IN THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY

HENRY BRADLEY MARSHALL,)	
individually and as Executor of the)	
Estate of Nina Marshall, deceased,)	
)	C.A. No. N11C-01-105 MMJ
Plaintiff,)	
)	
V.)	
)	
STATE FARM FIRE & CASUALTY)	
COMPANY,)	
)	
Defendant.)	

Submitted: April 24, 2013 Decided: June 13, 2013

On Defendant State Farm Fire & Casualty Company's Motion for Summary Judgment

GRANTED

OPINION

William R. Peltz, Esquire, Kimmel, Carter, Roman & Peltz, Attorney for Plaintiff

David G. Culley, Esquire, Christina M. Gafford, Esquire, Tybout, Redfearn & Pell, Attorneys for Defendant

JOHNSTON, J.

INTRODUCTION

This is a contract dispute that presents the novel issue of whether an estate can properly be said to have a "relative" under the homeowner's insurance policy ("Policy") in question. State Farm Fire & Casualty Company ("State Farm") has moved for summary judgment, claiming that the plain language of the Policy does not include a relative of a legal representative/executrix of the original policy holder, as an insured. Henry Bradley Marshall ("Plaintiff") contends that the son of the executrix is covered as an insured

FACTUAL AND PROCEDURAL CONTEXT

Plaintiffs¹ filed a Complaint on May 13, 2005 against Shirley Gladney, Ronald Turner, and "John Doe," seeking compensation for property damage to their home. Damage to Plaintiffs' home was caused by a fire occurring in an adjacent house. Shirley Gladney was the owner of the house where the fire originated. Gladney acquired ownership of the house from Jean E. Richardson, as the Executrix of Richardson's estate after she passed away on October 3, 2002.

Gladney permitted her son, Ronald Turner, to reside at the house at some point prior to May 13, 2003. At the conclusion of a trial in this Court, Turner was

¹ At the time, "Plaintiffs" included Nina Marshall and Henry Bradley Marshall. The caption now reflects that Ms. Marshall is deceased.

found to have proximately caused the fire that damaged Plaintiffs' home.² Plaintiffs were awarded \$250,000.00, plus costs and post-judgment interest.

State Farm issued the Policy to Richardson, with a coverage period of September 16, 2002 through September 16, 2003. Plaintiff filed the present action against State Farm Defendant in an effort to recover the damages awarded against Turner. Plaintiff contends that Turner was an "Insured" under the Policy. Plaintiff also alleges that State Farm willfully, wantonly, recklessly, and intentionally failed to provide Turner with a defense in connection with the May 13, 2005 Complaint and subsequent January 11, 2008 trial.

On December 5, 2012, State Farm filed the pending Motion for Summary Judgment, urging the Court to find as a matter of law that Turner is not an Insured under the Policy. Argument on State Farm's Motion was heard on April 12, 2013, The parties filed supplemental submissions on April 22, 2013 and April 24, 2013. The parties have agreed that the only issue presently before the Court is the narrow question of whether an estate can be said to have a relative, pursuant to the terms of the Policy and under Delaware law.

²Marshall v. Gladney, Del. Super., C.A. No. 05C-05-151, Johnston, J. (Jan. 11, 2008).

STANDARD OF REVIEW

Summary judgment is granted only if the moving party establishes that there are no genuine issues of material fact in dispute and judgment may be granted as a matter of law.³ All facts are viewed in a light most favorable to the non-moving party.⁴ Summary judgment may not be granted if the record indicates that a material fact is in dispute, or if there is a need to clarify the application of law to the specific circumstances.⁵ When the facts permit a reasonable person to draw only one inference, the question becomes one for decision as a matter of law.⁶ If the non-moving party bears the burden of proof at trial, yet "fails to make a showing sufficient to establish the existence of an element essential to that party's case," then summary judgment may be granted against that party.⁷

ANALYSIS

Policy Terms

The crux of the matter presently before the Court is whether Turner is an Insured under the Policy. It is undisputed that Turner was not an Insured at the time

³ Super. Ct. Civ. R. 56(c).

⁴ Hammond v. Colt Indus. Operating Corp., 565 A.2d 558, 560 (Del. Super. 1989).

⁵ Super. Ct. Civ. R. 56(c).

⁶ Wootten v. Kiger, 226 A.2d 238, 239 (Del. 1967).

⁷ Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986).

of Richardson's passing. Therefore, the Court must look to those parts of the Policy defining what occurs in the event that a named Insured dies.

Section 4 of the Policy provides:

- 4. **"Insured"** means you and, if residents of your household:
 - a. your relatives; and
 - b. any other person under the age of 21 who is in the care of a person described above.

