

DANNY LOWE et al.

v.

METROPOLITAN PROPERTY AND CASUALTY INSURANCE COMPANY

Submitted on Briefs September 29, 2020
Decided October 15, 2020

Panel: MEAD, GORMAN, JABAR, HUMPHREY, HORTON, and CONNORS, JJ.

MEMORANDUM OF DECISION

Danny Lowe and Kelly Wentworth appeal from an order of the Superior Court (Cumberland County, *Warren, J.*) granting Metropolitan Property and Casualty Insurance Company's motion for summary judgment and denying Lowe's in this reach-and-apply action.

This reach-and-apply action stems from an underlying March 2019 judgment entered in favor of Lowe against Metropolitan's insured, Alpee Lambert and Coastline Security Management, Inc. (collectively "Lambert"), awarding Lowe \$750,000 in damages arising from a 2017 automobile accident in which Lambert struck Lowe while negligently operating a 2015 Hyundai.¹ The judgment—agreed to by Lowe and Lambert—provided that it was

¹ Lowe filed the underlying suit against Lambert, who was acting in the course and scope of his employment at the time of the accident, and Coastline, the company he owned and operated. Coastline was the named insured on a separate commercial auto policy issued by Progressive Northern Insurance Company, which also listed the 2015 Hyundai as an insured vehicle. The Progressive policy provided a \$500,000 limit of liability coverage, and paid that full amount towards the judgment obtained by Lowe. The 2015 Hyundai is not listed as an insured vehicle on the Metropolitan policy.

intended to allow the coverage issue to be decided in a reach-and-apply action without exposing the defendants to pursuit of their assets, with the exception of pursuit of a policy issued to Lambert and his wife by Metropolitan.

Contrary to Lowe's contention, the language of the Metropolitan policy's "non-owned automobile" exception is not reasonably susceptible to more than one interpretation when read in context of the contract as a whole. *See Jipson v. Liberty Mut. Fire Ins. Co.*, 2008 ME 57, ¶ 10, 942 A.2d 1213 ("In evaluating an insurance contract, the long-standing rule in Maine requires an evaluation of the instrument as a whole." (Quotation marks omitted.)).

Because the 2015 Hyundai does not qualify as a "non-owned automobile," the Metropolitan Policy does not provide coverage for the judgment against Lambert. *See Nat'l Wrecker, Inc. v. Progressive Cas. Ins. Co.*, 2019 ME 153, ¶ 12, 218 A.3d 260. Accordingly, the Superior Court did not err in granting Metropolitan's motion for summary judgment. *Id* ¶ 10.

The entry is:

Judgment affirmed.

Patrick E. Hunt, Esq., Patrick E. Hunt, P.A., Island Falls, for appellants Danny Lowe & Kelly Wentworth

Christine Kennedy-Jensen, Esq., and Martica S. Douglas, Esq, Douglas Denham Buccina Kennedy-Jensen & Bell, Portland, for appellee Metropolitan Property and Casualty Insurance Company