UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0741

September Term, 2014

SWARN BHANDARI

v.

METLIFE AUTO AND HOME INSURANCE COMPANY

Krauser, C.J.,
Nazarian,
Arthur,
JJ.

Opinion by Arthur, J.

Filed: June 16, 2015

This is an insurance coverage case that concerns the so-called "owned but uninsured" exclusion in an automobile insurance policy. *See generally* Maryland Code (1995, 2011 Repl. Vol.) § 19-509(f)(1) of the Insurance Article; *GEICO v. Comer*, 419 Md. 89 (2011); *Powell v. State Farm Mut. Auto. Ins. Co.*, 86 Md. App. 98 (1991).

Appellant Swarn Bhandari alleged that his automobile insurer, appellee Metropolitan Direct Property & Casualty Insurance Company ("Metropolitan"),[1] breached its obligations under his policy by failing to compensate him for the injuries that he suffered as a result of the negligence of an underinsured motorist. Bhandari claimed to have suffered those injuries while driving his taxicab, which was not listed as an insured vehicle on the declarations page of the policy. The insurer, Metropolitan, claimed the right to deny coverage on the basis of an exclusion for vehicles that Bhandari owned, but had not insured under the policy. On cross-motions for summary judgment, the Circuit Court for Prince George's County entered summary judgment in Metropolitan's favor.

QUESTION PRESENTED

On his timely appeal from the grant of summary judgment against him, Bhandari presents one question, which we have rephrased as follows:

[1] The appeal, as captioned, designates the appellee as "Metlife Auto and Home Insurance Co." Both in the circuit court and in this Court, however, the appellee has insisted that its correct name is Metropolitan Direct Property & Casualty Insurance Company. The name that the appellant has used, "Metlife Auto and Home," appears to be a brand or trade name of Metropolitan Direct Property & Casualty Insurance Co. *See* https://www.metlife.com/individual/insurance/auto-insurance/index.html (last viewed May 29, 2015).

> Did the trial court err in granting summary judgment for Metropolitan on the ground that, because Bhandari was driving a taxicab that was not listed on his insurance policy with Metropolitan, he was excluded from benefits under the policy's uninsured or underinsured motorist coverage?[2]

For the reasons that follow, we conclude that the circuit court erred because the policy does not unambiguously exclude the possibility of coverage for the injuries that Bhandari claims to have suffered. Consequently, we shall reverse the circuit court's judgment with directions that summary judgment be entered in Bhandari's favor.

FACTS

Bhandari was involved in an automobile accident. At the time of the accident, he was driving a taxicab that he owned.

Bhandari asserted a tort claim against the driver of the vehicle that was involved in the accident. In settlement of that claim, Bhandari received the other driver's policy limits of $25,000, which he contended was insufficient to compensate him for his injuries. Consequently, he pursued a claim for underinsured motorist (UIM) benefits.

Bhandari had listed four automobiles on the declarations page of his policy with Metropolitan, but had not listed his cab. Bhandari listed the cab on a separate policy, with Amalgamated Casualty Insurance Co.

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[2] Bhandari originally phrased his question for review as follows:

> Did the trial court error [*sic*] in granting summary judgment on behalf of the Defendant Metropolitan Direct Property and Casualty Insurance Company denying coverage for underinsured benefits to the Appellee [*sic*] based on an owned cab that was not listed on the Appellant's covered vehicles of said policy[?]

The Amalgamated policy is a "liability-only" policy. In general, it insures only against claims by third parties who have suffered injuries as a result of the cab operator's negligence; it does not offer any kind of so-called "first-party" coverage for injuries that the owner or operator himself may suffer. In particular, the Amalgamated policy offers no coverage for injuries that the owner or operator may suffer at the hands of an uninsured or underinsured motorist. For that reason, Bhandari could pursue his UIM claim only against Metropolitan.

