

STATE OF MICHIGAN
COURT OF APPEALS

WESTFIELD INSURANCE COMPANY,

Plaintiff-Appellant,

v

LARAMIE, INCORPORATED, LARAMIE
ENTERPRISES, and G.M. SMITH, LIMITED,

Defendants-Appellees.

UNPUBLISHED

December 10, 1999

No. 209849

Wayne Circuit Court

LC No. 96-621392 NI

Before: Talbot, P.J., and Neff and Saad, JJ.

PER CURIAM.

In this insurance subrogation case, the trial court granted defendants' motion for summary disposition pursuant to MCR 2.116(C)(10). Plaintiff appeals as of right, and we affirm.

I

Plaintiff filed this action as subrogee of Omnitech Corporation, a company that services "coordinated measure machines," or CMMs.¹ The dispute arose when the General Electric Corporation (GE) hired Omnitech to dismantle a CMM at a Cincinnati, Ohio GE facility, transport it to GE's Quebec, Canada facility, and reassemble and install it there. Omnitech hired defendant Laramie to provide the transportation, and because Laramie was not licensed to provide transportation in Quebec, it subcontracted the transportation to defendant G.M. Smith. When Smith delivered the CMM to Quebec, GE employees observed that it was damaged. Though the precise cause of the damage is unclear, GE believed that the CMM was damaged because Smith did not use the proper type of truck for the transportation.

Prior to shipment, Omnitech contacted plaintiff and increased its existing equipment transportation coverage to \$300,000 to cover the value of the CMM. After the CMM was damaged, Omnitech submitted a claim to plaintiff to pay for the loss. Plaintiff initially refused, citing a policy exclusion for breakage unless caused by collision, upset or overturn of the transporting vehicle. Nonetheless, plaintiff ultimately paid Omnitech \$99,245.57 to cover the damage to the machine. Plaintiff continued to maintain that the loss came under the breakage exclusion in the policy. At

depositions, plaintiff's representatives explained that they paid the loss because they believed they could be held liable to Omnitech under an estoppel or agency theory, based on representations plaintiff's agent might have made to Omnitech at the time Omnitech upgraded its coverage. Plaintiff's representatives have consistently maintained that the loss was *not* covered under Omnitech's transportation policy. They have acknowledged that they paid the claim knowing that their right to subrogation was uncertain.

Nonetheless, plaintiff filed this subrogation action against defendants Laramie and Smith. In their summary disposition motions, defendants contended that (1) Omnitech lacked standing, and therefore Westfield lacked standing as Omnitech's subrogee; and (2) Westfield *voluntarily* paid the claim, thereby precluding its subrogation action. The trial court agreed and granted summary disposition for defendants.

II

This Court reviews decisions on motions for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Motions under MCR 2.116(C)(10) test the factual support of the plaintiff's claim. *Id.* The court considers the affidavits, pleadings, depositions, admissions, and other evidence submitted to determine whether a genuine issue of any material fact exists to warrant a trial. *Id.* Both this Court and the trial court must resolve all reasonable inferences in the nonmoving party's favor. *Bertrand v Allan Ford*, 449 Mich 606, 618; 537 NW2d 185 (1995).

Plaintiff challenges the trial court's determination that Omnitech lacked standing to sue defendants. As Omnitech's subrogee, plaintiff has the same cause of action that Omnitech would have had against defendants.² *Auto Club Ins Ass'n v New York Life Ins Co*, 440 Mich 126, 133-134; 485 NW2d 695 (1992). A subrogation action is purely derivative in nature, and the subrogee possesses only the rights of the subrogor. *Id.*, 135-136, quoting 16 Couch, Insurance, 2d (rev ed), § 61:37, 120-121. Consequently, if Omnitech lacked standing to sue, then plaintiff also lacked standing.

Standing requires a plaintiff to demonstrate a legally protected interest that is in jeopardy of being adversely affected. *Taylor v Blue Cross & Blue Shield of Michigan*, 205 Mich App 644, 655; 517 NW2d 864 (1994). This is generally accomplished by showing a personal stake in a dispute by demonstrating injury to the plaintiff or the plaintiff's property. *Id.* at 655-656. Stated another way,

“[o]ne cannot rightfully invoke the jurisdiction of the court to enforce private rights, or maintain a civil action for the enforcement of such rights, unless one has in an individual or representative capacity some real interest in the cause of action, or a legal or equitable right, title, or interest in the subject matter of the controversy. This interest is generally spoken of as ‘standing.’” [*Bowie v Arder*, 441 Mich 23, 42-43; 490 NW2d 568 (1992), quoting 59 Am Jur 2d, Parties, § 30, 414.]

Here, plaintiff did not own or physically possess the damaged property. Plaintiff claims, in conclusory fashion, that its interest in the property was “based on the possibility of pecuniary loss befalling the insured.” However, plaintiff does not say specifically how its insured, Omnitech, had a direct or a pecuniary interest. Plaintiff offers neither facts nor legal argument to establish that any of Omnitech’s interests were put in jeopardy when the CMM was damaged. This Court will not search for authority either to sustain or reject a party’s position. Where a party fails to cite any supporting legal authority for its position, the issue is effectively abandoned. *Schellenberg v Rochester, Michigan, Lodge No 2225 of the Benevolent and Protective Order of Elks of the United States of America*, 228 Mich App 20, 49; 577 NW2d 163 (1998). Thus, the trial court appropriately granted summary disposition for defendants based on Omnitech’s, and consequently, plaintiff’s, lack of standing.

III

Additionally, summary disposition was proper because plaintiff, having paid the claim voluntarily, was not entitled to subrogation. *Hartford Accident & Indemnity Co v Used Car Factory*, __ Mich __, __; 600 NW2d 630 (1999); *Auto Club Ins, supra* 132. Plaintiff concedes that it was not liable under the policy to pay Omnitech’s claim, but contends that it might have been liable under an agency or estoppel theory. However, plaintiff offers neither factual nor legal explanation to support this argument.³ Accordingly, defendants were also entitled to summary disposition on this basis as well as plaintiff’s lack of standing.

Affirmed.

/s/ Michael J. Talbot

/s/ Janet T. Neff

/s/ Henry William Saad

¹ Plaintiff explained that CMMs “provide exact measurements used by companies in the manufacturing of jet engines, parts and accessories.”

² See *Citizens Ins Co of America v Buck*, 216 Mich App 217, 226; 548 NW2d 680 (1996) for a more detailed discussion of subrogation.

³ This case is distinguishable from *Hartford Accident & Indemnity Co, supra*, where the plaintiffs seeking equitable subrogation were not volunteers because their payments to the subrogor were not voluntary. Rather, the plaintiffs were obligated to pay benefits because the subrogor had been injured by an uninsured motorist.