STATE OF MICHIGAN

COURT OF APPEALS

THOMAS J. KANE, d/b/a KANE'S TRUCK PARTS and MICHIGAN BUSINESS PARTS,

Plaintiff-Appellee,

v

MERIDIAN MUTUAL INSURANCE COMPANY,

Defendant-Appellant.

UNPUBLISHED
September 13, 2002

No. 231477
Wayne Circuit Court
LC No. 99-920540-CK

Before: Meter, P.J., and Saad and R. B. Burns*, JJ.

PER CURIAM.

Defendant appeals by right from a grant of summary disposition to plaintiff in this case involving an insurance coverage dispute. We affirm in part, reverse in part, and remand for further proceedings.

Plaintiff Thomas Kane ("plaintiff") suffered a loss to his business from a tornado. His insurance policy with defendant covered loss to business contents up to $40,000. However, plaintiff argued below and argues on appeal that a figure of $158,000 listed on a page of the policy's renewal declaration represented an additional policy limit for the loss of business contents. Plaintiff also argued below and argues on appeal that defendant erroneously withheld from him the full replacement costs for his damaged building.

The trial court agreed with plaintiff, finding (1) that the policy was ambiguous with regard to the business contents issue and thus should be construed in favor of plaintiff and (2) that plaintiff had fulfilled all the necessary conditions for reimbursement of his replacement building costs. The trial court thus granted plaintiff's motion for summary disposition under MCR 2.116(C)(10) and denied defendant's corresponding motion.

We review de novo a trial court's order concerning a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). "When reviewing a motion granted under MCR 2.116(C)(10), we must examine all relevant documentary evidence in the light most favorable to the nonmoving party and determine whether there exists a genuine

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

issue of material fact on which reasonable minds could differ." *Progressive Timberlands, Inc v R & R Heavy Haulers, Inc*, 243 Mich App 404, 407; 622 NW2d 533 (2000). Moreover, this Court reviews de novo a trial court's determination that an insurance policy is ambiguous. *Farm Bureau Ins Co v Nikkel*, 460 Mich 558, 563; 596 NW2d 915 (1999).

The trial court concluded that the policy was ambiguous with regard to the business contents issue because of an entry on the policy's renewal declaration pages. The entry listed "Automobile Parts & Supplies Distributors" under a "Schedule of Hazards" and listed a corresponding figure of $158,000. The trial court evidently accepted plaintiff's argument that the $158,000 figure plausibly constituted a coverage limit for his automotive parts and supplies losses. We note, however, that the $158,000 figure relied on by plaintiff and the trial court was taken from a 1996/1997 insurance policy that expired a day before the tornado in question. The corresponding figure used in the subsequent policy – the 1997/1998 policy in effect on the day of the tornado – was $1,012,573. It is unclear why the court applied the $158,000 figure to plaintiff's business contents claim, even though the 1996/1997 policy containing this figure expired before the tornado.

At any rate, we find no ambiguity with regard to either the 1996/1997 or the 1997/1998 polices. As noted in *Raska v Farm Bureau Ins Co*, 412 Mich 355, 362; 314 NW2d 440 (1982):

> A contract is said to be ambiguous when its words may reasonably be understood in different ways
>
> If a fair reading of the entire contract of insurance leads one to understand that there is coverage under particular circumstances and another fair reading of it leads one to understand that is no coverage under the same circumstances the contract is ambiguous and should be construed against the drafter and in favor of coverage.
>
> Yet, if a contract, however unartfully worded or clumsily arranged, fairly admits of but one interpretation, it may not be said to be ambiguous or, indeed, fatally unclear.