Subject to the definitions and exclusions, the UIM provisions of the Metropolitan policy provide coverage for "**bodily injury** and **property damages** caused by an accident arising out of the ownership, maintenance, or use of an **uninsured motor vehicle**, which an **insured** is legally entitled to collect from the owner or driver of an **uninsured motor vehicle**."[3] For purposes of the present appeal, there is no dispute that Bhandari is an insured or that he suffered bodily injury. Furthermore, because an "uninsured motor vehicle" includes an *underinsured* motor vehicle for purposes of the required coverages under Maryland law (*see Comer*, 419 Md. at 91 n.1), there is no dispute that Bhandari's bodily injury was "caused by an accident arising out of the ownership, maintenance, or use of an **uninsured motor vehicle**."

[3] The terms in bold-face type have specific definitions in the policy.

Nonetheless, the policy contains a series of exclusions that limit the grant of UIM coverage. For purposes of this case, the pertinent exclusion is Exclusion F, the "owned but uninsured" or "owned but underinsured" exclusion.

Exclusion F states that Metropolitan does not cover "an **insured** as defined in **PERSONS INSURED**, item 1., **occupying** or struck by a **motor vehicle** owned by such persons, other than an **insured motor vehicle**." Bhandari is a "person insured" for purposes of Exclusion F.

Under Exclusion F the policy affords no UIM coverage if an insured, such as Bhandari, suffers his injuries while he is occupying a "motor vehicle" that he owns, unless that motor vehicle is an "insured motor vehicle." A purpose of this exclusion is "to prevent a family, owning several motor vehicles, from insuring only one or two of them with an insurer, leaving the other vehicles uninsured, or underinsured under a different policy, and being able to claim uninsured or underinsured motorist benefits from the first insurer even though no premium was paid to the first insurer for coverage of the other vehicles." *Comer*, 419 Md. at 98. Section 19-509(f)(1) of the Insurance Article specifically authorizes such an exclusion. *Id.*

Because the "owned but uninsured" exclusion applies only if Bhandari was occupying an "uninsured motor vehicle" when he suffered his injuries, it is necessary to examine the policy's definitions of the terms "motor vehicle" and "uninsured motor vehicle" to determine whether the exclusion applies.

The policy defines the term "motor vehicle" to mean "a land motor vehicle or trailer other than":

1. a farm type tractor or other equipment designated for use principally off public roads, while not upon public roads;

2. a vehicle operated on rails or crawler treads; or

3. a vehicle while located for use as a residence or premises.

The policy then defines the term "insured motor vehicle," which a person must be occupying if he or she is to avoid the "owned but otherwise uninsured" exclusion, as a "motor vehicle":

1. described in the declarations as an insured motor vehicle to which the bodily injury and property damage liability coverage of the policy applies.

2. while temporarily used as a substitute for an insured motor vehicle as described in item 1. above, when withdrawn from normal use because of its breakdown, repair, servicing, loss or destruction.

3. while being operated by the named or designated insured or by the spouse of either, if a resident of the same household.

In the circuit court, Bhandari appears to have principally argued that the "owned but otherwise uninsured" exclusion should not apply because he was unable to procure UIM coverage for his cab. The circuit court rejected his arguments and directed the entry of summary judgment in Metropolitan's favor. Because we conclude that the policy's definition of an "uninsured motor vehicle" is ambiguous as applied to the facts of this case, we reverse.

STANDARD OF REVIEW

For motions for summary judgment, the applicable legal standards are well known: under Rule 2-501(f), "[t]he court shall enter judgment in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law."

"'In reviewing the grant of a motion for summary judgment, appellate courts focus on whether the circuit court's grant of the motion was legally correct.'" *Baker v. Baker*, 221 Md. App. 399, 407 (2015) (quoting *Sierra Club v. Dominion Cove Point LNG, L.P.*, 216 Md. App. 322, 330 (2014)). "Thus, we conduct a plenary, de novo review of the grant of summary judgment." *Baker*, 221 Md. App. at 407.

"[T]he summary judgment standard is akin to that of a directed verdict, *i.e.*, whether a fair-minded jury could return a verdict for the plaintiff on the evidence presented." *Seaboard Sur. Co. v. Richard F. Kline, Inc.*, 91 Md. App. 236, 244 (1992); *accord Baker*, 221 Md. App. at 407. "Thus, a court must view the facts, and all reasonable inferences that may be drawn from them, in the light most favorable to the non-moving party." *Baker*, 221 Md. App. at 407.

