

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION-CIVIL

EAST COAST GARMENT D/B/A	:	November Term 2014
EAST COAST GARMENT RESTORATION,	:	
Plaintiff,	:	No. 332
v.	:	
NATIONWIDE MUTUAL INSURANCE	:	COMMERCE PROGRAM
COMPANY,	:	
Defendants.	:	Control Number 16012022
	:	

ORDER

AND NOW, this ^{9th} day of May 2016, upon consideration of Defendant's Motion for Summary Judgment and Plaintiff's response in opposition, it hereby is **ORDERED** that Defendant's Motion for Summary Judgment is **Granted in part** and the claim for building coverage is dismissed since the Nationwide Business Personal Property Policy does not insure the Premises and therefore no coverage exists for the building.

All other aspects of the Motion are **Denied**.

DOCKETED
MAY 10 2016
R. POSTELL
COMMERCE PROGRAM

BY THE COURT,


PATRICIA A. McINERNEY, S.J.

East Coast Garment Dba -ORDOP



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COMPANY,	:	
Defendants.	:	Control Number 16012022
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OPINION

This is an insurance coverage dispute arising from a 2003 Horizontal Return Tubular 40 Horsepower Columbia Boiler (“Boiler”) loss. Plaintiff East Coast Garment d/b/a East Coast Garment Restoration (“East Coast”) is a laundering company located at 1234 Hayes Boulevard, Bristol, Pennsylvania. East Coast leased the property from HCF who purchased the building in 2006 or 2007 in as-is condition. East Coast did not make any improvements or betterments to the leased property. Defendant Nationwide Mutual Insurance Company (“Nationwide”) insured East Coast for the policy period December 27, 2013 to December 27, 2014 under a “Business Personal Property” policy.

On February 3, 2014, East Coast Garment reported a claim to Nationwide stemming from a loss with a steam boiler. As a result of the loss, East Coast claimed that smoke and soot damaged the building as well as dry cleaning supplies and customer’s clothes and that the boiler required repair or replacement. Nationwide investigated the claimed loss and provided payment to reimburse East Coast for the temporary cleaning of the equipment and work space in order to allow East Coast to resume business operations and avoid a business interruption loss. Nationwide provided payment for damage from the smoke to East Coast’s dry cleaning supplies

and the cost to re-clean customer clothes. Nationwide made payment to East Coast in the amount of \$85,891.45.

On August 20, 2014, Nationwide issued a partial denial of coverage letter to East Coast denying coverage for East Coast's claim for damages sustained to the building and boiler. In November 2014, East Coast instituted this lawsuit against Nationwide for breach of contract. Presently before the court is Nationwide's Motion for Summary Judgment.

DISCUSSION

The task of interpreting an insurance contract is generally performed by a court rather than by a jury. The goal of that task is to ascertain the intent of the parties as manifested by the language of the written instrument. Where a provision of a policy is ambiguous, the policy provision is to be construed in favor of the insured and against the insurer, the drafter of the agreement. Where, however, the language of the contract is clear and unambiguous, a court is required to give effect to that language.¹ Contractual language is ambiguous "if it is reasonably susceptible of different constructions and capable of being understood in more than one sense."² This is not a question to be resolved in a vacuum. Rather, contractual terms are ambiguous if they are subject to more than one reasonable interpretation when applied to a particular set of facts.³ The court will not, however, distort the meaning of the language or resort to a strained contrivance in order to find an ambiguity.⁴

¹ *Madison Const. Co. v. Harleysville Mut. Ins. Co.*, 557 Pa. 595, 606, 735 A.2d 100, 106 (1999) citing *Gene & Harvey Builders v. Pennsylvania Mfrs. Ass'n*, 512 Pa. 420, 426, 517 A.2d 910, 913 (1986) (quoting *Standard Venetian Blind Co. v. American Empire Ins. Co.*, 503 Pa. 300, 304-05, 469 A.2d 563, 566 (1983)) (citations omitted).

² *Id.* citing *Hutchison v. Sunbeam Coal Co.*, 513 Pa. 192, 201, 519 A.2d 385, 390 (1986).

