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UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of Connecticut,
Judicial District of New Haven.

Nicholas PERAZELLA
v.
PATRONS MUTUAL INSURANCE COMPANY OF CONNECTICUT, INC.

No. CV126004997S. | Sept. 17, 2013.

Opinion

JACK W. FISCHER, Judge.

FACTS

***1** The plaintiff, Nicholas Perazella, commenced the present case by way of a six-count complaint served on the defendant, Patrons Mutual Insurance Company of Connecticut, Inc. (Patrons), on April 27, 2012. In his complaint, Perazella alleges the following facts.

At all relevant times, Eugene Wolfe (Eugene) was the resident of the premises located at 5 Masonic Avenue in Wallingford. Eugene's parents, James Wolfe (James) and Patricia Wolfe (Patricia),[1] owned this property and insured it with a homeowners liability policy through Patrons. On February 27, 2010, Perazella went to Eugene's residence to assist him in renovating the upper portion of his garage. While on the premises, Eugene discharged a BB gun at Perazella's head, causing him severe injuries.

On or about January 14, 2011, Perazella initiated a lawsuit against Eugene seeking money damages for the injuries that he sustained at Eugene's residence. Although Eugene had previously notified Patrons of Perazella's injuries, Patrons declined to defend him against Perazella's claims. On March 5, 2012, the court entered judgment in Perazella's favor, and awarded him damages totaling $272,585.07. Eugene has not satisfied this judgment.

Perazella now seeks to enforce Eugene's rights as an insured under Patrons' policy. In his complaint, Perazella brings claims of breach of contract (count one), negligence (count two), violations of General Statutes § 38a–321[2] (count three), bad faith (count four), violations of General Statutes § 38a–815 et seq.,[3] (count five), and violations of the Connecticut Unfair Trade Practices Act (CUTPA), General Statutes § 42–110b[4] (count six).

Patrons moves for summary judgment on all of Perazella's claims on the sole ground that Eugene was not an insured under his parents' policy and, thus, Patrons had no obligation to defend him or provide him with benefits. Patrons filed its motion for summary judgment, memorandum of law, and supporting affidavits and evidence on March 28, 2013. Perazella filed a memorandum of law and supporting exhibits in objection to Patrons' motion on April 17, 2013. Patrons filed a reply brief on June 11, 2013. Perazella filed a reply brief on July 18, 2013. The matter was argued at the short calendar on April 12, 2013.

For the reasons set forth below, the court concludes that a genuine issue of material fact exists with respect to whether Eugene was an insured under his parents' policy with Patrons at the time of Perazella's injuries. Accordingly, Patrons' motion for summary judgment will be denied.

DISCUSSION

"Practice Book [§ 17–49] provides that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law ... In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party." *Patel v. Flexo Converters U.S.A., Inc.*, 309 Conn. 52, 56–57, 68 A.3d 1162 (2013).

***2** "[S]ummary judgment is appropriate only if a fair and reasonable person could conclude only one way ... [A] summary disposition ... should be on evidence which a jury would not be at liberty to disbelieve and which would require a directed verdict for the moving party ... [A] directed verdict may be rendered only where, on the evidence *viewed in the light most favorable to the nonmovant*, the trier of fact could not reasonably reach any other conclusion than that embodied in the verdict as directed." (Citations omitted; emphasis in original; internal quotation marks omitted.) *Dugan v. Mobile*

Medical Testing Services, Inc., 265 Conn. 791, 815, 830 A.2d 752 (2003).

"A genuine issue has been variously described as a triable, substantial or real issue of fact ... and has been defined as one which can be maintained by substantial evidence." (Citation omitted; internal quotation marks omitted.) *United Oil Co. v. Urban Development Commission*, 158 Conn. 364, 378, 260 A.2d 596 (1969). " 'Issue of fact' encompasses not only evidentiary facts in issue but also questions as to how the trier would characterize such evidentiary facts and what inferences and conclusions it would draw from them." *Id.*, at 379. "In ruling on a motion for summary judgment, the court's function is not to decide issues of material fact ... but rather to determine whether any such issues exist." (Internal quotation marks omitted.) *RMS Residential Properties, LLC v. Miller*, 303 Conn. 224, 233, 32 A.3d 307 (2011).

Patrons argues that the only individuals who were covered under the homeowners policy in effect at the time of Perazella's injuries were Eugene's parents and individuals living in their household. It avers that although Eugene's parents owned and insured the property at 5 Masonic Avenue in Wallingford, they actually resided at 396 Church Street in Yalesville, and have done so for the previous twenty years. Patrons contends that because Eugene lived at the Masonic Avenue property, and not his parents' home at 396 Church Street in Yalesville when Perazella was injured, he was not a relative living in his parents' household and, thus, did not qualify as an insured under their homeowners policy.

Perazella argues in response that the policy language relied upon by Patrons is ambiguous and, thus, must be construed in Perazella's favor. Perazella further argues that even if the language is held to be unambiguous, the question whether Eugene was a resident living in his parents' household is one of fact for the jury. Alternatively, Perazella contends that Eugene was entitled to coverage because he was a "domestic employee" for purposes of the homeowners policy.

