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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

CENTURY NATIONAL INSURANCE CO., Plaintiff and Respondent, v. JESUS GARCIA et al., Defendants and Appellants.	B209616 (Los Angeles County Super. Ct. No. BC379522)

APPEAL from a Judgment of the Superior Court of Los Angeles County. Maureen Duffy-Lewis, Judge. Affirmed.

Beverly Hills Associates and Stephen M. Losh for Defendants and Appellants Jesus Garcia and Theodora Garcia.

Haight, Brown & Bonesteel, Valerie A. Moore and Christopher Kendrick for Plaintiff and Respondent Century-National Insurance Company.

Jesus Garcia, Sr. and Theodora Garcia appeal judgment on their cross-complaint against Century National Insurance Company. The Garcia's son Jesus, Jr. deliberately set fire to the Garcia's home, and Century National sought a declaration that coverage was excluded for the intentional acts of "any insured;" the Garcias cross-claimed for breach of contract, bad faith, and reformation. The trial court sustained Century National's demurrer without leave to amend, concluding that the policy language defining "any insured" to include relatives precluded recovery for the intentional acts of Jesus Garcia, Jr. We affirm.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Jesus Garcia, Sr. and his wife Theodora Garcia were Century National's named insureds under a fire insurance policy on their home.[1] On May 2, 2007, a fire occurred at the Garcia's home, and on May 3, 2007, the Garcias filed a claim with Century National.

The insurance adjuster inspected the premises and suspected arson. Century National retained a qualified fire investigator, who determined that the fire started in the bedroom of the Garcia's son Jesus, Jr. shortly after he had been in the bedroom. The investigator ascertained the fire was intentionally set with the use of a small amount of accelerant applied to the floor and bed that was ignited with a small open flame, such as would be found on a cigarette lighter or a match. Century National concluded the fire was the result of arson. Jesus, Jr. pleaded no contest to arson charges (Pen Code, § 451, subd. (b)) and was sentenced to five years.

At the time of the fire, the Garcias were insured by Century National under a policy which excluded coverage for "Intentional Loss, meaning any loss arising out of any act committed by or at the direction of any insured having the intent to cause a loss," and also excluded coverage for losses caused by "Dishonesty, Fraud, or Criminal Conduct of any insured." An "insured" was defined as "you and the following persons if permanent residents of the residence premises. . . . [¶] Your relatives. . . ."

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[1] To avoid confusion, because the defendants share the same last name, we refer to them by their first names.

On October 22, 2007, Century National filed its complaint for declaratory relief, seeking a declaration that it had no duty to pay the Garcia's claim because the loss resulted from the intentional or criminal acts of an insured.

On December 3, 2007, the Garcias filed their cross-complaint for breach of contract, breach of the covenant of good faith and fair dealing, and reformation. They alleged that Jesus, Jr. was not a named insured on the policy and did not have an insurable interest in the property, although they alleged he was their son and lived at the property at the time of the loss. The Garcias further alleged that Century National's definition of intentional loss violated Insurance Code section 2071[2] because the policy used the words "any insured" rather than "the insured," and thereby denied the Garcias insurance coverage.

Century National demurred to the cross-complaint, contending that wrongdoing by the insured barred coverage and bad faith does not lie where there is a genuine dispute of law. In particular, Century National argued that although the Garcias allege Century National should indemnify them because they did not set the fire, the policy provided that coverage was excluded for any insured who engaged in intentional or criminal conduct. Century National pointed out under sections 2071 and 533, exclusion of coverage applied to "innocent co-insureds," citing *Fire Insurance Exchange v. Altieri* (1991) 235 Cal.App.3d 1352 (*Altieri*) and *Watts v. Farmers Insurance Exchange* (2002) 98 Cal.App.4th 1246 (*Watts*).

The Garcias opposed Century National's demurrer, contending that the Insurance Code required an insurance policy to refer to "the insured," not "any insured," and that the current trend in case law was to resolve any conflict between policy language and statutory language in favor of innocent co-insureds, citing *Sager v. Farm Bureau Mutual Ins. Co.* (Iowa 2004) 680 N.W.2d 8, 11. The Garcias also argued any legal dispute was not genuine, but had been manufactured by Century National.

The court sustained the demurrer without leave to amend, finding that (1) the policy defined "any insured" to include relatives of the insured, (2) courts generally interpret

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[2] All statutory references herein are to the Insurance Code unless otherwise noted.

policies which exclude coverage for criminal or intentional acts to exclude coverage of innocent co-insureds (*Altieri, supra,* 235 Cal.App.3d at p. 1361), and (3) section 533 expressly sets forth California's public policy of denying coverage for willful wrongs. The court entered judgment on the cross-complaint, and Century National dismissed its complaint.

