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STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF SPARTANBURG )  
 )  
 Hellen Lewis, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 Auto-Owners Insurance Company, )  
 and CWS Insurance Agency, Inc. )  
 )  
 Defendants. )

IN THE COURT OF COMMON PLEAS  
 (Jury Trial Demanded)  
  
**Order Granting Auto-Owners Insurance  
 Company's Motion for Summary Judgment**

C/A#: 2011-CP-42-00929

On April 18, 2013, personally appeared before me William McKibbin for Hellen Lewis, Robert Davis for Auto-Owners Insurance Company, and Bob Horner for CWS Insurance Agency, Inc. on cross motions for summary judgment between Auto-Owners and Lewis. Based on the evidence presented, arguments of counsel, and the applicable law, I hereby grant Auto-Owners' motion and deny Lewis' motion.

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**Factual Background**

Lewis owns a piece of property on Washington Rd. that has two duplexes on it. The duplexes have separate addresses—2018 Washington Rd. and 2016 Washington Rd. They were completely separate and are not connected in any way. Lewis used the duplexes as rental properties.

Lewis insured the duplexes with State Auto Insurance Company through February 28, 2007. The State Auto policy contained two separate declarations pages that specifically list both

<sup>1</sup> Cross-motions between CWS and Lewis were also heard and are addressed in a separate order.

the duplex at 2018 Washington Rd. and the duplex at 2016 Washington Rd. State Auto did not renew the policies.

There was a period of time after the State Auto policies expired that the duplexes at 2018 Washington Rd. and 2016 Washington Rd. were uninsured. The duplexes were also vacant for a period of time.

According to Steve Williams, Lewis approached his independent insurance company, CWS, in May 2007 about purchasing insurance. Williams filled out an application to Auto-Owners for Lewis asking for insurance only on the duplex at 2018 Washington Rd.<sup>2</sup> Williams did not provide any information about the duplex at 2016 Washington Rd. in the application to Auto-Owners. Lewis signed the application that only requested coverage on the duplex at 2018 Washington Rd.

After submitting the application to Auto-Owners, Williams took and submitted photographs of only the duplex at 2018 Washington Rd. to Auto-Owners. He did not provide any photographs of the duplex at 2016 Washington Rd. to Auto-Owners.

Williams testified that he intended to obtain coverage from Auto-Owners to cover only the duplex at 2018 Washington Rd. He did not intend for Auto-Owners to provide any coverage for the duplex at 2016 Washington Rd.

Auto-Owners issued a dwelling policy for the duplex at 2018 Washington Rd, which was renewed. Unlike Lewis' previous policy with State Auto, the Auto-Owners policy did not mention coverage for the duplex at 2016 Washington Rd.

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<sup>2</sup> Williams testified this was done at Lewis' request because the duplex at 2016 Washington Rd. was vacant.

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On October 20, 2009, the duplex at 2016 Washington Rd. caught fire. Auto-Owners denied Lewis' claim for the duplex at 2016 Washington Rd. because it was not covered under the policy.

### Standard of Review

Rule 56, SCRCP, provides that summary judgment shall be granted when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." "The purpose of summary judgment is to expedite the disposition of cases not requiring the services of a fact finder." Matsell v. Crowfield Plantation Cmty. Servs. Ass'n, Inc., 393 S.C. 65, 70, 710 S.E.2d 90, 93 (Ct. App. 2011) (citing George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001)).

### Findings on Motions for Summary Judgment

Auto-Owners argues it is entitled to summary judgment for Lewis' claims for coverage for the duplex at 2016 Washington Rd. because the plain language of the policy covers only the duplex at 2018 Washington Rd., and there was no intent by the parties to cover the duplex at 2016 Washington Rd. I agree.

"The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language." Schulmeyer v. State Farm Fire & Cas. Co., 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003). Where the language of a contract is clear and unambiguous, it alone determines the contract's force and effect. Id. "Parties to a contract have the right to construct their own contract without interference from courts to rewrite or torture the meaning of the policy to extend coverage." Id. at 495, 579 S.E.2d at 134. "The court's

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duty is 'limited to the interpretation of the contract made by the parties themselves regardless of its wisdom or folly, apparent unreasonableness, or failure [of the parties] to guard their interests carefully.'" B.L.G. Enters. v. First Fin. Ins. Co., 334 S.C. 529, 535, 514 S.E.2d 327, 330 (1999).