This case, however, involves no dispute of facts. Instead, it relates solely to the interpretation of a written agreement – Bhandari's insurance policy with Metropolitan.

"We construe an insurance policy according to contract principles." *Maryland Cas. Co. v. Blackstone Intern. Ltd.*, ___ Md. ___, 2015 WL 1798960, at *4 (Apr. 21, 2015).

"Maryland follows the objective law of contract interpretation," *id.*, under which "'[t]he written language embodying the terms of an agreement will govern the rights and liabilities of the parties, irrespective of the intent of the parties at the time they entered into the contract, unless the written language is not susceptible of a clear and definite understanding.'" *Dumbarton Improvement Ass'n v. Druid Ridge Cemetery Co.*, 434 Md. 37, 51 (2013) (quoting *Slice v. Carozza Props., Inc.*, 215 Md. 357, 368 (1958)); *accord Blackstone*, 2015 WL 1798960, at *4.

Although Maryland does not follow the rule that insurance contracts should be construed against the insurer as a matter of course, any ambiguity will be "'construed liberally in favor of the insured and against the insurer *as drafter of the instrument*.'" *Blackstone*, 2015 WL 1798960, at *4 (quoting *Dutta v. State Farm Ins. Co.*, 363 Md. 540, 556-57 (2001) (emphasis in original) (citation omitted). A policy is ambiguous if its language "suggests more than one meaning to a reasonably prudent layperson." *Beale v. American Nat'l Lawyers Ins. Reciprocal*, 379 Md. 643, 660 (2004). "[T]he determination of ambiguity is one of law, not fact, and that determination is subject to *de novo* review by the appellate court." *Calomiris v. Woods*, 353 Md. 425, 434 (1999).

ANALYSIS

We can uphold the circuit court's grant of summary judgment against Bhandari if and only if Exclusion F in the Metropolitan policy unambiguously excludes UIM coverage for his injuries.

To reiterate, Exclusion F states that Metropolitan does not cover "an **insured** . . . **occupying** or struck by a **motor vehicle** owned by such persons, other than an **insured motor vehicle**." Hence, to determine whether the exclusion applies, we must determine whether Bhandari was occupying an "insured motor vehicle" when he suffered his injuries.

Bhandari's taxicab is certainly a "motor vehicle," at least as that term is defined in the policy.[4] The cab is a land-borne motor vehicle, not a water-borne motor vehicle like a powerboat or an airborne motor vehicle like an airplane. It is not a farm tractor that is principally operated off the public roads. It does not run on rails or treads. And it is not a motor or mobile home that was in use as Bhandari's residence or premises at the time of the accident. The cab satisfies the policy definition of a "motor vehicle."

Nonetheless, even if Bhandari's cab qualifies as a "motor vehicle" under the policy's definition, the exclusion still applies unless the cab is an "insured motor vehicle." The policy defines an "insured motor vehicle" as "**a motor vehicle**":

> 1. described in the declarations as an **insured motor vehicle** to which the **bodily injury** and **property damage** liability coverage of the policy applies.

[4] As previously stated, the policy defines the term "motor vehicle" as "a land motor vehicle or trailer other than":

> 1. a farm type tractor or other equipment designated for use principally off public roads, while not upon public roads;
>
> 2. a vehicle operated on rails or crawler treads; or
>
> 3. a vehicle while located for use as a residence or premises.

2. while temporarily used as a substitute for an **insured motor vehicle** as described in item 1. above, when withdrawn from normal use because of its breakdown, repair, servicing, loss or destruction.

3. while being operated by the named or designated **insured** or by the spouse of either, if a resident of the same household.

The definition sets forth three, separately numbered conditions. These conditions are not joined by a coordinating conjunction such as "and" or "or" (even though the policy uses such conjunctions in other definitions, such as the definition of "motor vehicle"). In addition, the conditions are not separated from one another by commas or semicolons, but by periods.[5] On its face, therefore, the policy gives no indication as to whether a "motor vehicle" must satisfy each of these three conditions to qualify as an "insured motor vehicle," or whether one or more of the three are somehow indispensable, or whether it is sufficient if only one of the three conditions is met.

