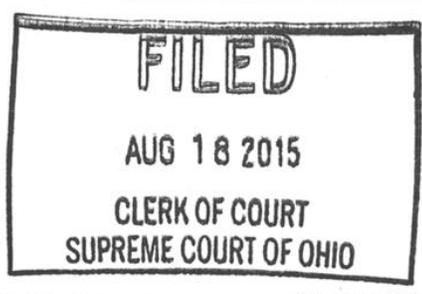


ORIGINAL

IN THE SUPREME COURT OF OHIO

WELLS FARGO BANK, N.A.)	
)	Case No. 2015-1252
Plaintiff-Respondent,)	
)	On Order of Certification of Question
vs.)	of State Law from the United States
)	District Court for the Northern District
ALLSTATE INSURANCE COMPANY,)	of Ohio, Eastern Division, Case No.
)	05-cv-00239
Defendant-Petitioner.)	

PRELIMINARY MEMORANDUM OF RESPONDENT WELLS FARGO BANK, N.A.



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INTRODUCTION

The dispute before the United States District Court for the Northern District of Ohio (“U.S. District Court”) is strictly a matter of contract interpretation under well-established Ohio law, and the public policy concern over whether “arson” is more appropriately categorized as “fire” or “vandalism and malicious mischief” is nothing more than a red herring. Though courts in other states have addressed the policy issue, such issue is neither at controversy among Ohio courts, nor determinative of the case before the U.S. District Court. Because well-established maxims of Ohio contract interpretation are more than sufficient to guide the U.S. District Court’s resolution of the parties’ dispute, this Court need not answer the presented certified question of law.

STATEMENT OF THE CASE

The question of law certified by the U.S. District Court does not resolve the sole dispositive issue between Wells Fargo Bank, N.A. (“Wells Fargo”) and Allstate Insurance Company (“Allstate”)—namely, whether the parties agreed that Allstate would provide coverage for arson-related damage at the time they entered the relevant insurance policy. The answer to that question is undeniably “yes.” The only mention of “arson” in the Policy (as defined below) is in connection with its explicit coverage for “fire” damage, and nowhere in the Policy’s exclusion for “vandalism or malicious mischief” does it refer to or mention “fire” or fire-related incidents. Indeed, because “fire” and other intentional wrongful acts are listed separately from “vandalism or malicious mischief,” the inescapable conclusion is that the parties intended to distinguish those acts from “vandalism or malicious mischief.” Finally, because the Policy defines neither “fire” nor “vandalism and malicious mischief,” the Policy is, at most, ambiguous with respect to its coverage of arson-related damage. As a matter of law, such ambiguities in insurance contracts must be construed in favor of coverage for the insured.

FACTUAL BACKGROUND

A. Events Giving Rise To The Claim

As noted by the U.S. District Court, Wells Fargo is the insured mortgagee under an insurance policy Allstate executed with Antoniano Delsignore for a single-family home located in Poland, Ohio (the “Property”). *See* Order of Certification to the Supreme Court of Ohio (“Certification Order”) filed July 30, 2015 at p. 2. Mr. Delsignore defaulted on his mortgage payments in 2013, and by the end of that year, the Property was vacant. *Id.* On February 6, 2014, a fire damaged the Property, and a few weeks later, an independent third-party determined that an unknown arsonist caused the fire. *Id.* Wells Fargo timely filed an insurance claim with Allstate for the fire damage, which Allstate denied on the grounds that arson fell within the Policy’s exclusion for “Vandalism or Malicious Mischief,” despite the Policy’s express coverage of damage caused by “Fire.” *Id.* at 3.

B. The Insurance Policy

The Policy provides coverage in three parts: (a) dwelling protection, (b) other structures protection, and (c) personal property protection. *See* Allstate Property and Casualty Insurance Company Homeowners Policy No. 9080584930 09/20, filed in Case No. 4:15-cv-00239 before the U.S. District Court for the Northern District of Ohio as Doc #: 1-1 (the “Policy”), at PageID #: 29-30. Wells Fargo seeks to enforce Allstate’s coverage for dwelling protection.

1. Losses Under Coverage A: Dwelling Protection

The Policy provides coverage for “sudden and accidental direct physical loss to property described in **Coverage A—Dwelling Protection** . . . except as limited or excluded in this policy.” Policy at PageID#: 30 (emphasis in original). Without defining the terms “vandalism” or “malicious mischief,” the Policy excludes the following from Coverage A:

6. Vandalism or Malicious Mischief if **your dwelling** is vacant or unoccupied for more than 30 consecutive days immediately prior to the vandalism or malicious mischief. A **dwelling** under construction is not considered vacant or unoccupied.

