[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 19-12110
Non-Argument Calendar

D.C. Docket No. 0:18-cv-60471-RNS

AIX SPECIALTY INSURANCE COMPANY,

Plaintiff-Appellee,

versus

MEMBERS ONLY MANAGEMENT, LLC,
a for profit corporation, d.b.a. Trapeze,

Defendant-Third Party Plaintiff-Appellant.

Appeal from the United States District Court
for the Southern District of Florida

(December 11, 2019)

Before WILSON, MARTIN, and ROSENBAUM, Circuit Judges.

PER CURIAM:

This is an insurance-coverage case. The appellant Members Only Management, LLC runs a night club in South Florida. The appellee AIX Specialty Insurance Company is Members Only's commercial general liability insurer.

In 2017, a patron allegedly drank too much at Members Only's night club, causing her to lose control of her vehicle and crash on her way home. Two passengers were driving with the patron; both died from their injuries. A few months later, the estate of one of the passengers sued Members Only for violating Florida's Dram Shop Act, Fla. Stat. § 768.125. The estate claimed that although the club does not sell alcohol, it allows patrons to bring their own alcohol and provides staff to help serve the alcohol. It also alleged that Members Only knowingly furnished alcohol to a patron who was habitually addicted to alcohol, causing the passenger's death.

Members Only tendered defense of the estate's claim to AIX, who agreed to defend under a reservation of rights. AIX then filed this declaratory judgment action, seeking a declaration that coverage for the claim is barred under the policy's Absolute Liquor Liability Exclusion and that AIX thus has no duty to defend or indemnify.

The district court granted summary judgment for AIX. Members Only now appeals. Because the Absolute Liquor Liability Exclusion unambiguously bars coverage, we affirm.

I.

We review a grant of summary judgment de novo and apply the same standard as the district court. *Burton v. Tampa Hous. Auth.*, 271 F.3d 1274, 1276 (11th Cir. 2001). Summary judgment is appropriate only "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). We view all evidence and factual inferences in the light most favorable to the non-moving party. *Burton*, 271 F.3d at 1277.

In Florida, the interpretation of an insurance policy is a question of law. *Gas Kwick, Inc. v. United Pac. Ins. Co.*, 58 F.3d 1536, 1538–39 (11th Cir. 1995). The "natural and plain meaning of a policy's language" guides our analysis. *Key v. Allstate Ins. Co.*, 90 F.3d 1546, 1549 (11th Cir. 1996). If the policy's terms are clear and unambiguous, we must interpret the policy according to its plain meaning. *Id.* But if "the relevant policy language is susceptible to more than one reasonable interpretation, one providing coverage and the another limiting coverage, the insurance policy is considered ambiguous." *Auto-Owners Ins. Co. v. Anderson*, 756 So. 2d 29, 34 (Fla. 2000). In that case, we construe the policy

"liberally in favor of the insured and strictly against the drafter who prepared the policy." *Id.*

An insurer has a duty to defend if the underlying complaint "alleges facts which fairly and potentially bring the suit within policy coverage." *Lime Tree Vill. Cmty. Club Ass'n, Inc. v. State Farm Gen. Ins. Co.*, 980 F.2d 1402, 1405 (11th Cir. 1993). If the allegations in the complaint could not possibly come within coverage, though, there is no duty to defend or indemnify. *See Trailer Bridge, Inc. v. Ill. Nat'l Ins. Co.*, 657 F.3d 1135, 1146 (11th Cir. 2011).

II.

Members Only's policy contains an Absolute Liquor Liability Exclusion that generally excludes coverage for "bodily injury" related to alcohol:

> [There is no coverage for] bodily injury . . . for which [Members Only] may be held liable by reason of:
>
> (1) Causing or contributing to the intoxication of any person;
> (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
> (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.
>
> This exclusion applies to an insured or his indemnitee who:
>
> (4) Manufactures, sells or distributes alcoholic beverages; or
> (5) Serves or furnishes alcoholic beverages with or without a Charge;

> (6) Permits others to bring alcoholic beverages on your premises, for consumption on your premises.
>
> This exclusion applies even if the claims against any insured or his indemnitee allege negligence or other wrongdoing in:
>
> (7) The supervision, hiring, employment, training or monitoring of others by that insured; or
> (8) Providing or failing to provide transportation with respect to any person that may be under the influence of alcohol.