For two reasons, it seems extremely unlikely that all three conditions are necessary conditions, such that a "motor vehicle" would qualify as an "insured motor vehicle" only if all three conditions were met. First, the definition omits the conjunction "and," thus implying that a "motor vehicle" may qualify as an "insured motor vehicle" even if one or more of the conditions are not met. Second, it is difficult to envision how a vehicle would ever satisfy both the first condition (by being listed on the declarations page) and the second

[5] Despite the use of periods to separate the three conditions from each other, the first letters of each clause are not capitalized. This departure from standard English convention suggests that the three conditions would more appropriately have been separated by commas or semicolons.

condition as well (by being temporarily used as a substitute for a vehicle listed on the declarations page).

Nonetheless, even if we reject the proposition that all three conditions must be met, we are left with uncertainty as to whether one or another particular condition is an indispensable *sine qua non* of an "insured motor vehicle," or instead whether a "motor vehicle" qualifies as an "insured motor vehicle" if any one of the three conditions is met. Given the defective structure of the definition, with its lack of grammatical signposts as to which conditions might be essential, a reasonably prudent layperson could reasonably accept the latter interpretation, under which Bhandari's taxicab would qualify as an "insured motor vehicle" if any one of the three conditions is met. The definition is, therefore, ambiguous. *Beale*, 379 Md. at 660.

Turning to the conditions themselves, Bhandari's cab does not meet the first or second: it is not described in the declarations as an insured motor vehicle to which the policy's coverages apply, nor is it a temporary substitute (such as a rental car or loaner) for an insured motor vehicle that is being repaired or has been destroyed. The cab, however, appears to meet the third: it is a "motor vehicle," as least within the policy definition, that was being operated by Bhandari, the "named or designated insured." Thus, while Metropolitan certainly had the prerogative to exclude UIM coverage for the injuries that Bhandari suffered in the taxicab that he failed to list on the declarations page of his Metropolitan policy (*Comer*, 419 Md. at 98), Metropolitan did not unambiguously do so in

this case: Bhandari was injured in what is arguably an "insured motor vehicle," as defined in the policy – *i.e.*, a "motor vehicle" that was "being operated by the named or designed insured," Bhandari. *Beale*, 379 Md. at 660.

We might have reached a different conclusion had Metropolitan employed a different structure in its definition of "uninsured motor vehicle." For example, Metropolitan could have defined an "insured motor vehicle" as a "motor vehicle," which (1) is *either* (a) described in the declarations as an insured motor vehicle to which the bodily injury and property damage liability coverage of the policy applies *or* (b) is being temporarily used as a substitute for a vehicle that was described in the declarations as an insured motor vehicle when the motor vehicle described in the declarations has been withdrawn from normal use because of its breakdown, repair, servicing, loss or destruction; *and* which (2) is being operated by the named or designated insured or by the spouse of either, if a resident of the same household.

Under that definition, a motor vehicle would not qualify as an "insured motor vehicle" merely because it was being operated by the named or designated insured at the time of the accident. Rather, a motor vehicle would qualify as an "insured motor vehicle" only if it also had been described in the declarations as an insured motor vehicle or was in temporary use as a substitute for a vehicle that was described in the declarations as an insured motor vehicle. Because Bhandari's cab would not satisfy that narrower definition of an "insured motor vehicle," he would have no access to UIM coverage.

If Metropolitan had intended for "insured motor vehicle" to be defined in that way, however, it has not unambiguously reflected that intent in the policy provision's language. We will not reorganize or rewrite the policy to insert conjunctions that Metropolitan omitted. We can construe the policy only as it is written. As written, the meaning of an "insured motor vehicle" is ambiguous. Where that is so, and where, as here, the record contains no extrinsic evidence to ameliorate the ambiguity, we construe the ambiguous provision against the insurer that drafted the policy. *See Empire Fire and Marine Ins. Co. v. Liberty Mut. Ins. Co.*, 117 Md. App. 72, 107 (1997).

