COURT OF APPEALS
DECISION
DATED AND FILED

April 30, 2013

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2012AP1778 **Cir. Ct. No. 2011CV223**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

RANDAL STRAUSS AND DIANE STRAUSS,

PLAINTIFFS,

V.

MILWAUKEE PLATE GLASS COMPANY,

DEFENDANT-APPELLANT,

ACUITY, A MUTUAL INSURANCE COMPANY,

INTERVENOR-RESPONDENT,

SECURA INSURANCE COMPANY,

INTERVENOR.

APPEAL from an order of the circuit court for Ozaukee County: SANDY A. WILLIAMS, Judge. *Affirmed*.

Before Hoover, P.J., Mangerson, J., and Thomas Cane, Reserve Judge.

¶1 PER CURIAM. Milwaukee Plate Glass Company appeals an order granting its insurer's motion to declare that it has no duty to defend or indemnify Milwaukee Glass. We agree with the circuit court that the Habitational Exterior Finish Systems exclusion clearly and unambiguously removed coverage for Randal and Diane Strauss's property damage claims. Accordingly, we affirm.

BACKGROUND

¶2 According to the Strausses' complaint, they hired Milwaukee Glass to caulk around the exterior of windows in their house on a regular basis from 1996 through 2003. In October 2010, the Strausses discovered extensive water damage, mold, and other microbial contaminants below the windows in their house. They alleged Milwaukee Glass negligently caulked the windows and caused the property damage. Milwaukee Glass's insurer, Acuity, a Mutual Insurance Company, intervened and successfully moved to bifurcate and stay the proceedings pending a coverage determination.

¶3 Acuity then moved for a judgment declaring it had no duty to defend or indemnify Milwaukee Glass because the policy's Habitational Exterior Finish Systems exclusion precluded coverage. The circuit court granted Acuity's motion, and Milwaukee Glass now appeals.

DISCUSSION

¶4 The parties dispute the application of an insurance policy to undisputed facts. This presents a question of law subject to de novo review. *See* ***Folkmann v. Quamme***, 2003 WI 116, ¶12, 264 Wis. 2d 617, 665 N.W.2d 857.

An insurance policy is construed to give effect to the parties' intent, as expressed by the policy's language. ***Id.*** If there is no ambiguity in the policy language, it is enforced as written, without resort to rules of construction or applicable principles of case law. ***Id.***, ¶13.

¶5 As relevant, the exclusion at issue here provides:[1]

> This insurance does not apply to … *property damage* … arising out of:
>
> ….
>
> d. Any work or operations performed on or to an *exterior finish system* or any component thereof or on or to a building or structure to which an *exterior finish system* attaches that results, directly or indirectly, in the intrusion of water or moisture, including any resulting fungus, mold, mildew, virus or bacteria …, into or on any part of the building or structure on which you performed such operations.

There is no dispute that there is an initial grant of coverage under the policy, or that the Strausses' home has an "exterior finish system" as defined by the policy.

¶6 Milwaukee Glass argues, however, that the exception does not bar coverage because it applies only to property damage "arising out of the exterior finishing system." (Emphasis omitted.) It then asserts that the caulking of windows was unrelated to the exterior finishing system and that, consequently, the alleged property damage did not "arise out of" the exterior finishing system.

[1] Acuity argues that paragraph (b) of the Habitational Exterior Finish Systems exclusion, concerning "the application or use of … caulking or sealant," also bars coverage. Because we affirm on other grounds, we need not reach this issue. *See* ***State v. Castillo***, 213 Wis. 2d 488, 492, 570 N.W.2d 44 (1997).

¶7 We need not concern ourselves with Milwaukee Glass's rather dubious assertion that the caulk it placed between the windows and the exterior finishing system is "totally unrelated to the exterior finish system." Rather, we reject Milwaukee Glass's argument because it ignores the policy language in the first instance.

¶8 Milwaukee Glass's inaccurate and misleading half-quotation[2] of the policy language, together with the concomitant argument, fails to account for the true policy language. Boiled down to the argument at hand, the exclusion provides that coverage "does not apply to … *property damage* … arising out of … [a]ny work or operations performed … on or to a building or structure to which an *exterior finish system* attaches …." Simply put, there is no disputing that the alleged property damage arose from Milwaukee Glass's work on a building that had an exterior finish system. Though broad, the exclusion is clear and unambiguous; it must be applied as written.

¶9 Milwaukee Glass next argues there is contextual ambiguity in the policy because the circuit court held that the alternative exclusion regarding the application of caulk, set forth in paragraph (b), did not apply. Milwaukee Glass further asserts, "Subparagraph (d) may not serve to enlarge the exclusion …." While we need not decide the matter, it appears Acuity has the stronger argument in contending that paragraph (b) would *also* apply here. Regardless, the failure of one exclusion to apply does not somehow expand a policy's scope of coverage or

[2] Milwaukee Glass purports to quote the policy language, but then alters that language and omits the second set of quotation marks. The half-quotation is clearly intended to convey that it represents the policy language, as it is followed by the explanatory parenthetical "(Italics in the original, emphasis added.)." We admonish counsel for Milwaukee Glass that this practice falls below standards of the legal profession.

negate the application of a different exclusion. We therefore reject Milwaukee Glass's contextual ambiguity argument.

¶10 Finally, Milwaukee Glass argues that our interpretation of the paragraph (d) exclusion could lead to absurd results in other fact situations. This two-sentence argument, which lacks citation to authority, is insufficiently developed. *See* ***State v. Flynn***, 190 Wis. 2d 31, 39 n.2, 527 N.W.2d 343 (Ct. App. 1994) (We will not decide issues that are not, or inadequately, briefed.). In any event, "An insurance policy is not interpreted in a vacuum or based on hypotheticals. It is tested against the factual allegations at issue." ***Estate of Sustache v. American Family Mut. Ins. Co.***, 2008 WI 87, ¶19, 311 Wis. 2d 548, 751 N.W.2d 845.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2011-12).