STATE OF MICHIGAN

COURT OF APPEALS

THOMAS HOLLIDAY,

Plaintiff-Appellant,

v

PIONEER STATE MUTUAL INS CO,

Defendant-Appellee.

UNPUBLISHED
March 5, 2009

No. 281319
Oakland Circuit Court
LC No. 2006-078526-ND

Before: Jansen, P.J., and Meter and Fort Hood, JJ.

PER CURIAM.

In this action involving a home insurance policy, plaintiff appeals as of right from the trial court's order granting summary disposition to defendant pursuant to MCR 2.116(C)(10). We affirm.

This Court reviews de novo a trial court's ruling regarding a motion for summary disposition. *Greene v AP Products*, 475 Mich 502, 507; 717 NW2d 855 (2006). MCR 2.116(C)(10) provides for summary disposition when there is no genuine issue regarding any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the pleadings, affidavits, and other documentary evidence, when viewed in the light most favorable to the nonmoving party, who must be given the benefit of every reasonable doubt, show that there is no genuine issue concerning any material fact. *Greene*, *supra* at 507. "Only if there is no factual dispute, making the moving party entitled to judgment as a matter of law, would summary disposition be appropriate." *Rice v Auto Club Ins Ass'n*, 252 Mich App 25, 31; 651 NW2d 188 (2002). "However, the nonmoving party must present more than mere allegations in order to demonstrate that there is a genuine issue of material fact in dispute, making trial necessary." *Id*.

Plaintiff argues that wind-blown water infiltrating his roof during a storm caused his loss and, as such, was a covered loss. Plaintiff bases his argument for coverage on two different sections of his policy with defendant. The first section is paragraph 11 under the section entitled "Additional Coverages," which provides:

> 11. **Landlord's Furnishings**. We will pay up to $2500 for your appliances, carpeting and other household furnishings, in an apartment on the

> **residence premises** regularly rented or held for rental to others by an **insured**, for loss caused only by the following Perils Insured Against:
>
> * * *
>
> b. **Windstorm or hail**.
>
> This peril does not include loss to the property contained in a building caused by rain, snow, sleet, sand or dust unless the direct force of wind or hail damages the building causing an opening in a roof of wall and the rain, snow, sleet, sand or dust enters through this opening.

Plaintiff also relies on paragraph two under "Section C-Personal Property" of the policy, which is identical to the windstorm or hail section quoted above.

This Court interprets an insurance contract similarly to any other contract, looking to the plain language of the insurance policy and interpreting the terms therein in accordance with Michigan's principles of contract construction. *Henderson v State Farm Fire and Cas Co*, 460 Mich 348, 353; 596 NW2d 190 (1999); *Busch v Holmes*, 256 Mich App 4, 9; 662 NW2d 64 (2003). Considering the plain language of this insurance policy, neither section applies to plaintiff's loss. Paragraph 11 specifically applies to appliances, carpeting, and other household furnishings in an apartment on the premises. At no time did plaintiff request reimbursement for losses to any appliances, carpeting, or furnishings or for any damage to anything but his own residence. The second provision that plaintiff relies on is listed under coverage of personal property. However, plaintiff did not make any claims for personal property. Plaintiff submitted bills for his roof repair and repair to the walls and ceilings in his house. Accordingly, the trial court properly concluded that plaintiff could not rely on either section for coverage.

Alternatively, a policy exclusion applied. As plaintiff acknowledges, the policy specifically excludes coverage for any seepage/leakage of water damage that continues over a period of weeks or longer. The specific exclusion contained in "Endorsement HO AMN3 0903" provides:

> We insure against risks of direct loss to property described in Coverages A and B only if that loss is a physical loss to property; however, we do not insure loss;
>
> * * *
>
> 2. caused by;
>
> * * *
>
> e. or resulting from constant or repeated seepage or leakage of water or the presence of condensation or humidity, moisture, or vapor, over a period of weeks, months or years.

Plaintiff argues that his loss occurred as a result of strong winds that created an opening in his roof and allowed rain to enter the home. Plaintiff further contends that he did not expect

defendant to repair his entire roof, but only the part that had been damaged as a result of the wind raising the roof and allowing the rain to enter the home.

"Exclusionary clauses in insurance policies are strictly construed in favor of the insured." *Hayley v Allstate Ins Co*, 262 Mich App 571, 574; 686 NW2d 273 (2004). "Coverage under a policy is lost if any exclusion in the policy applies to an insured's particular claims." *Id.* "Clear and specific exclusions must be given effect because an insurance company cannot be liable for a risk it did not assume." *Id.* "When reviewing an exclusionary clause, we read the contract as a whole to effectuate the overall intent of the parties." *Id.* at 575. Where the language is clear and unambiguous, the insurance policy must be enforced as written. *Farm Bureau Mut Ins Co of Michigan v Nikkel*, 460 Mich 558, 566; 596 NW2d 915 (1999).

In support of its motion for summary disposition, defendant included affidavits and letters or reports from Robert Bise of Great Lakes Insurance Restorations, Terry Wiczuk of Wiczuk Roofing, and Chad Zielinski, a licensed professional engineer. All three inspected plaintiff's roof and concluded that the roof had been leaking for a long period and that the damage was long-term because the roof and attic showed signs of advanced decay and mold. Moreover, Zielinski concluded that the water damage and mold in plaintiff's attic were the direct result of defective construction and ongoing deterioration. Zielinski explained that the roof covering should have been installed under the metal edging but was instead installed over the metal edging. As a result, the roof covering became detached from the metal edging, which allowed rain to easily penetrate the roof covering. According to Zielinksi, the roof had been leaking for several years, and he did not find any evidence that the damage to the roof covering had been wind-related.

Once the moving party satisfies its burden by showing that the non-movant's claim cannot be supported by evidence at trial, the burden shifts to the non-moving party to establish the existence of a material factual dispute. *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999), superceded on other grounds by statute as stated in *McLiechey v Bristol West Ins Co*, 408 F Supp 2d 516 (WD Mich, 2006). Defendant provided ample evidence to support its motion for summary disposition including affidavits, an engineer's report, and photographs. Plaintiff did not submit any evidence to refute defendant's motion.

Plaintiff stated in his interrogatories that he "believe[d] that the flat roof was damaged during a wind storm that blew branches into the roof and damaged it, which allowed winds to lift the roof and resulted in wind-blown water entering the inside of the dwelling." However, plaintiff failed to produce any evidence to support this theory. Moreover, Wiczuk discredited plaintiff's theory of the cause of the damage. When plaintiff told Wiczuk that branches had struck the roof, Wiczuk inspected the roof and found some indentations that could have been consistent with tree branches hitting the roof. However, Wiczuk concluded that the water was not entering the home from that spot. The water entered the home where the roof covering had separated from the metal on the roof, which was caused by poor installation.

Accordingly, there was no material factual dispute that plaintiff's loss was excluded from coverage because it was a result of "constant or repeated seepage or leakage of water or the presence of condensation or humidity, moisture, or vapor, over a period of weeks, months or years."

Plaintiff failed to establish the existence of a material factual dispute, and the trial court properly granted defendant's motion for summary disposition.

Affirmed.

/s/ Kathleen Jansen
/s/ Patrick M. Meter
/s/ Karen M. Fort Hood