Here, the renewal declarations for 1996/1997 and for 1997/1998 clearly state that the "Coverage[] Provided" for "Business Personal Property" is $40,000. There is nothing in the renewal declarations indicating that the $158,000 and the $1,012,573 figures, respectively, constitute coverage limits. Moreover, the $158,000 and $1,012,573 amounts are listed under "Automobile Parts & Supplies Distributors." Plaintiff's interpretation – that the figures represent coverage limits for his automotive parts and supplies – requires that one ignore the word "Distributors." As noted in *Associated Truck Lines, Inc v Baer*, 346 Mich 106, 110; 77 NW2d 384 (1956), courts should, if possible, give meaning to every word in a contract.

Additionally, plaintiff himself testified in a deposition that his business inventory was worth between $158,000 and $200,000 and that he would never over-insure his inventory for five to six times its value. Nevertheless, the figure listed under "Automobile Parts & Supplies Distributors" for the policy in effect at the time of the tornado was $1,012,573.

As noted above, "if a contract, however unartfully worded or clumsily arranged, fairly admits of but one interpretation, it may not be said to be ambiguous or, indeed, fatally unclear." *Raska, supra* at 362. While plaintiff or even an employee of defendant may have been confused about the $158,000 and $1,012,573 figures, we conclude that a *fair* interpretation of the policy simply cannot lead to the conclusion that these figures represented policy limits for business contents losses. Indeed, to reach such a conclusion would require ignoring the term "Distributors" and concluding that plaintiff accepted a $1,012,573 policy limit for contents worth $158,000 to $200,000. It would also require ignoring the classification code "S," for "gross sales," on the relevant page of the renewal declaration. The only fair interpretation is that set forth by defendant, that "Automobile Parts & Supplies Distributors" referred to the classification of plaintiff's business and that the amounts listed reflected the calculation of the insurance premiums.

Upon our de novo review, we conclude that the trial court erred in applying a $158,000 limit applied to plaintiff's business contents losses because this figure, as well as the $1,012,573 figure, cannot fairly be interpreted to apply to these losses. Summary disposition should have been granted to defendant with respect to this issue.

With regard to the replacement building costs, the trial court concluded that because an appraisal award had been entered and because plaintiff had completed the repairs on the building, defendant owed plaintiff the full amount of the appraisal award. In large part, we agree.

The policy states, under the heading "Loss Conditions," that in the event of a dispute concerning the amount of a loss, the parties may submit to an appraisal. The policy provides that this appraisal will be "binding." The policy further states that defendant will not pay replacement costs "[u]ntil the lost or damaged property is actually repaired or replaced," and it states that defendant will not pay more for replacement costs than "[t]he amount you actually spend that is necessary to repair or replace the lost or damaged property."

Here, an employee of defendant testified that plaintiff had indeed repaired the property with the exception of some spray-painting of a deck. Moreover, the appraisal award fixed a replacement value of $231,332.09. Given that the appraisal award is "binding" on the parties, we conclude that the provision limiting replacement costs to "[t]he amount you actually spend that is necessary to repair or replace the lost or damaged property" is no longer relevant. As noted by the trial court, "the only condition precedent was to repair or replace the damage to the building that was acknowledged by Defendant to be completed." While the court's statement is not entirely accurate because some spray-painting still had to be done, the bulk of "the lost or damaged property" had indeed been "actually repaired or replaced." Moreover, plaintiff has agreed on appeal to discount the replacement costs by the cost of the spray-painting. Under these circumstances, we affirm the trial court's ruling with regard to the replacement costs issue but order the ruling modified to comport with plaintiff's concession regarding the spray-painting. We do not accept defendant's argument that plaintiff must submit additional documentation before the replacement building costs are due.[1]

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[1] Defendant also makes a brief reference to a period of limitation with regard to the replacement
(continued…)

Affirmed in part, reversed in part, and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Patrick M. Meter
/s/ Henry William Saad
/s/ Robert B. Burns

(…continued)

cost issue. However, defendant does not develop an argument with respect to this issue, and thus we need not address it. See generally *Palo Group Foster Care, Inc v Dep't of Social Services*, 228 Mich App 140, 152; 577 NW2d 200 (1998).