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IN THE
COURT OF APPEALS OF INDIANA

United Farm Family Mutual
Insurance Company,
Appellant-Plaintiff

v.

Hudson Insurance Company,
Appellee-Defendant.

March 14, 2023

Court of Appeals Case No.
22A-PL-544

Appeal from the Marion Superior
Court

The Honorable Marc Rothenberg,
Judge

Trial Court Cause No.
49D07-2011-PL-39417

Opinion by Judge Pyle

Judges Robb and Weissmann concur.

Pyle, Judge.

Statement of the Case

- [1] Automobile accidents are a daily occurrence. When insurance companies cannot agree which of their insureds is at fault, they sometimes submit their dispute to arbitration. In this case, Hudson Insurance Company (“Hudson”) and United Farm Family Mutual Insurance Company (“United Farm Family”) could not come to an agreement over liability relating to an automobile accident and submitted their case to Arbitration Forums, Inc. (“Forums”), a private arbitration company. Forums initially found that Hudson was not entitled to an award relating to the accident. Forums indicated that if United Farm Family wants to seek any recovery it must do so under a separate arbitration case. Seeking to recover sums it had already paid to its insured for the same accident, United Farm Family submitted a separate claim to Forums and eventually received an award in its favor. However, Hudson failed to pay. Seeking to enforce the arbitration award, United Farm Family filed a complaint in Marion Superior Court. Hudson then filed a motion for summary judgment arguing that United Farm Family should have sought recovery under the initial arbitration case. United Farm Family filed a cross-motion for summary judgment. The trial court granted Hudson’s motion and denied United Farm Family’s cross-motion for summary judgment. United Farm Family appealed. On review, we find that the trial court erroneously granted summary judgment to Hudson. Instead, United Farm Family is entitled to summary judgment.
- [2] We reverse and remand.

Issue

Whether the trial court erroneously granted summary judgment to Hudson.

Facts

- [3] Hudson and United Farm Family are a part of an intercompany arbitration process known as the Automobile Subrogation Arbitration Agreement (“the Agreement”). Under the Agreement, disputes involving automobile property damage claims are resolved by Forums. The arbitration process is governed by procedural rules. Under Forum’s rules, companies can file claims under six different forums: “Automobile, Medical Payment, Property, Special, PIP, and Uninsured Motorist Forums.” (App. Vol 2, p. 98). These categories relate to the type of insurance coverage involved. A party with affirmative defenses or counterclaims must raise them in the initial filing. However, filings that involve a claim and companion claims across different coverages are treated as separate claims. Each party to the arbitration process agrees to be bound by the arbitrator’s ruling. The rules provide an opportunity for an appeal, but, once that process is complete, a party that is ordered to pay an award agrees to do so within thirty (30) days. A party awarded damages under the Agreement may pursue an unpaid award, including attorney fees and costs, through the courts.
- [4] On November 18, 2018, an automobile accident involving vehicles insured by Hudson and United Farm Family occurred in Griffith, Indiana. Unable to reach an agreement regarding liability, Hudson filed a case with Forums in the property insurance coverage forum; it was assigned case number P033-00081-

19-033 (“P033”). United Farm Family did not file a counterclaim under this case number, but both parties submitted evidence for consideration. On May 12, 2020, Forums issued its decision. It found that Hudson had not proven liability and was not entitled to an award for property damage. In addition, the decision noted that United Farm Family “would have to submit its own filing as an applicant in the proper forum, seeking an award for its damages.” (App. Vol. 2, p. 41).

[5] Prior to the arbitrator’s decision in P033, United Farm Family filed a case seeking recovery of proceeds paid to its insured under the automobile category of coverages; the file was assigned case number A033-00003-20-00 (“A033”). After hearing evidence, Forums issued its decision on March 12, 2020. Forums found that Hudson was liable for the accident and issued an award in favor of United Farm Family in the amount of \$26,108.71. Hudson did not appeal this decision. United Farm Family subsequently made several attempts to collect the amount awarded, but Hudson failed to pay.

