

STATE OF MICHIGAN
COURT OF APPEALS

RENEE ELLIS,

Plaintiff-Appellee,

v

FARM BUREAU INSURANCE COMPANY,

Defendant-Appellant.

UNPUBLISHED
February 12, 2008

No. 275240
Wayne Circuit Court
LC No. 05-508314-CK

Before: Gleicher, P.J., and O'Connell and Kelly, JJ.

PER CURIAM.

Defendant appeals as of right the trial court's judgment for \$99,551.18, which the trial court, following a bench trial, determined that plaintiff could recover for losses she suffered in a house fire. We affirm. The only issue in this case is whether, for purposes of defendant's fire insurance policy, plaintiff's rental house was left vacant or unoccupied for more than sixty consecutive days.

The record reflects that plaintiff owned a rental home in Detroit and that she wanted to make substantial modifications to the home before leasing it to a new family. While the old tenants were still in possession, she applied for a fire insurance policy from defendant. Plaintiff testified that the insurance agent knew that she planned to renovate the property. The record reflects that the roof was replaced in early May 2003, and within a few weeks the insurance application was filled out and the first premium was submitted. The tenants did not leave until June, however, and plaintiff explained to her insurance agent that the contractor was taking on the pending interior reconstruction as a side job. The work was extensive, including the addition of a new kitchen, bathroom, and installation of new windows. Plaintiff explained that her insurance agent visited the home after the old tenants had moved out and substantial interior renovations were underway. Plaintiff grew dissatisfied with the first contractor and hired a new contractor to finish several projects that included laying a new kitchen floor, hanging drywall, installing interior doors, and painting. The new contractor also installed kitchen cabinets, set tile in the bathroom, paneled a section of stairwell, and built a linen closet.

The project was substantially completed by the middle of October, and plaintiff testified that she was fully prepared to rent the house. She had shown the house to a prospective tenant, who offered \$600 per month in rent, but plaintiff had not yet decided whether to accept that offer or hold out for the possibility of receiving \$200 more a month by participating in a government-sponsored housing program. She never had the opportunity to decide, though, because in the

middle of November, vandals broke into the house and set fire to it, causing nearly \$100,000 in damage.

Plaintiff called defendant, which reported to her that she was not yet in its system and that her insurance agent no longer worked there. Plaintiff had never received a copy of the contract, and only received a copy of the declarations sheet after reporting the fire.

Nevertheless, defendant argues that the insurance policy's plain language regarding the "vacant or unoccupied" status of the property "beyond a period of 60 consecutive days" relieves it from any obligation to pay plaintiff's claim for fire damages. We disagree. The interpretation of contractual language is an issue of law, which this Court reviews de novo. *Morley v Automobile Club of Michigan*, 458 Mich 459, 465; 581 NW2d 237 (1998).

In *Smith v Lumbermen's Ins Co*, 101 Mich App 78, 84; 300 NW2d 457 (1980), this Court held, "Although occupancy may imply an actual use of the house as a dwelling place, circumstances may arise in which an insured can be said to be 'occupying' a building without continuous possession." The Court in *Smith* went on to explain the various situations in which a rental property may be temporarily uninhabited without running afoul of a policy's vacancy exclusion. *Id.* at 85-86. Included among the circumstances that do not qualify as a vacancy or leave the property unoccupied for insurance purposes are temporary lags between renters or periods of renovation for anticipated tenants. *Id.* This approach comports with the analogy to a home's repeated, temporary vacancy for renovations that Justice Cooley expressed in *Shackelton v Sun Fire Office of London, England*, 55 Mich 288, 292; 21 NW 343 (1884). Here, the trial court found that plaintiff's renovations were reasonably undertaken for the purpose of obtaining a new tenant and improving the home's marketability. It found that the insurer was on notice that the building would undergo renovation for a significant time and remain without a tenant in the interim. We do not see any clear error in these findings. The substantial renovations and the steadily applied efforts of the on-site contractor did not cease until mid-October, which was less than sixty consecutive days before the fire. Because the renovations to the property in this case prevented application of the policy exclusion for vacant or unoccupied property, the trial court did not err by rejecting defendant's claim that it had no liability for plaintiff's loss.

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ Peter D. O'Connell
/s/ Kirsten Frank Kelly