STATE OF MICHIGAN

COURT OF APPEALS

STANLEY R. VAN REKEN and HARRIET E. VAN REKEN, Plaintiffs-Appellees, v MICHIGAN BASIC PROPERTY INSURANCE ASSOCIATION, Defendant-Appellant.	UNPUBLISHED May 18, 2001 No. 216478 Wayne Circuit Court LC No. 97-700842-CK

Before: Doctoroff, P.J., and Cavanagh and Meter, JJ.

PER CURIAM.

Defendant appeals by right from the trial court's decision to grant plaintiffs' motion for summary disposition and deny defendant's motion for summary disposition. We reverse and remand for entry of summary disposition in favor of defendant.

Plaintiffs were vendors in a land contract for the sale of property in Taylor. Defendant issued an insurance policy for that property, naming the vendees as the insureds; plaintiffs were listed under a loss payable clause. Subsequently, the vendees failed to make payments and vacated the property. Plaintiffs discovered that the interior of the home had been stripped of its carpeting, fixtures, doors, trim, cabinets, counters, and other items. Plaintiffs made a claim with defendant to recover for the damage to the home, defendant denied the claim, and plaintiffs sued.

Eventually, the parties discovered that one of the vendees had caused the damage to the home. Defendant moved for summary disposition because, inter alia, the insurance policy specifically excluded coverage for loss caused by an intentional act of an insured. The circuit court, ruling that plaintiffs "are covered just like a mortgage or bank would be covered," denied defendant's motion and granted summary disposition to plaintiff under MCR 2.116(I). Defendant contends that the trial court erred in denying its motion for summary disposition because the insurance contract unambiguously identified plaintiffs as loss payees who had no greater rights to the insurance proceeds than did the vendees. We agree.

We review a trial court's grant or denial of summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

This Court interprets insurance policies by first reviewing the policy language. *Michigan Basic Property Ins Ass'n v Wasarovich*, 214 Mich App 319, 322; 542 NW2d 367 (1995). The policy terms will be applied as written if they are clear and unambiguous. *Id.* This Court will not create an ambiguity where none exists. *Auto-Owners Ins Co v Churchman*, 440 Mich 560, 567; 489 NW2d 431 (1992).

In the present case, the insurance policy clearly listed plaintiffs under a loss payable clause. Loss payable clauses come in two forms, both of which are also known as mortgage clauses and which protect the interests of mortgagees, lienholders, and other secured parties. See *Foremost Ins Co v Allstate Ins Co*, 439 Mich 378, 383; 486 NW2d 600 (1992). The effect of the loss payable clause on a lienholder's interest depends on whether it is an ordinary or standard clause. Under an ordinary loss payable clause, "the lienholder is simply an appointee to receive the insurance fund to the extent of its interest, and its right of recovery is no greater than the right of the insured." *Id*. at 383. Under a standard loss payable clause, however, the lienholder has an independent contract with the insurer, and the lienholder's interests are protected regardless of any act or neglect by the mortgagor. *Id*. at 384, 389.

The two clauses are distinguishable based on their language. An ordinary loss payable clause merely provides that the mortgagee will be paid as his or her interests may appear. 4 Couch, Insurance, 3d, § 65:8, p 65-17; *Foremost, supra* at 383. A standard loss payable clause, however, is more specific and provides that mortgagees will be protected from loss based on any act or neglect of the insured. Couch, *supra* at 65-17; see also *Foremost, supra* at 387 n 22, 388, 392 n 34, *Marketos v American Employers Ins Co*, 240 Mich App 684, 692 n 4; 612 NW2d 848 (2000), and *Foremost Ins Co v Allstate Ins Co*, 185 Mich App 119, 120; 460 NW2d 242 (1990), aff'd 439 Mich 378 (1992).

In this case, the loss payable clause covering plaintiffs' interest in the property was clearly an ordinary loss payable clause, because it provided for payment to the insured and plaintiffs "as their interests may appear," without any additional language providing that plaintiffs would be protected from loss based on any act or neglect of the insured. See Couch, *supra* at 65-17, and *Foremost, supra*, 439 Mich at 384; cf. *Foremost, supra*, 439 Mich at 387 n 22, 388, 392 n 34, *Marketos, supra* at 692 n 4, and *Foremost, supra*, 185 Mich App at 120. The clause must be applied as written. *Michigan Basic Property Ins Ass'n, supra* at 322. Accordingly, plaintiffs' right of recovery was no greater than the right of the vendees to recover in this case. Because the policy's theft and intentional act provisions clearly precluded the vendees from recovering, plaintiffs were also precluded from recovering. The trial court should have denied plaintiffs' motion for summary disposition and granted defendant's motion for summary disposition.

Plaintiffs contend that the policy at issue did in fact contain the equivalent of a standard loss payable clause because of the following language:

> 12. Mortgage Clause.
>
> *** * ***
>
> If a mortgagee is named in this policy, any loss payable . . . will be paid to the mortgagee and you, as interests appear . . . .

> If we deny your claim, that denial will not apply to a valid claim of the mortgagee . . . .

We disagree that this mortgage clause operated as a standard loss payable clause. Indeed, this clause does not contain language specifically providing coverage for a mortgagee despite any act or neglect of the mortgagor. Such language is important to indicate the distinction between the mortgagee's and the mortgagor's interests. Because this mortgage clause lacks such protective language, the clause did not operate as a standard loss payable clause.[1] Cf. *West v Farm Bureau Mutual Ins Co of Michigan*, 63 Mich App 279, 285-286; 234 NW2d 485 (1975), reversed in part on other grounds 402 Mich 67 (1977); see also Couch, *supra* at 65-17, *Foremost, supra*, 439 Mich at 387 n 22, 388, 392 n 34, *Marketos, supra* at 692 n 4, and *Foremost, supra*, 185 Mich App at 120.

Reversed and remanded to the circuit court to enter summary disposition in favor of defendant. We do not retain jurisdiction.

/s/ Martin M. Doctoroff
/s/ Mark J. Cavanagh
/s/ Patrick M. Meter

---

[1] We acknowledge that in *Singer v American States Ins*, ___ Mich App ___; ___ NW2d ___ (Docket No. 217148, issued 4/20/01), slip op, pp 4-5, the Court referenced a particular policy clause as a "standard mortgage clause," even though the clause, *as quoted in part*, did not contain the protective language. However, we do not feel that *Singer* is binding with respect to whether the clause at issue in the instant case was an ordinary or a standard loss payable clause, because *Singer* was not concerned with the effect of a standard mortgage or loss payable clause on coverage for a loss resulting from an insured's act or omission. In other words, the *Singer* Court had no reason to quote the protective language in its opinion. We assume that the clause cited at page 5, if quoted in its entirety, did indeed contain the protective language.