Policy at PageID#: 37.

2. Losses Under Coverage C: Personal Property

The terms “vandalism” and “malicious mischief” are also used with respect to the Policy’s coverage for personal property. With respect to losses to personal property, the Policy states, in relevant part:

Losses We Cover Under Coverage C:

We will cover sudden and accidental direct physical loss to the property described in **Coverage C—Personal Property Protection**, except as limited or excluded in this policy, caused by:

1. Fire or Lightning.

...

4. Riot or Civil Commotion, including pillage and looting during, and at the site of, the riot or civil commotion.

...

8. Vandalism and Malicious Mischief.

We do not cover vandalism or malicious mischief if **your dwelling** has been vacant or unoccupied for more than 30 consecutive days immediately prior to the vandalism or malicious mischief. A **dwelling** under construction is not considered vacant or unoccupied.

...

15. Theft, or attempted theft, including disappearance of property from a known place when it is likely that a theft has occurred. Any theft must be promptly reported to the police.

...

16. Breakage of glass, meaning damage to covered personal property caused by breakage of glass constituting a part of any **building structure** on the **residence premises**. This does not include damage to the glass.

Policy at PageID#: 31-33.

3. Additional Protection Under The Policy

The Policy further provides an “Arson Reward” for information leading to the conviction of an arsonist. Specifically, the Policy states:

10. Arson Reward

We will pay up to \$5,000 for information leading to an arson conviction in connection with a fire loss to property covered under **Section I** of this policy. The \$5,000 limit applies regardless of the number of persons providing information.

Policy at PageID#: 35.

ARGUMENT IN OPPOSITION TO ACCEPTANCE OF CERTIFIED QUESTION

THIS COURT NEED NOT ANSWER THE QUESTION OF OHIO LAW CERTIFIED BY THE U.S. DISTRICT COURT IN THIS CASE BECAUSE IT IS NOT DETERMINATIVE OF WELLS FARGO’S CLAIM.

Pursuant to Supreme Court Rule 9.01, the Court need not answer the certified question of law because, as discussed below, well-settled Ohio precedent on contract interpretation directs the U.S. District Court how to resolve the parties’ dispute over the meaning of the relevant Policy provision.

A. The Policy Categorizes “Arson” As A “Fire.”

It is well-settled law in Ohio that when a contract does not expressly define a term, courts can ascertain the term’s meaning from its context in the entire agreement. *Nationwide Life Ins. Co. v. City of Canton*, 10th Dist. No. 09AP-939, 2010-Ohio-4088 ¶ 20 (“Contractual language is ‘ambiguous’ only where its meaning cannot be determined from the four corners of the

agreement[.]”); *Turek v. Vaughn*, 154 Ohio App. 3d 612, 624, 2003-Ohio-4473 ¶ 26 (“[W]e commit ourselves and are bound by overriding principles of contractual interpretation to read and consider the entirety of the definition in the context of the overall agreement.”); *Brush Wellman, Inc. v. Certain Underwriters at Lloyds*, No. 03-CVH-089, 2006 Ohio Misc. LEXIS 387, at *61 (Ottawa Cty. C.P. Aug. 30, 2006) (“The mutual intention of the parties is to be inferred, if possible, solely from the written provisions of the contract.”). The Policy in this case only uses the term “arson” once. In the sole instance that “arson” appears in the Policy, it is directly linked to “fire”:

We will pay up to \$5000 for information leading to an *arson* conviction in connection with a *fire* loss to the property covered under **Section I** of this policy.

Policy at PageID#: 35 (boldface in original; italics added). Notably, the Policy does not offer an award for an arson conviction in connection with *vandalism* or *malicious mischief*. Therefore, when the entire Policy is considered as a whole, it is clear that the Policy’s drafters intended “arson” to be considered a “fire.”

