DOCKET NO.: X07-HHD-CV20-6135938-S:		SUPERIOR COURT
DEER, LEE, ET AL.	:	COMPLEX LITIGATION DOCKET
V.	:	AT HARTFORD
NATIONAL GENERAL INSURANCE COMPANY, ET AL.	:	MAY 03, 2022

MEMORANDUM OF DECISION ON CROSS MOTIONS FOR SUMMARY JUDGMENT

Before the court are the cross-motions for summary judgment of the parties, Lee and Keleen Deer (insureds) and National General Insurance Company (National General) and Century-National Insurance Company (Century-National) (collectively the insurers). This case is predicated on the claimed improper cancellation of a homeowner's policy of insurance. For the following reasons summary judgment is granted in favor of the insurers and the motion for summary judgment for the insureds is denied.

The following undisputed facts relevant to this decision are as follows. Century-National and Keleen Deer entered into a contract of homeowners insurance, covering the property located at 52 Gurley Road, in Waterford. (the "Policy").[1] The Policy, number 2007911861, which was effective from June 27, 2019 until June 27, 2020 at 12:01a.m., provided, inter alia, dwelling coverage with limits of $361,442, subject to all the terms and conditions of the Policy.

On April 19, 2020, Century-National issued a Notice of Non-Renewal to Keleen Deer, by certified mail, as a consequence of hazards they had identified shortly after the issuance of the policy which it required to be repaired and which the plaintiffs had not done so. The plaintiffs dispute ever having received notice of the required repairs as a condition of the renewal of the

[1] Keleen Deer is the named insured under the Policy and Lee Deer, as her spouse, is an additional insured.

Emailed to Atty R. Rearden, Atty J. Barnes, Atty C. Joyce, Atty L. Siegel

policy. Notice of Non-Renewal arrived in Waterford at 8:39 am, and the first delivery took place later that day at 12:42 pm. The letter carrier entered the following note: "Notice Left (No Authorized Recipient Available)." Two subsequent reminders were left at the Deer home; however, the Postal Service declared the Notice of Non-renewal "unclaimed" on May 6, 2020. The Postal Service returned the letter to Century-National. The Deers admitted at deposition that they were home and not on vacation from April 23, 2020 through May 6, 2020. The undisputed evidence demonstrates that the Notice of Non-Renewal was issued to the insured, at the address listed in the Policy, by certified mail, more than sixty days prior to expiration of the Policy, identifying the basis for the non-renewal. On June 27, 2020, the Policy expired. On July 15, 2020, at approximately 3:00 am, the Plaintiffs' home was destroyed by an accidental fire.

The insureds dispute that they ever received notice and assert that the Policy may only lapse by virtue of the insurers non-renewal if they *received* the notice or had actual notice of the non-renewal. The insurers assert that National General was a stranger to the Policy and that the notice of non-renewal was valid to effect the non-renewal of the policy because actual notice is not required under our law and it properly issued notice of the non-renewal.

"[S]ummary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law... In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party." *Stuart v. Freiberg*, 316 Conn. 809, 820-21, 116 A.3d 1195 (2015). "The party seeking summary judgment has the burden of showing the absence of any genuine issue [of] material facts which, under applicable principles of substantive law, entitle him to a judgment as a matter of law... and the party opposing such a motion must provide an evidentiary foundation to

demonstrate the existence of a genuine issue of material fact ... A material fact ... [is] a fact which will make a difference in the result of the case." Id., 821.

Statutory interpretation begins "with the text of the statutes in light of the relevant statutory framework. See General Statues § 1-2z. If the text and pertinent statutory context lead to a clear and unambiguous meaning, then our interpretive task is finished. See General Statues §1-2z ("[i]f, after examining such text and considering [its] relationship [to the broader statutory scheme of which it is a part] the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered"). "The test to determine ambiguity is whether the statute, when read in context, is susceptible to more than one reasonable interpretation." (Citation omitted.)" *Doe #2 v. Rackliffe*, 337 Conn. 627, 633, 255 A.3d 842 (2020).

As an initial matter, a review of the policy at issue reveals that the issuing company was Century-National and not National General. Therefore, summary judgment enters in favor of National General.

The relevant Policy language regarding non-renewal provides that: "We (Century-National) may elect not to renew this policy and may do so by letting you know in writing at least 60 days before the expiration date of this policy. The written notice, stating the reasons for non-renewal, may be delivered to you, or mailed to you at your mailing address, shown in the Declarations, by registered mail, certified mail or United States Postal Service certificate of mailing."