DISCUSSION

I. STANDARD OF REVIEW.

Because the function of a demurrer is to test the sufficiency of a pleading as a matter of law, we apply the de novo standard of review in an appeal following the sustaining of a demurrer without leave to amend. (*Holiday Matinee, Inc. v. Rambus, Inc.* (2004) 118 Cal.App.4th 1413, 1420.) We assume the truth of the allegations in the complaint, but do not assume the truth of contentions, deductions, or conclusions of law. It is error for the trial court to sustain a demurrer if the plaintiff has stated a cause of action under any possible legal theory, and it is an abuse of discretion for the court to sustain a demurrer without leave to amend if the plaintiff has shown there is a reasonable possibility a defect can be cured by amendment. (*California Logistics, Inc. v. State* (2008) 161 Cal.App.4th 242, 247.)

II. CENTURY NATIONAL'S POLICY DOES NOT VIOLATE THE INSURANCE CODE.

The Garcias argue that Century National's policy violates sections 533 and 2071, which they contend require policy language to refer to "the insured," not "any insured;" they assert that because they had no role in Jesus, Jr.'s conduct, they are innocent co-insured entitled to indemnity. (See *Watts, supra,* 98 Cal.App.4th 1246.)

1. Century National's Policy Language Precludes Recovery.

Although insurance contracts have special features, they are contracts to which the ordinary rules of contractual interpretation apply. "Thus, the mutual intention of the contracting parties at the time the contract was formed governs. [Citations.] We ascertain that intention solely from the written contract if possible, but also consider the

circumstances under which the contract was made and the matter to which it relates. [Citations.] We consider the contract as a whole and interpret the language in context, rather than interpret a provision in isolation. [Citations.] We interpret words in accordance with their ordinary and popular sense, unless the words are used in a technical sense or a special meaning is given to them by usage. [Citations.]" (*London Market Insurers v. Superior Court* (2007) 146 Cal.App.4th 648, 655-656.)

In reviewing the question of whether an innocent co-insured is entitled to coverage under a policy exclusion, *Altieri, supra,* 235 Cal.App.3d 1352 held that where the policy exclusion language referred to "the insured," coverage would be extended to co-insureds. On the other hand, if the policy exclusion language referred to "an insured," or "any insured," coverage would not extend to innocent co-insureds. (*Id.* at pp. 1360-1361; see also *Western Mutual Insurance Co. v. Yamamoto* (1994) 29 Cal.App.4th 1474, 1486-1487 [relying on *Altieri* in holding no coverage for co-insured where exclusion language refers to "any insured"].)

In *Watts, supra,* 98 Cal.App.4th 1246, where the court held that an innocent co-insured may recover his or her percentage share of the property unless the policy contains language excluding that possibility, the court explained the basis for the distinction between "the insured" and "any insured." (*Id.* at pp. 1253-1254.) *Watts* noted that "'Generally, where a policy precludes recovery as a result of fraud on the part of "*the*" insured, the recovery is precluded only as to the insured who committed the fraud and the innocent co-insured is allowed to recover. On the other hand, where the policy precludes recovery as a result of fraud on the part of "*any*" insured, the effect of the fraudulent acts of one insured precludes recovery as to all insureds and an innocent co-insured is thereby precluded from recovery.'" (*Id.* at p. 1258, citing 13 Couch on Insurance (3d ed. 1999) § 197:34, p. 197-65, italics added, fn. omitted.) *Watts* explained that the use of the word "any" indicates that the insureds' obligations under the policy relating to fraud and intentional conduct are joint, rather than several. (*Id.* at p. 1260.)

The Garcia's Century National policy defined insured as a relative of the named insured and excluded coverage for intentional loss. The Garcias have admitted Jesus, Jr.'s

conduct was intentional. As a result, the policy language provides no coverage. (See *Western Mutual Insurance Co. v. Yamamoto, supra*, 29 Cal.App.4th at p. 1486.)

2. Century National's Policy Language is Not Prohibited By the Insurance Code.

The Garcias argue the plain policy language violates section 2071, which they contend in its fraud provisions also applies to intentional and criminal acts and specifies the language "the insured." They also assert that Century National cannot rely on section 2080 pertaining to riders because its policy used the "any insured" terminology in the main policy, not in a rider. Finally, they argue the policy similarly violates section 533's reference to "the insured."

In interpreting a statute, we begin with the fundamental rule that our primary task is to determine the Legislature's intent. To determine that intent, we turn first to the words of the statute for the answer. (*J.C. Penney Casualty Insurance v. M.K.* (1991) 52 Cal.3d 1009, 1020.) A statute must be construed in the context of the entire statutory scheme of which it is a part, in order to achieve harmony. (*O'Brien v. Dudenhoeffer* (1993) 16 Cal.App.4th 327, 333.)

