the court will not imply a contract where an express contract exists that covers the same subject matter. *Scholz v Montgomery Ward & Co*, 437 Mich 83, 93; 468 NW2d 845 (1991). Thus, the theory of unjust enrichment does not apply here given that there is an express contract covering the issue of applicability of deductibles and plaintiff's claim of unjust enrichment is without merit. See *id.*

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Mark J. Cavanagh
/s/ Kathleen Jansen
/s/ Karen M. Fort Hood