This language is clear: There is no coverage for, among other things, a claim seeking recovery for bodily injury under "[a]ny statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages." The sole count alleged against Members Only is a negligence claim brought under Florida's Dram Shop Act. As the Dram Shop Act is a statute relating to the "distribution or use of alcoholic beverages,"[1] the claim unambiguously falls outside coverage.

Similarly, the exclusion bars coverage for a bodily injury claim in which Members Only is claimed to have caused or contributed to the intoxication of any

[1] The act's language provides:

> A person who sells or furnishes alcoholic beverages to a person of lawful drinking age shall not thereby become liable for injury or damage caused by or resulting from the intoxication of such person, except that a person who willfully and unlawfully sells or furnishes alcoholic beverages to a person who is not of lawful drinking age or who knowingly serves a person habitually addicted to the use of any or all alcoholic beverages may become liable for injury or damage caused by or resulting from the intoxication of such minor or person.

Fla. Stat. § 786.125.

person or to have furnished alcoholic beverages to a person under the influence of alcohol. The crux of the underlying complaint is that Members Only knowingly served alcohol to a club patron who was already drunk and was addicted to alcohol. That claim falls within either of those exclusionary clauses.

Members Only does not meaningfully dispute this straightforward application of the exclusion.[2] Instead, it claims that this exclusion is so broad that it renders coverage illusory. The idea seems to be that, since Members Only is a club that permits patrons to bring in alcohol, any claim for bodily injury could theoretically bear connection to alcohol, and thus be barred under the Absolute Liquor Liability Exclusion.

That argument fails, though, because this exclusion does not eclipse coverage. To render coverage illusory, the exclusion must "completely contradict the insuring provisions." *Interline Brands, Inc. v. Chartis Specialty Ins. Co.*, 749 F.3d 962, 966 (11th Cir. 2014). If an exclusion does not "completely swallow" the insuring provision, the policy is not illusory, even if it is a significant exclusion. *Warwick Corp. v. Turetsky*, 227 So. 3d 621, 625 (Fla. 4th DCA 2017), *review denied*, 2018 WL 1272581 (Fla. Mar. 12, 2018).

[2] Members Only mentions in a paragraph in its opening brief that the underlying allegations could fall outside the "Absolute Pollution Exclusion." As that exclusion is not at issue in this appeal, we think Members Only was referring to the Absolute Liquor Liability Exclusion. In any event, Members Only does not explain what allegations in the complaint could take this case outside the exclusion, nor have we seen any.

The exclusion here would not swallow every claim for bodily injury. Imagine, for instance, that a sober patron tripped in a dimly lit corridor and sued for negligence. That claim has nothing to do with alcohol. Or say a light fixture falls from the ceiling and hits a sober patron. That claim bears no connection to alcohol either. No doubt, the Absolute Liquor Liability Exclusion is a significant exclusion given Members Only's business. But it does not swallow its coverage whole.

Ours is not a novel reading of this exclusion: Florida courts have repeatedly upheld liquor liability exclusions with identical or substantially similar language. *See Canopius Corp. Capital Two Ltd. v. BKH Corp. of Ft. Pierce*, 2013 WL 12095521, at *3 (S.D. Fla. Feb. 14, 2013) (collecting cases). To be sure, Members Only says that these courts considered exclusions that are narrower than the exclusion here. But the only material difference that Members Only points us to is that those exclusions applied only to entities in the business of "manufacturing, distributing, selling, serving, or furnishing alcoholic beverages," while this exclusion lacks such limiting language. That distinction is none at all, as the omission of this language expands only the entities that the exclusion applies to, not the circumstances in which it applies. As the exclusion's substance remains unchanged, we agree with the district court that the exclusion does not render

coverage illusory under Florida law and ultimately bars coverage for the claim here.

For these reasons, the district court's judgment is **AFFIRMED**.