Insurance Code section 2070 provides that "[a]ll fire policies on subject matter in California shall be on the standard form, and, except as provided by this article shall not contain additions thereto. No part of the standard form shall be omitted therefore except that any policy providing coverage against the peril of fire only, or in combination with coverage against other perils, need not comply with the provisions of the standard form of insurance policy or section 2080; provided, that coverage with respect to the peril of fire, when viewed in its entirety, is substantially equivalent or more favorable to the insured than that contained in such standard form of fire insurance policy."

Section 2071 sets forth the standard form fire insurance policy for the State of California, and its standard provisions relating to concealment and fraud provide that "[t]his entire policy shall be void if, whether before or after a loss, *the insured* has willfully concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof, or the interest of the insured therein, or in case of any fraud or false

swearing by *the insured* relating thereto." (§2071, emphasis added.) Under section 2080, "[e]xcept as otherwise provided in this article, clauses imposing specified duties and obligations upon the insured and limiting the liability of the insurer may be attached to the standard form. Such clauses shall be in the rider or riders attached to the standard form of policy and shall be in type as provided in Section 2073."[3]

The Garcias' policy insures against perils in addition to the peril of fire, and therefore pursuant to section 2070 need not comply with the provisions of section 2071's standard form of insurance policy or section 2080 governing riders, provided that coverage with respect to the peril of fire, when viewed in its entirety, is "substantially equivalent or more favorable to the insured than that contained in such standard form insurance policy." (§ 2070.)

We conclude Century National's policy complies with section 2070 because the addition of the provision at issue is not inconsistent with the fire coverage of the standard form policy, which does not address intentional acts. Because section 2070 governs, the limitation of section 2080 requiring additional language to be placed in riders does not apply; there is nothing to prohibit the additional exclusionary language from being incorporated into the insurance contract itself. Section 2071 contains no language relating to exclusion for intentional misconduct or criminal acts, and there is no prescription of the form of exclusionary language relating to such conduct. The exclusionary language at issue here relating to intentional conduct this did not alter the standard form language of the fire insurance provisions of the Garcias' contract because the standard provisions are silent with respect to intentional conduct. Furthermore, if the policy at issue were solely a fire policy, the insurer properly could have placed the exclusionary language in a rider; it does not alter the insurance coverage to include the exclusions in this insurance policy because, as it covers additional perils, the insured knows there are more provisions to read.

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[3] Section 2073 provides, "The policy shall be plainly printed. The type shall not be smaller than eight-point and in a style not less legible than Century and subheads shall be in type larger than eight-point and in a style not less legible than Century. The lines of the policy following the countersignature clause shall be numbered consecutively."

As a result, the Garcias' fire coverage was "substantially equivalent" to that under the standard form policy.

Nonetheless, the Garcias insist that *Watts* held that recovery will be permitted to an innocent co-insured because the statutory form fire insurance policy does not state the act of any insured will be attributed to all insureds; they argue the intent is to provide coverage for an innocent co-insured when another insured commits a wrongful act. *Watts*, in discussing section 2071 as it applied to the distinction between "the insured" and "any insured," stated that, "since the language adopted by the Legislature for the standard form does not specifically state that the act of any insured will be attributed to all insureds, the intent is that coverage be severable and that an innocent co-insured be able to recover for his or her proportionate share of the damaged property." (*Watts, supra*, 98 Cal.App.4th at p. 1261.) *Watts's* statement in this regard does not alter the rule that liability for excluded acts may be joint or several, depending upon the language of the policy. *Watts* merely refers to the standard form policy, which as our discussion above establishes, does not govern the exclusion here.

Finally, section 533 provides in relevant part that "An insurer is not liable for a loss caused by the willful act of *the insured.*" (Emphasis added.) Section 533 is an implied exclusionary clause in every insurance contract, and reflects the fundamental public policy of denying coverage for willful wrongs. (*Shell Oil Co v. Winterthur Swiss Insurance Company* (1993) 12 Cal.App.4th 715, 739.) Contrary to the Garcias' assertion, unlike section 2071, which is expressly directed at controlling the language insurers may use in fire policies, section 533 does not govern mandatory requirements for policy language, but rather provides the basis for exclusion of coverage. We therefore find that Century National's policy may, consistent with section 533, exclude coverage for willful acts of *any* insured.

DISPOSITION

The judgment of the superior court is affirmed. Respondent is to recover its costs on appeal.

ZELON, J.

We concur:

PERLUSS, P. J.

JACKSON, J.