The insureds argue that this policy provision mandates actual notice because of the language that non-renewal may be done "by letting you know in writing at least 60 days before the expiration date of this policy" of the non-renewal. This phrase, in their view, clearly and

unambiguously established a standard of actual notice. The argument ignores the language that Century-National *may* let them know of the non-renewal and the following language that provides the means by which notice may be provided, i.e., delivery to them, mail at their mailing address by registered, certified mail or United States Postal Service certificate of mailing. Delivery, the only certain method of ensuring actual notice, is one of several means by which the notice of non-renewal may be made.

"It is axiomatic that when interpreting a contract, we must look at the contract as a whole, consider all relevant portions together and, if possible, give operative effect to every provision in order to reach a reasonable overall result. The defendant's interpretation of the final sentence of paragraph three runs afoul of the mandate that the individual clauses of a contract cannot be construed by taking them out of context and given them an interpretation apart from the contract of which they are a part." *Creatura v. Creatura*, 122 Conn. App. 47, 55–56, 998 A.2d 798 (2010). The phrase "letting you know," read in context with the rest of the paragraph, may only reasonably be interpreted to mean that Century-National will advise the insured of a non-renewal by one of several means, one of which, delivery, will result in actual notice, and the others may not.

The insureds also argue that the attempt at non-renewal runs afoul of Connecticut General Statutes § 38a-323(a)(1) which provides, in relevant part: "no insurer shall refuse to renew any policy... unless such insurer or its agent sends, by registered or certified mail or by mail evidenced by certificate of mailing, or delivers to the named insured, at the address shown in the policy, at least sixty days' advance notice of its intention not to renew." Connecticut General Statutes§ 38a-323(c) provides a remedy when the insurer fails to comply with this statute. It provides "failure of the insurer or its agent *to provide the insured* with the required

notice of nonrenewal ... shall entitle the insured to (1) renewal of the policy for a term of not less than one year." (Emphasis added).

Giving the words and phrases of the non-renewal statute their plain and ordinary meaning leaves no room for ambiguity or dispute—it is the sending of, inter alia, the certified mail that satisfies the statute. No proof of receipt is required. The legislature afforded several options for a carrier to be compliant with the statute—sending by registered mail, sending by certified mail, a certificate of mailing, or, in the alternative, delivery to the named insured. The statute mandates no requirement that upon sending the appropriate notice, an insurer must thereafter confirm actual receipt, otherwise the mailing options would be redundant with the delivery option. Such a construct renders the word "delivers" superfluous and unreasonable.

Connecticut courts have repeatedly found that the sending notice of cancellation by certified mail (see Conn. Gen. Stat. § 38a-343(a)), satisfies an insurer's obligations to its insured. The Connecticut Supreme Court articulated that there is no actual receipt requirement when a provision allows notice by certified mail. *Westmoreland v. Gen. Acc. Fire & Life Assur. Corp.*, 144 Conn. 265, 270, 129 A.2d 623 (1957). The Supreme Court held that mailing, without proof of actual receipt, was sufficient to cancel coverage. "[T]he giving of notice by the method contracted for is sufficient whether it results in actual notice or not." Id. In a different context, the Court of Appeals found that actual receipt was immaterial when a contract permitted notice via certified mail. *Scoville v. Shop-Rite Supermarkets, Inc.*, 86 Conn. App. 426, 430, 863 A.2d 211 (2004). The appellate court observed that when the contract permits notice by certified mail, actual receipt is not contemplated. Moreover, "[A]ny rule that provides that the risk of delivery of certified mail should be placed solely on the sender would set a dangerous precedent. There are many variables associated with any type of mail delivery that are out of the control of either

party, such as misdelivery or late delivery. In addition, by placing the risk solely on the optionee, the optionor could intentionally avoid accepting delivery until after the terminal date had passed."[2] Id. at 433. The court finds this reasoning persuasive, and binding, that the notice required by §38a-323, was provided by Century-National.

For the foregoing reasons, the Motion for Summary Judgment by the insureds is denied in its entirety and the Motion for Summary Judgment by the insurers is granted.

THE COURT

435707

Cesar A. Noble
Judge, Superior Court

[2] The court declined to speculate, as this court does, "as to whether there was any avoidance of the letter in this case. [It] merely point[ed] out that a rule that places the risk on the sender may allow for uncertainty and manipulation of the contracting process." Id. 433 n. 8.