At oral argument, Metropolitan argued that if the term "insured motor vehicle" includes any "motor vehicle . . . while being operated by the named or designated insured," as the definition arguably says it does, then Exclusion F would have no meaning. We disagree, because the exclusion would still exclude some UIM claims even if it did not exclude claims such as Bhandari's. For example, in the third condition in the definition of "insured motor vehicle," a "motor vehicle" is an "insured motor vehicle" while being operated by "the spouse" of "the named or designated insured" *only* if the spouse is a resident of the same household. Therefore, Exclusion F would still exclude a claim by the insured's spouse if that spouse were not a resident of the insured's household. In addition, Exclusion F would still exclude a claim brought by someone who was not injured in a "motor vehicle," as a vehicle cannot be an "insured motor vehicle" unless it is also a "motor vehicle." In any event, the potential conflict between the scope of the exclusion and the scope of the

definition of "insured motor vehicle" only underlines the ambiguity in the Metropolitan policy.

We recognize that, under § 19-501(b)(2)(ii) of the Insurance Article, a taxicab is not a "motor vehicle" for purposes of the statutorily-required primary coverages. Consequently, we have considered whether the policy definitions of "motor vehicle" and "uninsured motor vehicle" should be deemed to incorporate the statutory definition of "motor vehicle." If the policy did somehow incorporate those definitions, then the exclusion would apply to bar coverage, because the cab could not be an "insured motor vehicle" if it is not a "motor vehicle."

For two reasons, we reject the proposition that the policy silently incorporates the statutory definition of "motor vehicle."

First, it could lead to unreasonable results if taxicabs were not "motor vehicles" within the meaning of the policy. The UIM coverage applies in the first instance only if an insured suffers bodily injury or property damage in an "accident arising out of the ownership, maintenance, or use of an uninsured motor vehicle," which includes an underinsured "motor vehicle." In other words, the UIM coverage applies only if an insured suffers bodily injury or property damage as a result of the negligence of the driver of an uninsured or underinsured "motor vehicle." Yet, if the policy's definition of "motor vehicle" excludes taxicabs, then an insured would have no UIM coverage when he or she suffered serious bodily injury or property damage as a result of the negligence of the driver of an uninsured or underinsured

taxicab.[6] Because it is doubtful that the policy was intended not to afford coverage to injured policy holders in those circumstances, we reject the proposition that the policy, *sub silentio*, incorporates the statutory definition of "motor vehicle."

Second, the insurance policy is a contract. Within the limits allowed by the Insurance Article and the regulations promulgated thereunder, Metropolitan was free to limit its exposure by adopting the statutory definition of "motor vehicle" that excludes taxi cabs. Metropolitan, however, did not do so. Instead, it adopted a definition that is substantially broader than the definition under the Insurance Article – one that encompasses taxicabs. Where such meaning appears clear and unambiguous, it is not within our purview to revise the contract. *Calomiris*, 353 Md. at 445 (quoting *Canaras v. Lift Truck Services*, 272 Md. 337, 350 (1974)) (it is "'improper for the court to rewrite the terms of a contract, or draw a new contract for the parties, when the terms thereof are clear and unambiguous, simply to avoid hardships'").

In summary, we conclude that the Metropolitan policy does not unambiguously exclude coverage for the UIM claim arising from the injuries that Bhandari suffered in his

[6] Similarly, because the statutory definition of "motor vehicle" excludes buses, *see* § 19-501(b)(2)(i) of the Insurance Article, an insured would have no UIM coverage when he or she suffered bodily injury or property damage as a result of the negligence of the driver of an uninsured or underinsured bus.

taxicab. Accordingly, we vacate the grant of summary judgment in Metropolitan's favor and direct the entry of summary judgment in Bhandari's favor on his cross-motion. *See Valliere v. Allstate Ins. Co.*, 324 Md. 139, 146-47 (1991).

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY VACATED. CASE REMANDED TO THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY FOR FURTHER PROCEEDINGS NOT INCONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY THE APPELLEE.