

IN THE SUPREME COURT OF THE STATE OF NEVADA

No. 34748

J. MICHAEL CORDELL,

Appellant,

vs.

FARMERS INSURANCE EXCHANGE, AN
INTER-INSURANCE EXCHANGE; AND
FARMERS GROUP, INC., A NEVADA
CORPORATION,

Respondents.

FILED

JUL 13 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a district court order dismissing a complaint pursuant to NRCP 12(b)(5) in an action for breach of contract and bad faith in an insurance matter.¹

The district court dismissed appellant's complaint on the basis that appellant's loss of his car was not covered under the automobile insurance policy issued by respondent Farmers Insurance Exchange. We conclude that the district court did not err in dismissing appellant's complaint.

Appellant alleged in the amended complaint that he parted with title and possession of his Lamborghini automobile in exchange for a \$248,000 cashier's check, which appellant later discovered was counterfeit. The comprehensive coverage of the policy provides in relevant part:²

We will pay for **loss** to your **insured car** caused by any accidental means except **collision**, less any applicable deductibles.

Loss caused by missiles, falling objects, fire, **theft** or **larceny**, explosion, earthquake, windstorm, hail, water, flood, vandalism, riot or civil commotion, colliding with a bird or animal, or breakage of glass is not deemed **loss** caused by **collision**.

The policy defines "theft or larceny," in relevant part, as the unlawful taking and removal of **your insured car**, its parts or accessories. It does not include voluntary parting with title or possession by you or

¹Pursuant to NRAP 34(f)(1) we conclude that oral argument is not warranted in this appeal.

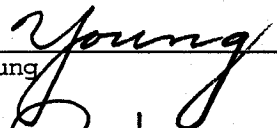
²The bold-face type indicates that the word or words are defined in the policy.

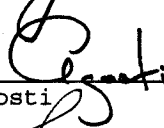
others, if induced to do so by trickery or false pretense.


In reviewing a motion to dismiss under NRCP 12(b)(5), all inferences must be construed in favor of the non-moving party, and all factual allegations in the complaint must be accepted as true. See Breliant v. Preferred Equities Corp., 109 Nev. 842, 845, 858 P.2d 1258, 1260 (1993). When neither party disputes a material fact, the construction of an insurance policy raises only a question of law. See Siggelkow v. Phoenix Ins. Co., 109 Nev. 42, 44, 846 P.2d 303, 304 (1993). The policy must be considered as a whole and viewed from the perspective of one not trained in the law. See id. Any ambiguity will be construed in favor of the insured. See Serrett v. Kimber, 110 Nev. 486, 874 P.2d 747 (1994).

We conclude that a reasonable insured reading the policy as a whole would understand that voluntarily parting with title or possession of the car if induced to do so by trickery or false pretense is excluded from coverage under the comprehensive provisions of this insurance policy. Because appellant voluntarily parted with title and possession of the car, and was allegedly induced to do so by trickery or false pretense, appellant's loss is not covered under the policy. Thus, appellant's complaint for breach of contract and bad faith against respondents failed to state a claim upon which relief can be granted. See NRCP 12(b)(5). Accordingly, we conclude that the district properly dismissed appellant's complaint, and we

ORDER this appeal dismissed.


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. Valorie Vega, District Judge
Morton R. Galane
Law Office of V. Andrew Cass
Clark County Clerk