"Unlike certain other contracts ... where absent statutory warranty or definitive contract language the intent of the parties and thus the meaning of the contract is a factual question ... construction of a contract of insurance presents a question of law for the court ..." (Internal quotation marks omitted.) *Christian v. Harleysville Worcester Ins. Co.*, 104 Conn.App. 345, 350–51, 933 A.2d 1216 (2007). "An insurance policy is to be interpreted by the same general rules that govern the construction of any written contract ... In accordance with those principles, [t]he determinative question is the intent of the parties, that is, what coverage the ... [insured] expected to receive and what the [insurer] was to provide, as disclosed by the provisions of the policy ... If the terms of the policy are clear and unambiguous, then the language, from which the intention of the parties is to be deduced, must be accorded its natural and ordinary meaning ... Under those circumstances, the policy is to be given effect according to its terms ... When interpreting [an insurance policy], we must look at the contract as a whole, consider all relevant portions together and, if possible, give operative effect to every provision in order to reach a reasonable overall result ...

***3** "In determining whether the terms of an insurance policy are clear and unambiguous, [a] court will not torture words to import ambiguity where the ordinary meaning leaves no room for ambiguity ... Similarly, any ambiguity in a contract must emanate from the language used in the contract rather than from one party's subjective perception of the terms ... As with contracts generally, a provision in an insurance policy is ambiguous when it is reasonably susceptible to more than one reading ... Under those circumstances, any ambiguity in the terms of an insurance policy must be construed in favor of the insured because the insurance company drafted the policy." (Internal quotation marks omitted.) *Lexington Ins. Co. v. Lexington Healthcare Group, Inc.*, 309 Conn. 1, 9–10, 68 A.3d 1121 (2013).

The disposition of Patrons' motion for summary judgment turns on the court's interpretation of the term "insured" as it is used in the Wolfes' policy with Patrons. In the agreement, "insured" is defined as meaning, *inter alia*, "you" and "your relatives if residents of your household." The terms "you" and "your" are defined as meaning "the person or persons named as the insured on the declarations." The court notes that the declarations page lists only James and Patricia as insureds.

It is apparent from this language that the parties intended the class of insured individuals to include James, Patricia, and their relatives if those relatives were residents of their household. Perazella does not dispute this construction, but contends that the phrase "residents of your household" is ambiguous, largely because the terms "residents" and "household" are undefined in the policy. In accordance with the well established principle that "any ambiguity in the terms of an insurance policy must be construed in favor of the insured"; (internal quotation marks omitted) *Lexington Ins. Co. v. Lexington Healthcare Group, Inc., supra*, 309 Conn. at

10; he urges the court to construe the policy against Patrons and in his favor. For the reasons set forth subsequently in this opinion, the court concludes that the phrase "resident of your household" is unambiguous and must be accorded its natural and ordinary meaning.

In *Griffith v. Security Ins. Co.*, 167 Conn. 450, 454, 356 A.2d 94 (1974), our Supreme Court concluded that a phrase nearly identical to the one at issue in the present case—"resident of the same household"—was unambiguous: "No persuasive argument or legal authority has been submitted for the proposition that the controlling words of the policy 'resident of the same household,' are ambiguous. The Supreme Courts of Hawaii and Minnesota, in considering the same provisions in insurance policies, have concluded that the words are not ambiguous, and we agree with their conclusions." Consistent with its conclusion, the court turned to the dictionary to ascertain the meaning of the term "household," and determined that the term meant "those who dwell under the same roof and compose a family: a domestic establishment; specifically: a social unit comprised of those living together in the same dwelling place." (Internal quotation marks omitted.) *Id.*

***4** The one dissimilarity between the phrase at issue in the present case and the one at issue in *Griffith*—Patrons' use of the word "your" instead of "same"—is too insubstantial to justify departing from precedent. Accordingly, the court accords the phrase the same meaning as that accorded to it in *Griffith*, and turns its analysis to the question of whether Eugene could properly be considered a resident of his parents' household. In making this determination, the court applies the two-prong test articulated in *D'Addio v. Connecticut Ins. Guarantee Assn.*, 30 Conn.App. 729, 734, 622 A.2d 609, cert. denied, 226 Conn. 903, 625 A.2d 1375 (1993).

Under the test described in *D'Addio*, the court must determine whether Eugene (1) had a "close, family-type relationship" with his parents, and (2) "actually lived" in their household. *Id.* If both of these prongs are met, Eugene is properly considered a resident of his parents' household. Because this is a motion for summary judgment, Patrons bears the burden of establishing that there is no genuine issue of material fact that at least one of these prongs is not satisfied.

With respect to the first prong, Eugene and his father both testified during their respective depositions that their family was very close, as evidenced by the Wolfes assisting Eugene with, *inter alia*, child care during his divorce. Patrons' evidentiary submissions fail to place the issue beyond dispute. Accordingly, the court concludes that a genuine issue of material fact exists with respect to the first prong.

