

STATE OF MICHIGAN
COURT OF APPEALS

MICHAEL MALLET,

Plaintiff-Appellant,

v

FARM BUREAU INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED

April 3, 2008

No. 277493

Wayne Circuit Court

LC No. 06-609312-CK

Before: Kelly, P.J., and Owens and Schuette, JJ.

MEMORANDUM.

Plaintiff appeals as of right from an order granting defendant's motion for summary disposition under MCR 2.116(C)(10). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff's rental property was twice vandalized before it was damaged in a fire. The first act of vandalism coincided with plaintiff's eviction of a tenant. At least in part due to the damage from the vandalism, the premises remained unoccupied from June 2005 until the fire in November 2005. Defendant had issued plaintiff an insurance policy on the property. Paragraph 26 of the "Conditions" section of this policy provides:

Increase in Hazard. Unless otherwise provided in writing, we will not be liable for loss occurring:

* * *

b. while a described building, whether intended for occupancy by owner or tenant, is vacant or unoccupied beyond a period of 60 consecutive days.

After defendant denied plaintiff's claims for vandalism and the fire, plaintiff brought this lawsuit. However, plaintiff sought benefits only for the damage caused by the fire. Defendant sought summary disposition based on Paragraph 26. The trial court noted that even if the lack of occupancy was caused by defendant's failure to pay the vandalism claims, the vandalism claims were not before the court. The court held that defendant was not liable for benefits since the property had been unoccupied for more than 60 days before the fire.

On appeal, plaintiff argues that an issue of fact exists because defendant's failure to pay the vandalism claims resulted in the property not being occupied. However, this argument is without merit. Regardless of fault for nonpayment of the vandalism claims, the insurance contract expressly stated that a loss would not be covered if the property had been vacant for more than 60 consecutive days.

"[I]n reviewing an insurance policy dispute we must look to the language of the insurance policy and interpret the terms therein in accordance with Michigan's well-established principles of contract construction." *Henderson v State Farm Fire & Cas Co*, 460 Mich 348, 353-354; 596 NW2d 190 (1999). In *Henderson*, this Court described those principles as follows:

First, an insurance contract must be enforced in accordance with its terms. A court must not hold an insurance company liable for a risk that it did not assume. Second, a court should not create ambiguity in an insurance policy where the terms of the contract are clear and precise. Thus, the terms of a contract must be enforced as written where there is no ambiguity. [*Citizens Ins Co v Pro-Seal Serv Group, Inc*, 477 Mich 75, 82-83; 730 NW2d 682 (2007)].

Paragraph 26 of the "Conditions" section is unambiguous, and precludes payment of benefits under the circumstances of this case. Therefore, plaintiff is not entitled to relief.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Donald S. Owens
/s/ Bill Schuette