B. “Vandalism and Malicious Mischief” Do Not Include Acts Provided For Elsewhere In The Policy.

Ohio law requires courts to view undefined terms in a contract in terms of the entire agreement and give those terms the same meaning throughout the contract. *Hall v. Kemper Ins. Cos.*, 4th Dist. No. 02CA17, 2003-Ohio-5457, ¶ 66 (noting that “you” cannot only mean the “named insured” in one context and mean both the “insured” and “named insured” in another context; “[T]he preferred interpretation of the term ‘you’ . . . is to apply ‘you’ consistently throughout the policy.”); *De Uzhca v. Derham*, 2d Dist. No. 19106, 2002-Ohio-1814 ¶ 28 (“We believe that a consistent interpretation of the word is preferable to ascribing it different meanings depending on where in the policy it appears.”). Thus, the district court can glean the meaning of

“vandalism” and “malicious mischief” under Coverage A of the Policy by reference to their meaning under Coverage C of the Policy.

Indeed, the use of “vandalism” and “malicious mischief” under Coverage C of the Policy is instructive. Under Coverage C, the Policy lists “fire,” “riot or civil commotion,” “theft” and “breakage of glass” as separate perils from “vandalism and malicious mischief.” Therefore, Allstate, as the Policy’s drafter, must not have intended these terms to be synonymous. Rather, “vandalism and malicious mischief” must be distinguished from—and refer to something other than—fire, riot or civil commotion, theft and breakage of glass. *Andover Vill. Ret. Cmty. v. Cole*, 11th Dist. No. 2003-A-00057, 2014-Ohio-4983, ¶ 15 (“Generally in interpreting a statute or a contract, we presume that the use of different words indicates an intention that the words possess different meanings.”). Otherwise, the “vandalism and malicious mischief” provision would be completely superfluous of the other provisions. As this Court has noted:

‘In the construction of a contract courts should give effect, if possible, to *every* provision therein contained, and if one construction of a doubtful condition written in a contract would make that condition meaningless, and it is possible to give it another construction that would give it meaning and purpose, then the latter construction *must* obtain.’

State v. Bethel, 110 Ohio St. 3d 416, 423 (2006) (emphasis in original) (quoting *Farmers’ Nat’l Bank v. Delaware Ins. Co.*, 83 Ohio St. 309 (1911)).

“Vandalism and malicious mischief” might include defacing property, graffiti, spray-painting, ransacking, or pranking, none of which are listed as separate perils under the Policy. Since “fire” is separated from “vandalism and malicious mischief” and does not exclude arson, Ohio principles of contract interpretation mandate that “vandalism and malicious mischief” must not include “arson.” *Kenney v. Chesapeake Appalachia, LLC*, 7th Dist. No. 14 CO 24, 2015-Ohio-1278, ¶¶ 29-40 (holding that “extending a lease” was not the same as “renewing a lease” because such an interpretation would render one of the provisions superfluous and redundant).

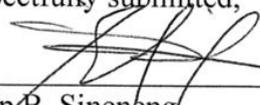
C. Even If There Was An Ambiguity In The Policy, Ambiguities In Insurance Contracts Are To Be Resolved In Favor Of Coverage.

Finally, even though the Policy is unambiguous that “arson” is a “fire,” and that “vandalism and malicious mischief” do not include “fire,” well-established Ohio precedent directs the U.S. District Court on how to interpret the Policy if it was somehow ambiguous. As a matter of law, any ambiguities in an insurance contract should be resolved in favor of the insured. *Rinehart v. Dillard*, 10th Dist. No. 06AP-977, 2007-Ohio-4310, ¶ 56 (“[W]e must liberally construe these ambiguous provisions in favor of the insureds, and must strictly construe these provisions against the insurer, Allstate Insurance.”); *Knapp v. Nationwide Agribusiness Ins. Co.*, 2d Dist. No. 20613, 2005-Ohio-3060, ¶ 18 (“[A]n ambiguity in an insurance contract is ordinarily interpreted against the insurer and in favor of the insured.”). In other words, if the U.S. District Court finds that the Policy is ambiguous as to whether “arson” is a “fire” or an act of “vandalism or malicious mischief,” established maxims of contract interpretation direct the court to interpret the contract so as to provide coverage. Therefore, “arson” is, and should be, classified as a covered “fire” under the Policy.

CONCLUSION

For the foregoing reasons, Wells Fargo Bank, N.A. respectfully requests that this Supreme Court of Ohio decline to answer the certified question of state law from the United States District Court for the Northern District of Ohio.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on August 18, 2015, I caused a true and copy of the foregoing *Preliminary Memorandum of Respondent Wells Fargo Bank, N.A.* to be filed with the Clerk of Court and mailed via First-Class mail, postage pre-paid, to the following counsel of record:

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