Analyzing the second prong requires the court to consider the factors enumerated by our Supreme Court in *Remington v. Aetna Casualty & Surety Co.*, 240 Conn. 309, 315, 692 A.2d 399 (1997). "[A] trier of fact must determine where an individual resides by analyzing the facts unique to each case ... In undertaking this analysis, the trier of fact must consider a conglomeration of factors ... These factors include: the intent of the individual; the frequency of contact between the individual and other household inhabitants; the frequency with which the individual spends time at the household; the maintenance of a separate residence for the individual; whether the individual is emotionally and financially capable of establishing and maintaining a residence independent of the household; the location of personal belongings; the location of and address used for personnel and business records; the address at which mail is received; and the address used for formal purposes such as voting, licenses, and income tax filings." (Citations omitted.) *Id.*

James testified at his deposition that he and his wife often stayed at the Masonic Avenue property with Eugene and assisted him with watching and raising his children. Moreover, the policy with Patrons lists James and Patricia's address as 5 Masonic Avenue, and describes that property as "owner occupied." James further testified that in addition to frequently staying at the Masonic Avenue property, he also received mail there, which included his tax and utilities bills. On the basis of this evidence, the court concludes that a genuine issue of material fact exists with respect to whether the second prong is satisfied.

***5** Patrons contends that Eugene's and James' own testimony establishes that the Wolfes' Church Street property in Yalesville was their actual residence and, thus, Eugene must have lived there in order to have been a resident of their household. But that argument fails to recognize that "a person may have more than one residence"; *id.*, at 316; and that residing under the same roof does not necessarily mean residing under *one* roof. See *id.*, at 315. Furthermore, James' and Eugene's statements of intent regarding their respective residencies, although relevant to the issue at hand, are not dispositive. See *Middlesex Mutual Assurance Co. v. Walsh*, 218 Conn. 681, 687, 590 A.2d 957 (1991) ("statements expressing the intent of a claimed resident as to where he or

she lives are merely one factor among many to be considered in determining household residence").

The court acknowledges that not every factor weighs in favor of concluding that Eugene shared a household with his parents, and that some factors appear to weigh heavily against that conclusion. But on a motion for summary judgment, the court's function "is not to cull out the weak cases from the herd of lawsuits waiting to be tried; rather, only if the case is dead on arrival, should the court take the drastic step of administering the last rites by granting summary judgment." (Internal quotation marks omitted.) *Mott v. Wal–Mart Stores East, LP*, 139 Conn.App. 618, 631, 57 A.3d 391 (2013). In the present case, a reasonable fact-finder might conclude that the Wolfes maintained two residences, one of which was the Masonic Avenue property, and that Eugene was a resident of that household. For this reason, Patrons' motion for summary judgment must be denied. [5]

CONCLUSION

For the forgoing reasons, Patrons' motion for summary judgment is denied.

Footnotes

1 James and Patricia will hereafter be referred to collectively as "the Wolfes."

2 General Statutes § 38a–321 provides: "Each insurance company which issues a policy to any person, firm or corporation, insuring against loss or damage on account of the bodily injury or death by accident of any person, or damage to the property of any person, for which loss or damage such person, firm or corporation is legally responsible, shall, whenever a loss occurs under such policy, become absolutely liable, and the payment of such loss shall not depend upon the satisfaction by the assured of a final judgment against him for loss, damage or death occasioned by such casualty. No such contract of insurance shall be cancelled or annulled by any agreement between the insurance company and the assured after the assured has become responsible for such loss or damage, and any such cancellation or annulment shall be void. Upon the recovery of a final judgment against any person, firm or corporation by any person, including administrators or executors, for loss or damage on account of bodily injury or death or damage to property, if the defendant in such action was insured against such loss or damage at the time when the right of action arose and if such judgment is not satisfied within thirty days after the date when it was rendered, such judgment creditor shall be subrogated to all the rights of the defendant and shall have a right of action against the insurer to the same extent that the defendant in such action could have enforced his claim against such insurer had such defendant paid such judgment."

3 General Statutes § 38a–815 provides: "No person shall engage in this state in any trade practice which is defined in section 38a–816 as, or determined pursuant to sections 38a–817 and 38a–818 to be, an unfair method of competition or an unfair or deceptive act or practice in the business of insurance, nor shall any domestic insurance company engage outside of this state in any act or practice defined in subsections (1) to (12), inclusive, of section 38a–816. The commissioner shall have power to examine the affairs of every person engaged in the business of insurance in this state in order to determine whether such person has been or is engaged in any unfair method of competition or in any unfair or deceptive act or practice prohibited by sections 38a–815 to 38a–819, inclusive. When used in said sections, 'person' means any individual, corporation, limited liability company, association, partnership, reciprocal exchange, interinsurer, Lloyd's insurer, fraternal benefit society and any other legal entity engaged in the business of insurance, including producers and adjusters."

4 General Statutes § 42–110b provides, in relevant part, that "[n]o person shall engage in unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce."

5 Because the court concludes that a genuine issue of material fact exists with respect to whether Eugene was an insured individual under his parents' homeowners policy, it need not reach Perazella's argument that Eugene was a domestic employee under the agreement.