³ *Id.* citing *See Gamble Farm Inn v. Selective Ins. Co.*, 440 Pa.Super.501, 505, 656 A.2d 142, 144.

⁴ *Id.* citing *Steuart v. McChesney*, 498 Pa. 45, 53, 444 A.2d 659, 663 (1982).

Applying the foregoing legal principles to the case at hand, the Business Personal Property Policy issued to East Coast does not provide premises coverage. The Business Personal Property Policy provides in pertinent part as follows:

A. Coverage

We will pay for direct physical loss or damage to Covered Property at the premises described under Paragraph a. below, Business Personal Property as described under Paragraph b. below, or both, depending on whether a Limit of Insurance is shown in the Declarations for that type of property. Regardless of whether coverage is shown in the Declaration for Buildings, Business Personal Property, or both, there is no coverage for property described under Paragraph 2, Property Not Covered.

Paragraphs a. and b. provide as follows:

- a. Buildings, meaning the building and structures described in the Declarations...
- b. Business Personal Property located in or on the buildings at the described premises or in the open (or in a vehicle) within 100 feet of the described premises, including:
 - (1) Property you own that is used in your business;
 - (2) Property of others that is in your care, custody, or control, except as otherwise provided in Loss Payment Property Loss Condition Paragraph E.5.d.(3)(b);
 - (3) Tenant's improvements and betterments. Improvements and betterments are fixtures, alternations, installations or additions:
 - (a) Made a part of the building or structure you occupy but do not own; and
 - (b) You acquired or made at your expense but cannot legally remove;
 - (4) Leased personal property which you have a contractual responsibility to insure, unless otherwise provided for under paragraph 1.b.(2); and
 - (5) Exterior building glass....⁵

⁵ Exhibit "P" attached to Defendant's Motion for Summary Judgment.

In determining whether the premises constitute “Covered Property”, section A *supra* directs the insured to the Limits of Insurance section of the Declaration page to determine whether the premises East Coast seeks coverage for exists. The Declaration shows that the Limit of Insurance in the area designated for Premises Coverage is blank, indicating that no coverage was requested for the premises and therefore no coverage exists for the premises. Additionally, in the area designated for type of coverage, the only designation made was for “business personal property” not “building” coverage. As such, the Nationwide policy does not confer coverage for the costs related to the cleaning of the building. ⁶

East Coast argues that genuine issues of material fact exist as to whether under the Nationwide policy the premises are covered business personal property. In support thereof, East Coast relies upon a factual dispute concerning whether it was contractually obligated to the landlord to insure the premises and relies upon subsections 2, 3 and 4 *supra* to support its position. The court is not persuaded. First, East Coast’s alleged obligation to its landlord bears no relevance to the question at hand, whether coverage exists under the Business Personal Property Policy issued by Nationwide. In this regard, only the unambiguous language of the policy is controlling which clearly states that the subsections referenced by East Coast all pertain to business personal property not building and structures. East Coast is not seeking coverage for business personal property and therefore the above referenced provisions are not applicable and no coverage exists for the premises cleaning.

Additionally, East Coast seeks coverage for the boiler replacement cost. In this regard, the court finds that genuine issues of material fact exists as to whether coverage exists.

⁶ The policy does provide coverage for tenants’ improvements and betterments but East Coast admitted that no such improvements and betterments were made. Exhibit “L” to Defendant’s Motion for Summary Judgment, Plaintiff’s response to Defendant’s Request for Admissions, Plaintiff’s response to Defendant’s Motion for Summary Judgment ¶ 43.

Specifically, whether the loss was a covered loss or the result of wear and tear. As such, Nationwide's Motion for Summary Judgment is denied in this regard.

CONCLUSION

For the foregoing reasons, Defendant's Motion for Summary Judgment is **Granted in part** and the claim for building coverage is dismissed since the Nationwide Business Personal Property Policy does not insure the Premises and therefore no coverage exists for the building. All other aspects of the Motion are **Denied**.

BY THE COURT,



PATRICIA A. McINERNEY, S.J.