

STATE OF MICHIGAN
COURT OF APPEALS

STEVEN M. SCHNEIDER,

Plaintiff-Appellant,

v

AMERICAN SPIRIT INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED

November 15, 2005

No. 254822

Oakland Circuit Court

LC No. 2001-037071-CK

Before: Gage, P.J., and Hoekstra and Murray, JJ.

PER CURIAM.

In this action alleging breach of an insurance contract, plaintiff appeals as of right the trial court's order granting summary disposition in favor of defendant American Spirit Insurance Company pursuant to MCR 2.116(C)(7), on the ground that the suit had been filed outside the contractual one-year limitations period for the filing of a suit under the contract. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In addition to providing that "[n]o action can be brought unless the policy provisions have been complied with and the action is started within one year after the date of loss," the contractual policy of insurance at issue here required that plaintiff give prompt notice of any loss to covered property to the issuer of the policy, American Spirit, or its "agent." Pursuant to MCL 500.2833(1)(q), upon such notice the contractual one-year limitations period for the filing of suit is tolled "until the insurer formally denies liability." Plaintiff claimed below that he gave the required notice of his loss to American Spirit by requesting, shortly after the loss in October 1998, that James Lolas of L & G Insurance Services view the damage to his property. Plaintiff argued that L & G, as the agency through which plaintiff acquired his policy, was an agent of American Spirit within the meaning of the insurance contract and that, as a result, notice to Lolas was notice to American Spirit. The trial court found that Lolas was not an agent of American Spirit for purposes of notice and that, therefore, plaintiff did not provide American Spirit with notice of loss until June 29, 1999, when he filed his claim of loss. Therefore, the trial court ruled that plaintiff's suit, which was not filed until December 20, 2001, was barred by the one-year limitations period provided for under the policy.

On appeal, plaintiff argues that the trial court erred in concluding that his notice of loss to Lolas was not effective as to American Spirit. Therefore, plaintiff argues, pursuant to MCL 500.2833(1)(q) the one-year limitations period was tolled immediately after the date of loss and

remained tolled until April 9, 2001, the date on which American Spirit formally denied his claim. We disagree.

We review a trial court's ruling on a motion for summary disposition de novo. *Van v Zahorik*, 460 Mich 320, 326; 597 NW2d 15 (1999). "Summary disposition is appropriate under MCR 2.116(C)(7) when a claim is time-barred." *Mouradian v Goldberg*, 256 Mich App 566, 570; 664 NW2d 805 (2003). In deciding a motion brought under MCR 2.116(C)(7), "a court should consider all affidavits, pleadings, and other documentary evidence submitted by the parties." *Holmes v Michigan Capital Medical Center*, 242 Mich App 703, 706; 620 NW2d 319 (2000). If the pleadings or other documentary evidence reveal no genuine issues of material fact, the court must decide as a matter of law whether the claim is barred. *Id.*

Here, the evidence submitted by the parties shows that L & G was an agent of American Spirit pursuant to an Agency-Company agreement that authorized L & G to solicit and endorse contracts of insurance on behalf of American Spirit. See also Black's Law Dictionary (8th ed) (defining an agent as "[o]ne who is authorized to act for or in place of another; a representative"). The parties do not dispute, however, that L & G was also plaintiff's agent. See *Vargo v Sauer*, 457 Mich 49, 69; 576 NW2d 656 (1998) ("[a] person may be the servant of two masters, not joint employers, *at one time as to one act*, if the service to one does not involve abandonment of the service to the other"), quoting 1 Restatement Agency, 2d, § 226, p 498. Therefore, L & G was a dual agent, at least to those acts for which it was given authority both by plaintiff and American Spirit.

However, although L & G had a limited agency relationship with American Spirit, and was at times a dual agent, Lolas did not act as American Spirit's agent when he came to plaintiff's house to view the damage to plaintiff's property. Rather, Lolas acted solely as plaintiff's agent, as evidenced by the fact that Lolas followed plaintiff's instructions, both at that time and again during several subsequent conversations with Lolas over the next several months, not to file a claim with American Spirit despite having been urged to do so by Lolas. Indeed, plaintiff himself testified that he did not file the claim until June 1999 because he sought first to obtain restitution from the moving company that caused the damage to his property.

Therefore, it is clear that, in his interactions with plaintiff immediately following the October 1998 loss, Lolas acted solely as plaintiff's agent. He did as plaintiff instructed. Although Lolas urged that plaintiff should provide American Spirit with notice of the loss, Lolas did not give such notice to American Spirit because plaintiff wanted the moving company to make restitution for the damage. Plaintiff chose not to provide American Spirit with notice of the loss until June 29, 1999, and Lolas respected plaintiff's wishes. In doing so, he acted solely as plaintiff's agent. Consequently, tolling of the one-year period of limitations did not begin until June 29, 1999, approximately eight months after the date of loss. Because plaintiff's suit was not filed until an additional eight months after American Spirit denied his claim in April 2001, the trial court did not err in granting summary disposition in favor of American Spirit under MCR 2.116(C)(7).

Affirmed.

/s/ Hilda R. Gage

/s/ Joel P. Hoekstra

/s/ Christopher M. Murray