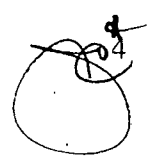
Insurance contracts are subject to the same rules of interpretation governing other types of contracts. Laidlaw Envtl. Serv. Inc. v. Aetna Cas. & Sur. Co. of Ill., 338 S.C. 43, 524 S.E.2d 847 (Ct. App. 1999). "The foremost rule in interpreting an insurance contract is to give effect to the intent of the parties as shown by the language of the contract itself." Id. at 48, 524 S.E.2d at 850 (citing Dorman v. Allstate Ins. Co., 332 S.C. 176, 178, 504 S.E.2d 127, 129 (Ct. App. 1998)). "[I]f the intention of the parties is clear, courts have no authority to change insurance contracts in any particular or to interpolate a condition or stipulation not contemplated either by the law or the contract between the parties." Standard Fire Ins. Co. v. Marine Contracting & Towing Co., 301 S.C. 418, 421, 392 S.E.2d 460, 461-62 (1990).

In this case, the Auto-Owners policy indicates the insured location is "2018 Washington Rd., Spartanburg, SC 29302-4137." There is no mention of the duplex at 2016 Washington Rd. in the Auto-Owners policy.

The independent broker submitting the application testified that he intended for the Auto-Owners policy to cover only the duplex at 2018 Washington Rd. He never submitted any information or photographs about the duplex at 2016 Washington Rd. to Auto-Owners. He did not intend for Auto-Owners to provide any coverage for the duplex at 2016 Washington Rd.

Lewis signed an application that contained information about only the duplex located at 2018 Washington Rd. Lewis submitted no information to Auto-Owners seeking coverage for the duplex at 2016 Washington Rd. The Auto-Owners policy Lewis received referenced only the

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duplex at 2018 Washington Rd. Lewis' prior policy with State Auto specifically mentions both the duplex at 2018 Washington Rd. and the duplex at 2016 Washington Rd.

Auto-Owners issued the subject policy, which covers only the duplex located at 2018 Washington Rd. At the time it issued the policy, Auto-Owners had no information about the duplex at 2016 Washington Rd.

According to the plain language of the policy and the intent of all involved, the Auto-Owners policy only insured the duplex at 2018 Washington Rd. The policy did not cover and there was no intent to insure the duplex at 2016 Washington Rd. In addition to there not being coverage for the duplex at 2016 Washington Rd., there is no evidence to support any other causes of action against Auto-Owners.

Lewis argues she is entitled to summary judgment because the Auto-Owners policy is ambiguous based on Spartanburg County documents that reference a plot of land. I disagree.

Lewis' reliance on information beyond the four corners of the contract to create an ambiguity is improper. "When the contract language is clear and unambiguous the language alone determines the contract's force, and terms must be construed to give effect to the plain, ordinary, and popular meaning." Laidlaw, 338 S.C. at 48, 524 S.E.2d at 850 (citing Donnan v. Allstate Ins. Co., 332 S.C. 176, 178, 504 S.E.2d 127, 129 (Ct.App.1998)).

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Even, however, considering the Spartanburg County documents, there is no ambiguity as to the structure the Auto-Owners policy insured.

A term is ambiguous only if it is susceptible to more than one meaning and reasonably intelligent persons, reading the policy as whole, would differ as to which meaning is the proper one. Hansen v. United Servs. Auto. Ass'n, 350 S.C. 62, 565 S.E.2d 114 (Ct. App. 2002). An

ambiguity, however, is not created simply because there is a controversy between the parties or because one party claims an interpretation not consistent with the terms of the policy. B.L.G. Enters. v. First Fin. Ins. Co., 334 S.C. 529, 514 S.E.2d 327 (1999).

The Auto-Owners policy in question is a dwelling policy that insured a structure—not land. The dwelling insurance policy specifically states, “[w]e do not cover any land, including land the dwelling occupies.” It, therefore, describes the structure insured using a street address. If more than one structure is insured, then the street address for both structures is used—like Lewis’s prior policy with State Auto, which identified both 2018 and 2016 Washington Rd. The Auto-Owners policy issued to Lewis only identifies the duplex at the street address of 2018 Washington Rd., Spartanburg, SC 29302-4137. The Auto-Owners policy does not identify a plot of land.

Unlike a dwelling insurance policy, the Spartanburg County documents reference the land and all structures on the land. The Spartanburg County documents identify plots of land for totally different purposes than a dwelling insurance policy.

There is nothing in the dwelling policy that would support using descriptions of plots of land for county government purposes to determine what structure is insured. There is no legal authority presented that would support using a description of a plot of land and coverage for a specific structure under a dwelling policy or that a street address is ambiguous.

The Auto-Owners policy clearly identifies the structure insured in this dwelling policy. No ambiguity exists.

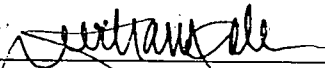
IT IS THEREFORE ORDERED that Auto-Owners Insurance Company’s Motion for Summary Judgment is GRANTED;



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IT IS FURTHER ORDERED that Hellen Lewis' Motion for Summary Judgment is DENIED;

IT IS SO ORDERED.

  
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J. Derham Cole  
Presiding Judge, Seventh Judicial Circuit

\_\_\_\_\_, 2013.

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