This portion of the Policy plainly refers to Richardson. Richardson is "you," and therefore subsections a. and b. refer to Richardson's relatives and persons under the age of 21 in Ms. Richardson's care.

In the event of Richardson's passing, the Policy was written to extend coverage to Richardson's legal representative:

- 9. **Death.** If any person shown in the **Declarations** or the spouse, if a resident of the same household, dies:
 - a. we insure the legal representative of the deceased. This condition applies only with respect to the premises and property of the deceased covered under this policy at the time of death;
 - b. **Insured** includes:
 - (1) any member of your household who is an **insured** at the time of your death, but only while a resident of the **residence premises**; and

(2) with respect to your property, the person having proper temporary custody of the property until appointment and qualification of a legal representative.

When Ms. Richardson died, Gladney eventually became the Executrix of her Estate. As Executrix, Gladney was the legal representative of Richardson's Estate, and became an Insured pursuant to Policy Section 9.a. A new Declarations Page was issued by State Farm. The Named Insured was changed from "Jean E. Richardson" to the "Estate of Jean E. Richardson."

It is undisputed that Turner was not and is not an insured under Policy Section 9.b.1, since Turner clearly was not an Insured at the time of Richardson's death. Additionally, Turner cannot be an Insured under Policy Section 9.b.2, because he only resided in the house after his mother became Richardson's legal representative.

Parties' Contentions

Turner is Gladney's son, and Gladney became an Insured pursuant to Policy Section 9.a. Plaintiff contends that with Gladney as the Estate's representative, and with the Estate as the Named Insured listed on the Declarations Page, Gladney became the "you" referred to in Policy Section 4. According to Plaintiff, it follows that as a relative of Gladney, Turner also is an Insured under Policy Section 4.a.

Defendant asserts that there is no precedent in Delaware, or in any other jurisdiction, for the proposition that an estate has relatives. State Farm urges the Court not to create a new doctrine in this case. In sum, the question before the Court is whether, under the terms of the Policy, Turner can be a relative of Richardson's Estate.

Discussion

The narrow issue in this case is one of first impression in Delaware.

The proper interpretation of the language in an insurance policy is a question of law to be resolved by the Court.⁸ When the policy language is unambiguous, he parties will be bound by the plain meaning of the insurance policy.⁹ The Court finds the Policy language at issue in this case to be unambiguous. Therefore, the rule requiring the "broad" interpretation of ambiguous insurance policies, so as to maximize coverage, does not apply.¹⁰

Neither party was able to submit any legal precedent on the issue of whether an estate can have a relative - for purposes of insurance coverage, or for any other reason. Common sense dictates that people have relatives. Artificial entities, such as corporations and partnerships, do not have relatives.

⁸ Hudson v. State Farm Mut. Ins. Co., 569 A.2d 1168, 1170 (Del. 1990).

⁹ Hallowell v. State Farm Mut. Auto. Ins. Co., 443 A.2d 925, 926 (Del. 1982). .

¹⁰ See Harris by Harris v. Nationwide Mut. Ins. Co., 712 A.2d 470, 472 (Del. 1997).

After carefully considering the fair bounds of coverage and exposure under the Policy, the Court has concluded that the Estate cannot properly have a relative. This Court declines to create an unprecedented legal fiction here. Principles of judicial restraint mandate that this Court refrain from promulgating entirely new law, whenever possible.¹¹

Further, there has been no public policy reason offered to support creating an additional source of exposure, within the Policy before the Court, by creating a new principle of Delaware law. The Court is unaware of any jurisdiction that has held that an estate, executor/executrix, or other legal representative can have relatives. To find otherwise would extend the exposure under the insurance contract beyond what reasonably could have been foreseen or contemplated by the parties negotiating this policy.

This Court finds that estates do not have relatives. Therefore, Turner is not an Insured under the Policy.

CONCLUSION

On this issue of first impression in Delaware, the Court finds that an estate cannot have relatives for purposes of insurance coverage. Plaintiff cannot recover

¹¹ See In re Southern Peru Copper Corp. Shareholder Derivative Litigation, 30 A.3d 60, 87 (Del. Ch. 2011).

from State Farm because the tortfeasor, who is a relative of the Insured Estate's Executrix, is not an Insured, as defined under the Policy.

THEREFORE, State Farm Fire & Casualty Company's Motion to Dismiss is hereby GRANTED. This case is hereby DISMISSED WITH PREJUDICE.

IT IS SO ORDERED.

Is! Mary M. Johnston

The Honorable Mary M. Johnston