[6] On November 6, 2020, United Farm Family filed a complaint alleging Hudson had breached the Agreement by failing to pay the damage award determined by Forums. On January 11, 2021, Hudson filed its answer denying the United Farm Family’s allegations. On July 17, 2021, Hudson filed a motion for summary judgment. In its motion, Hudson argued that it was entitled to judgment as a matter of law because the Agreement required claims arising out of the same accident or loss as the original claim to be heard with the original arbitration case. Specifically, Hudson asserted that since United Farm Family

did not seek recovery of its proceeds as a counterclaim in case P033, its subsequent recovery under case A033 was barred. On August 26, 2021, United Farm Family filed its cross-motion for summary judgment. In its motion, United Farm Family argued that it was entitled to judgment because Hudson's failure to pay the award was a clear breach of the Agreement. As a part of its designated evidence, United Farm Family submitted an affidavit from Tim McKernan ("McKernan"), Operations Manager and Forum Rules Manager for Arbitration Forums. Attached to the affidavit was a copy of Forum's rules. McKernan explained that there were "six different forums that companies will electronically file in, depending on the damages asserted and lines of coverage the damages are paid under." (App. Vol. 2, p. 97). He further explained (1) that insurance carriers that seek recovery under the automobile coverage of a policy must file for recovery in the "Automobile Forum[;]" and (2) "[c]ompanion filings, i.e. filings arising out of the same accident/incident, that are paid across different lines of coverage are considered separate claims and must be filed in the appropriate forum." (App. Vol. 2, p. 98). In response to Hudson's assertions, United Farm Family argued that it did not seek recovery under case P033 because it involved a different coverage forum. Further, United Farm Family argued that Hudson had waived this issue because it did not raise it during arbitration under case P033. In response, Hudson filed a motion seeking to strike McKernan's affidavit, but the trial court denied it.

[7] On January 3, 2021, the trial court issued its order granting summary judgment to Hudson and denying United Farm Family's cross-motion for summary

judgment. In its order, the trial court reasoned that the Agreement was unambiguous and required United Farm Family to submit its claim for recovery in case P033, and, because it failed to do so, it was barred from seeking recovery under case A033.

[8] United Farm Family now appeals.

Decision

[9] United Farm Family argues that the trial court erroneously granted summary judgment in favor of Hudson. We agree.

[10] We review summary judgment cases de novo. *Progressive Southeastern Insurance Company v. Brown*, 182 N.E.3d 197, 200 (Ind. 2022). “[S]ummary judgment is appropriate only when the designated evidence shows no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” *Id.* at 200 (quoting *Rogers v. Martin*, 63 N.E.3d 316, 320 (Ind. 2016)). Where, as here, the parties are sophisticated business entities, free to enter into contracts which clearly and unambiguously express the intentions of the parties, summary judgment is a particularly appropriate tool to resolve their dispute. *Haegert v. University of Evansville*, 977 N.E.2d 924, 937 (Ind. 2012).

[11] Here, we find that the trial court erred in granting summary judgment in favor of Hudson; it should have granted summary judgment in favor of United Farm Family. First, the facts, as outlined above, are undisputed. Next, neither Hudson nor United Farm Family contend that the Agreement is ambiguous. As a result, in order to give effect to the intentions of the parties under the

Agreement, we “apply the plain and ordinary meaning of that language and enforce the contract according to those terms.” *Haegert*, 977 N.E.2d at 937.

[12] The Agreement clearly states that Forum “considers a claim and companion claim(s) for *different lines of coverage* as separate claims.” (App. Vol. 2, p. 104) (emphasis added). This language is contained in “Section One” of the Agreement outlining “Jurisdiction.” (App. Vol. 2, p. 103). A “counterclaim” is defined as a “*claim*, resulting from the same accident or loss as the original claim, presented by the original Respondent against the original Applicant in an arbitration proceeding.” (App. Vol. 2, p. 112) (emphasis added). It is apparent from the designated evidence that Hudson was the original Applicant when it filed its claim under case number P033. However, its claim was seeking recovery under a property damage line of coverage and was filed in the property forum and was given a case file designation (“P”) indicating the appropriate forum. Following the terms of the Agreement, United Farm Family could not file a counterclaim in case P033 because it was seeking recovery under the automobile line of coverage. This fact is corroborated by the arbitrator’s decision in case P033 directing United Farm Family to file a separate case in the appropriate forum, which it did in case A033. As a result, Hudson’s argument is not supported by the plain language of the Agreement, and it was bound to pay the damage award under case A033. Because it failed to do, United Farm Family was entitled to seek enforcement through the courts, and its cross-motion for summary judgment should have been granted. Thus, we reverse and remand for further proceedings to assess the amount of “statutory

interest and all legal fees and costs incurred in pursuing collection until the award is paid.” (App. Vol. 2, p. 109).

[13] Reversed and remanded.

Robb, J., and Weissmann, J., concur.