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Sciarratta v. Foremost Ins. Co. Grand Rapids Mich., 137 Nev. Adv. Op. 32 (July 8, 2021)¹

UMBRELLA INSURANCE POLICIES: NRS 687B.147 IS NOT APPLICABLE

Summary

This is an appeal on a summary judgment motion that dismissed an umbrella insurance policy holder's claim for a third-party injury that would have been payable to the insured. The Court answered if a coverage exclusion is invalid if it does not meet statutory requirements and if it is not disclosed at the time of policy formation. The Court concluded that NRS 687B.147 requires disclosures of an exclusion to be made in a certain manner in a motor vehicle policy, and does not apply to umbrella policies.² Additionally the Court recognized that although an exclusion that is never disclosed to the policy holder may be unenforceable, if the insured is claiming nondisclosure they must provide admissible evidence supporting their claim.

FACTS AND PROCEDURAL HISTORY

Filippo Sciarratta and his then-wife Cynthia owned a motorcycle. In June 2015, Sciarratta allowed his brother-in-law Jonas Stoss to drive the motorcycle and Sciarratta rode as a passenger. Stoss was negligent and lost control of the motorcycle, and Sciarratta was seriously injured. Cynthia was the named insured on a personal umbrella policy that was underwritten by Farmers Insurance Exchange (Farmers). The couple also had a motorcycle liability policy, and an automobile policy underwritten by other insurance companies. Sciarratta requested coverage for his injuries under all three policies. The other insurance companies paid over \$500,000 under the auto and motorcycle policies, but Farmers denied coverage under the umbrella policy. Farmers gave two reasons for denying coverage: First, Stoss was not an insured under the policy; and

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² NEV. REV. STAT. § 687B.147 (2020).

Second, there was an exclusion in the policy which did not cover damages that were payable to the insured. Farmers argued that because Sciarratta was an insured he was not entitled to payment.

Sciarratta sued the other two companies concerning all the policies, asserted that the umbrella policy was a part of the auto policy, and alleged that his claims were covered under the two other policies. Farmers voluntarily joined the litigation and counterclaimed for a declaratory judgment that it owed nothing under the umbrella policy. In Sciarratta's answer, he denied the existence of the exclusion. Later, Farmers moved for summary judgment and included a copy of the policy as an exhibit and an affidavit stating the copy was a true and correct copy of the policy given to Cynthia and was in effect at the time of the accident. Sciarratta opposed the motion for summary judgment, and claimed the exclusion was unenforceable for two reasons: First, that it did not comply with NRS 687B.147³; and Second, that Farmers never sent him or his wife a copy of the policy containing the exclusion.

The district court found that NRS 687B.147⁴ does not apply to umbrella policies, therefore the statute did not invalidate the exclusion. The court also granted summary judgment to Farmers on its declaratory judgment action because Sciarratta was an insured and thus was excluded from coverage.

DISCUSSION

The issue on appeal is limited to whether the exclusion is valid. Therefore, the Court reviews the district court's grant of summary judgment de novo.⁵ Summary judgment must be granted if it is shown that there is no genuine issue of material fact and the movant is entitled to judgement as a matter of law.⁶

³ *Id.*

⁴ *Id.*

⁵ *See, Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).

⁶ *Id.*

NRS 687B.147 applies only to primary motor vehicle policies

The Court first addresses the dispute that the exclusion is not enforceable because Farmers did not conform to NRS 687B.147. The Court held that a personal umbrella liability policy is not a motor vehicle policy, and therefore the statute does not apply. The Court recalls the case of *Estate of Delmue v. Allstate Insurance Co.*, where they examined the applicability of NRS 687B.145(2).⁷ The issue being whether an umbrella policy was subjected to the statute, which required insurance companies to offer coverage on the use of a passenger car.⁸ The Court then emphasized the importance of the words “motor vehicle” in the statute at issue in this present case.⁹ The Court then applied the Vermont Supreme Court’s analysis of insurance policies, and concluded that the statute at issue here is distinguishable from other statutes based on the words “motor vehicle” and limits its application accordingly.

Sciarratta failed to create a genuine issue of material fact that would defeat summary judgment

Sciarratta argued that the exclusion was unenforceable because no notice was given. Sciarratta refers to the generally agreed notion that when an insurer does not disclose the exclusion, it is not enforceable.¹⁰ Although, to defeat summary judgment under his proposed rule, he would have had to show that there was no dispute that the exclusion was not disclosed prior to the accident, or that there was a genuine dispute as to whether it was disclosed. Sciarratta’s evidence was simply not enough for the Court to conclude that a copy was never sent, therefore there was not enough evidence shown to defeat summary judgment.¹¹

The district court did not abuse its discretion in denying Sciarratta’s NRCP 56(d) request

⁷ *Estate of Delmue v. Allstate Ins. Co.*, 113 Nev. 414, 936 P.2d 326 (1997).

⁸ *Id.*

⁹ *See, C. Nicholas Peros, Ltd. v. Bank of Am.*, 131 Nev. 436, 441, 352 P.3d 1133, 1136 (2015).

¹⁰ *See, e.g., Farmers Ins. Exch. v. Call*, 712 P.2d 231, 236-37 (Utah 1985); *Kozlik v. Gulf Ins. Co.*, 673 N.W.2d 343, 348-49 (Wis. Ct. App. 2003).

¹¹ *See, Wood*, 121 Nev. at 731, 121 P.3d at 1030.

Finally, Sciarratta alleged that his request for additional discovery before summary judgment should have been granted. NRCP 56(d) is phrased as “the court may”, and the decision to grant or deny a continuance of a motion for summary judgment and to allow for more discovery would be reviewed for an abuse of discretion.¹² Federal courts who have interpreted FRCP 56(d), which is identical to NRCP 56(d), have held that the opposing party must show that the requested discovery would change the court’s verdict.¹³ Sciarratta’s only relevant proposed further discovery appeared to be a deposition of a Farmers’ employee whom he intended to question regarding several things, including when the policies were provided to the insureds. The Court concluded that this did not clearly illustrate how discovery might alter the district court’s determination.¹⁴

Conclusion

The Court held that NRS 687B.147 only applies to “motor vehicle insurance” policies, and not to umbrella policies. While an insurer’s failure to disclose a policy exclusion might make it unenforceable, the Court held that when an insured alleges that an exclusion was not disclosed, they must make that allegation in an affidavit rather than rely mainly on the arguments of their counsel. Finally, the Court also held that the district court did not abuse its discretion by denying a continuance where Sciarratta did not clearly demonstrate how further discovery would change the outcome of the case. The Nevada Supreme Court affirmed the district court’s order granting Farmers summary judgment.

¹² Choy v. Ameristar Casinos, Inc., 127 Nev. 870, 872, 265 P.3d 698, 700 (2011).

¹³ Harrison v. Off. of the Architect of the Capitol, 281 F.R.D. 49, 52 (D.D.C. 2012).

¹⁴ See, *Id.*