

County Civil Court: CONTRACTS – Summary Judgment—Insurance’s policy provision excluding coverage for theft from an unprotected car lot was enforceable. The policy exclusion was clear and unambiguous, did not completely eviscerate coverage, and did not contradict other provisions of the policy. Judgment affirmed. Shutt Enterprises, Inc. v. Century Surety Company, No. 13000043AP-88B (Fla. 6th Cir. App. Ct. May 5, 2014).

**IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
APPELLATE DIVISION**

SHUTT ENTERPRISES INC.,
Appellant,

v.

Ref. No.: 13-0043-AP-88B
UCN: 522013AP000043XXXXCI

CENTURY SURETY COMPANY,
Appellee.

_____ /

ORDER AND OPINION

Shutt Enterprises, Inc. appeals the trial court’s order granting final summary judgment in favor of Century Surety Company in an insurance coverage dispute. The court below found the insurance policy at issue to be unambiguous and preclude Shutt’s claim for loss due to theft because the lot from which the vehicle was stolen was not a “protected lot.” Shutt does not dispute that the lot protection exclusion in the insurance policy, as written, would preclude coverage of the loss. Rather, Shutt contends that enforcement of that exclusion is improper because, at the time it issued the policy, Century was aware that Shutt’s lot was an unprotected lot, and therefore, any theft from Shutt’s lot would be completely excluded from coverage.

Our review of an order granting summary judgment is de novo. *American Strategic Ins. Co. v. Lucas-Solomon*, 927 So. 2d 184 (Fla. 2nd DCA 2006).

Facts

In April of 2011, Shutt applied for an insurance policy from Century, seeking coverage in connection with its used auto sales business. On April 15, 2011, based on the information provided in Shutt’s application, Century provided Shutt with a quote of \$6,682.00 for insurance coverage under a “garage policy.” Included with this quote were

several policy forms detailing exactly what would, and what would not, be covered under the policy. Form 1901, titled “Additional Conditions and Exclusions,” was included with the quote. This form explicitly states that Century would not pay for loss due to theft of an auto or any portion of an auto if:

- a. The lot where the “autos” are located is not protected (all entrances, exits, or openings, and the entire perimeter surrounded by fences with gates or heavy chains and locks); or
- b. The building where the “autos” are located is not protected with locked and secured openings.

On May 10, 2011, Century inspected Shutt’s property to determine if, and on what terms, it was willing to insure Shutt. It was apparent at the inspection that Shutt’s lot was an unprotected lot. On May 11, 2011, after concluding its inspection of the property, Century and Shutt entered into the insurance policy at issue in this appeal. Subsequently, a vehicle was stolen from Shutt’s used car lot. When Shutt filed a claim for coverage under its policy, Century denied coverage on the basis that, because the vehicle was stolen from an unprotected lot, the theft was excluded from coverage.

Analysis

Shutt contends that enforcement of the protected lot exclusion is improper because, at the time it issued the policy, Century was aware that Shutt’s lot was an unprotected lot and that the exclusion would eliminate all coverage for theft from Shutt’s lot. Shutt also argues that Century’s reliance on the policy exclusion should be barred by Century’s inequitable conduct of inserting the protected lot exclusion only one day prior to issuing the policy, and not bringing to Shutt’s attention that the policy provided substantially less coverage than was requested in the insurance application.

Shutt relies on *Poland v. Phillips*, 371 So. 2d 1053 (Fla. 3d DCA 1979) for the proposition that an insurer may not deny coverage based on a policy condition which it knew the insured could not comply with at the time the policy was issued. In *Poland*, an insurance policy containing exclusions which operated on the premise that the building would not be insured if it were vacant was issued for an abandoned building with full knowledge that the building was vacant. Because the insurance policy contained exclusions voiding the entire policy if the building was vacant, and with full knowledge that the building was abandoned the insurer issued the policy anyway, the court found that the insurer could not then deny coverage under the vandalism exclusion. *Id.*

There is a fundamental difference, however, between an enforceable exclusion that pertains to a particular kind of loss but leaves other coverage intact, and an exclusion that completely contradicts a grant of coverage. *Colony Ins. Co. v. Total Contracting & Roofing, Inc.*, 2011 WL 4962351 (S.D. Fla. 2011). In order for coverage to be considered illusory, an exclusion must entirely contradict the insuring provisions. *Id.* at 5. Unlike what appears to have been the case in *Poland*, the policy exclusion in the instant case, like that in *Colony Ins. Co.*, does not entirely contradict the insuring provisions. All exclusions, by definition, exclude *something* from coverage, and to that extent will always contradict some aspect of a general liability insurance policy. The protected lot policy exclusion only excludes coverage of theft from an unprotected lot. The policy provides coverage for a myriad of other risks, including liability, personal injury protection, medical payments, uninsured motorist, and property damage. Refusing to insure all risk does not render an insurance policy illusory.

Even though the policy exclusion for an unprotected lot is clear and unambiguous, Shutt contends that by adding this exclusion to the policy just one day before issuance, Century engaged in a “sleight-of-hand withdrawal of coverage,” and should be barred from enforcing the exclusion because of its inequitable conduct. This argument lacks merit. On April 15, 2011, Century gave Shutt a preliminary quote of \$6,682.00 for insurance coverage of a standard protected lot, expressly excluding coverage of theft of vehicles from an unprotected lot in attached Form 1901. After inspecting the property on May 10th, Century offered Shutt the insurance policy at issue. That policy contained the same Form 1901 exclusion of theft from an unprotected lot, and was offered for the same premium of \$6,682.00 as originally quoted. Contrary to Shutt’s contention, there was no sleight-of-hand withdrawal of coverage.

Conclusion

The unprotected lot policy exclusion was clear and unambiguous. The exclusion did not completely eviscerate coverage, nor did it contradict the other provisions of the policy. The initial policy quote provided the same coverage and for the same premium as the policy issued to Shutt. Accordingly, we affirm.

DONE AND ORDERED in Chambers in St. Petersburg, Pinellas County, Florida,
on this _____ day of _____ 2014.

Original order entered on May 5, 2014, by Circuit Judges Jack Day, Peter Ramsberger, and Amy M. Williams.

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