STATE OF MICHIGAN

COURT OF APPEALS

JAMES A. CARPENTER,

Plaintiff-Appellee,

v

MICHIGAN BASIC PROPERTY INSURANCE ASSOCIATION,

Defendant-Appellant.

UNPUBLISHED
June 3, 2008

No. 277742
Wayne Circuit Court
LC No. 06-631364-CK

Before: Davis, P.J., and Murray and Beckering, JJ.

PER CURIAM.

Defendant appeals by leave granted from a circuit court order denying its motion for summary disposition. We reverse and remand for entry of an order granting defendant's motion. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff, who claims to be an insured under a homeowners insurance policy issued by defendant to another person, filed this breach of contract action after defendant denied a claim for coverage following a November 2004 fire. The parties disputed whether plaintiff was an insured under the policy and, if so, whether he had one year or two years in which to file suit. The trial court ruled that there was a question of fact whether plaintiff was an insured and that limitation provisions of the policy were ambiguous and, therefore, denied the motion.

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Benefiel v Auto-Owners Ins Co*, 277 Mich App 412, 414; 745 NW2d 174 (2007). "The interpretation of a contract is also a question of law this Court reviews de novo on appeal, including whether the language of a contract is ambiguous and requires resolution by the trier of fact." *DaimlerChrysler Corp v G-Tech Professional Staffing, Inc*, 260 Mich App 183, 184-185; 678 NW2d 647 (2003). "Whether a period of limitation applies to preclude a party's pursuit of an action constitutes a question of law that we review de novo." *Detroit v 19675 Hasse*, 258 Mich App 438, 444; 671 NW2d 150 (2003).

An insurance policy is much the same as any other contract. It is an agreement between the parties in which a court will determine what the agreement was and effectuate the intent of the parties. *Auto-Owners Ins Co v Churchman*, 440 Mich 560, 566; 489 NW2d 431 (1992). "The policy application, declarations page of the policy, and the policy itself construed together constitute the contract." *Royal Prop Group, LLC v Prime Ins Syndicate, Inc*, 267 Mich App 708,

715; 706 NW2d 426 (2005). An insurance contract is to be read as a whole with meaning given to all terms. *Id*. A clear and unambiguous contractual provision is to be enforced as written. *Coates v Bastian Bros, Inc*, 276 Mich App 498, 503; 741 NW2d 539 (2007). More specifically, "an unambiguous contractual provision providing for a shortened period of limitations is to be enforced as written unless the provision would violate law or public policy." *Rory v Continental Ins Co*, 473 Mich 457, 470; 703 NW2d 23 (2005). Clear and unambiguous language may not be rewritten under the guise of interpretation. *South Macomb Disposal Auth v American Ins Co* (*On Remand*), 225 Mich App 635, 653; 572 NW2d 686 (1997). "Courts must be careful not to read an ambiguity into a policy where none exists." *Auto-Owners Ins Co v Harvey*, 219 Mich App 466, 469; 556 NW2d 517 (1996). A contract is ambiguous when two provisions "irreconcilably conflict with each other," *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 467; 663 NW2d 447 (2003), or "when [a term] is equally susceptible to more than a single meaning." *Mayor of the City of Lansing v Pub Service Comm*, 470 Mich 154, 166; 680 NW2d 840 (2004). "However, if a contract, even an inartfully worded or clumsily arranged contract, fairly admits of but one interpretation, it may not be said to be ambiguous or fatally unclear." *Michigan Twp Participating Plan v Pavolich*, 232 Mich App 378, 382; 591 NW2d 325 (1998).

The original policy contains a section entitled "Policy Conditions" setting forth conditions "applicable to all coverages." One condition provides:

> 11. **Suit Against Us** – No suit may be brought against "us" unless all the "terms" of this policy have been complied with and:
>
> a. **Property Coverages** – The suit is brought within two years after the loss.

The amendatory endorsement, included with the original policy and referenced in the declarations, states that it "changes the policy" in certain respects. In particular, it provides:

> ● If this policy includes endorsement FORM 2, Broad Form, the following changes apply:
>
> Section – **POLICY CONDITIONS**
>
> 11a. The words "**two years**" are changed and replaced by "**one year**."

There is no basis for finding the policy or the amendment ambiguous. The amendment specifically references the section to which it applies, that being ¶ 11a of the Policy Conditions section. Further, it does not conflict with another provision of the policy, but changes the one provision with which it would otherwise conflict. Further, when read together according to their plain meaning, ¶ 11a of the Policy Conditions section and the amendatory endorsement plainly and unambiguously state that the two-year period is reduced to one year. Specifically, where ¶ 11a provides that "[t]he suit is brought within two years after the loss," the words "two years" are replaced by the words "one year" and thus ¶ 11a is amended to provide that "[t]he suit is brought within one year after the loss." Although there may have been other ways to word the change so as to leave no doubt about its effect, the fact remains that ¶ 11a of the Policy Conditions section and the amendatory endorsement, when read together, "fairly admit[ ] of but one interpretation," *Michigan Twp Participating Plan, supra*, that being that the two-year period

in which to file suit is reduced to one year. Therefore, the trial court erred in finding the contract ambiguous.

The loss occurred in November 2004. In fire insurance policies, the time for filing suit is tolled from the time the insured notifies the insurer of the loss until the insurer formally denies liability. MCL 500.2833(1)(q); *Randolph v State Farm Fire & Cas Co*, 229 Mich App 102, 106-107; 580 NW2d 903 (1998). Assuming plaintiff notified defendant of the loss immediately, the limitations period did not begin to run until April 12, 2005, when defendant formally denied the claim, and expired one year later on April 12, 2006. Because plaintiff filed this action in November 2006, the action was untimely and the trial court erred in denying defendant's motion.

In light of our decision, it is unnecessary to address whether plaintiff was an insured under the policy.

Reversed and remanded for entry of an order granting defendant's motion. We do not retain jurisdiction.

/s/ Alton T. Davis
/s/ Christopher M. Murray
/s/ Jane M. Beckering