0786

STATE OF MICHIGAN

COURT OF APPEALS

CITIZENS INSURANCE COMPANY OF AMERICA,

Plaintiff-Appellant,

v

RONALD E. BROWN,

Defendant-Appellee.

OCT 1 7 1990

No. 120339

Before: Maher, P.J., and Sullivan and Reilly, JJ.

PER CURIAM.

In this declaratory judgment action, plaintiff Citizens Insurance Company appeals by right the opinion and order which denied its motion for summary disposition but which, in turn, granted summary disposition to defendant Ronald E. Brown under MCR 2.116(C)(8) and (9) and MCR 2.116(I). We reverse.

Defendant was a passenger in a Corvette owned and driven by Ronald Green when they were involved in a car accident in which defendant was injured. The Corvette was insured under a policy of insurance issued by the Automobile Club of Michigan. Defendant received the maximum liability coverage under that policy. Green and his wife Jackie also owned three other cars which were insured under one insurance policy issued by Citizens. Citizens brought the instant declaratory judgment action to determine whether the policy it issued to the Greens, insuring three cars which were not involved in the accident, provided liability coverage under the facts of this case. The trial court held that it did, relying on the "logic and reasoning" of Justice Williams' opinion in Powers v DAIIE, 427 Mich 602; 398 NW2d 411 (1986).

Under section two of the Citizens' insurance policy, Citizens agreed to pay damages which the insured shall become legally obligated to pay for bodily injury "[t]o which this

insurance applies, caused by an occurrence and arising out of the ownership, maintenance or use . . . of the owned automobile or a non-owned automobile . . . ."

The pertinent language contained in the insurance policy also includes:

> PERSONS INSURED UNDER SECTION TWO
>
> 1. The named Assured with respect to the owned Automobile;
>
> 2. If the named Assured is an individual, or husband and wife, or if the Automobile is owned jointly by two or more related residents of the same household
>
> (a) The named Assured with respect to a non-owned Automobile,
> (b) Any resident of the named Assured's household with respect to the owned Automobile, and
> (c) Any relative with respect to a non-owned private passenger Automobile not regularly furnished for the use of such relative.

"Owned automobile" is defined as "the vehicle described in the Declarations and, as defined herein, a temporary substitute automobile, a replacement automobile, an additional automobile, and any trailer owned by the Assured." "Temporary substitute automobile," "replacement automobile" and " additional automobile" are also defined in the policy. There is no dispute, however, that the Corvette does not fall under any of those definitions. Hence, it is not "the owned automobile."

"Non-owned automobile" is defined as "(a) a private passenger automobile or trailer not owned by the named Assured or any relative or (b) any other automobile not owned by or furnished to or available for the regular use of either the named Assured or any resident of the same household. 'Non-owned automobile' does not include a temporary substitute automobile." The Corvette clearly was not a "non-owned automobile."

An insurance clause contained in an insurance policy will be enforced according to its terms as long as it is clear, unambiguous and not in contravention of public policy. Raska v Farm Bureau Mutual Ins Co of Michigan, 412 Mich 355, 361-362; 314 NW2d 440 (1982), reh den 412 Mich 1119 (1982); Allen v Auto Club

Ins Ass'n, 175 Mich App 206, 209; 437 NW2d 263 (1988), lv den 432 Mich 928 (1989). If a reading of the whole insurance contract fairly admits of but one interpretation, it may not be said that the clause is ambiguous or fatally unclear. Raska, supra, p 362; Allen, supra, pp 209-210.

Because Green owned the Corvette, our inquiry must focus on the language of the insurance policy as it relates to "the owned automobile." Having read the insurance policy as a whole, we conclude that the language contained in the policy admits of only one interpretation: the Corvette was not "the owned vehicle." See also, e.g., Vanguard Ins Co v McKinney, ___ Mich App ___; ___ NW2d ___ (Docket No. 116512; rel'd 8/6/90). Because the language, as it relates to the facts of this case, is clear and unambiguous, it should be enforced as written. See VanDyke v League General Ins Co, 184 Mich App 271; ___ NW2d ___ (1990).

Defendant and the trial court rely on Justice Williams' opinion in Powers, supra, to support the position that the language in the Citizens' policy is vague and ambiguous. We note, however, that Powers is a plurality opinion and, therefore, is not binding precedent for the case before us. VanDyke, supra, p 274; DeMaria v Auto Club Ins Ass'n (On Remand), 165 Mich App 251, 253; 418 NW2d 398 (1987). Moreover, none of the cases consolidated in Powers involved a situation like the one in this case, i.e., one in which coverage was sought for the owner of an automobile which was insured under a separate insurance policy with a different insurance company.

We conclude that the trial court erred by granting summary disposition to defendant and that, instead, summary disposition should have been granted to Citizens.

Reversed.

/s/ Richard M. Maher
/s/ Joseph B. Sullivan
/s/ Maureen Pulte Reilly