STATE OF MICHIGAN

COURT OF APPEALS

SPARKLE BUILDERS I, LTD,

Plaintiff-Appellant,

v

JEANETTE WILLIAMS,

Defendant,

and

AUTO CLUB GROUP INSURANCE,

Defendant-Appellee.

UNPUBLISHED
December 6, 2012

No. 307522
Wayne Circuit Court
LC No. 09-019711-CK

Before: WILDER, P.J., and GLEICHER and BOONSTRA, JJ.

PER CURIAM.

Plaintiff, Sparkle Builders I, LTD, appeals as of right the trial court's order granting summary disposition in favor of defendant, Auto Club Group Insurance ("Auto Club"), pursuant to MCR 2.116(C)(10). We affirm.

This cause of action arises out of a fire that damaged the home of Jeanette Williams. At the time of the fire, Williams had a homeowners' insurance policy with Auto Club. Williams contracted with plaintiff to repair the damaged house and agreed to assign her insurance proceeds to plaintiff in connection with the repair work plaintiff performed on the house. The contract states, in relevant part:

> [T]he undersigned Owner, hereby irrevocably contracts with Sparkle Builders I, LTD, the undersigned Contractor, its successor or assigns, to make all necessary repairs caused by a fire or other act occurring on or about February 11, 2007, at approximately 3:00 a.m., at 5917 Florida Street, Detroit. Owner hereby authorizes Contractor to negotiate his loss with his insurance carrier.
>
> Contractor, its successor or assigns, agrees the damaged property identified by the specifications executed by the Owner or, if no specifications are executed by the Owner, the damaged property identified by the Owner's insurance carrier as the adjusted claim will be repaired to as good or better condition as before the fire or other act causing the damage. *The Owner shall pay*

> *to the Contractor for such repairs* the amount of the adjusted claim and irrevocably assigns to the Contractor, its successor or assigns, all Insurance proceeds due the Owner as a result of the fire or other act causing the damage to secure payment of such sums due the Contractor from the Owner. The Owner shall not be liable to the Contractor *for any sum in excess of the adjusted claim paid by the Owner's insurance carrier for the Contractor's performance pursuant to the agreement* and endorsement of the insurance proceeds check or checks by the Owner to the Contractor shall be payment in full for such performance (except for any insurance deductible, extras and improvements to prior code violations). [Emphasis added.]

Sometime after executing this document, Williams decided to exercise the option from her Auto Club policy to rebuild her house in another location, rather than to repair the existing structure. Williams refused to allow plaintiff to perform construction services under the contract. Auto Club paid Williams for rebuilding in accordance with the homeowners' policy. Plaintiff subsequently brought this action against Williams[1] and Auto Club. The complaint included allegations of breach of contract, breach of custom and trade practice, and conversion. In the briefs and subsequent hearings on Auto Club's motion for summary disposition, it became evident that the dispositive issue, assuming that Williams had breached her contract with plaintiff, was whether Auto Club owed plaintiff payment under the assignment provision of the contract, regardless of the fact that Williams had elected to build a new home rather than repair her old one. The trial court granted Auto Club's motion for summary disposition based on its finding that, because no repairs were performed on the damaged structure, plaintiff was not entitled to compensation.

We review de novo a trial court's decision to grant or deny a motion for summary disposition. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). In evaluating a motion under MCR 2.116(C)(10), we must consider the whole record in the light most favorable to the nonmoving party, including affidavits, pleadings, depositions, admissions, and other evidence offered by the parties. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). The motion is properly granted if the evidence fails to establish a genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. *Michalski v Bar-Levav*, 463 Mich 723, 730; 625 NW2d 754 (2001).

This appeal also involves the interpretation of a contract, which is a question of law that we review de novo. *Pickering v Pickering*, 268 Mich App 1, 13; 706 NW2d 835 (2005). Our goal in construing contracts is to honor the true intention of the parties. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 473; 663 NW2d 447 (2003). A contract should be read as a whole, with meaning given to all the terms, to determine the intent of the parties, *Wilkie v Auto-*

[1] The action against Williams was administratively closed because of the commencement of bankruptcy proceedings.

Owners Ins Co, 469 Mich 41, 50 n 11; 664 NW2d 776 (2003), and construed in context, *Vushaj v Farm Bureau Gen Ins Co*, 284 Mich App 513, 516; 773 NW2d 758 (2009).

Plaintiff does not claim that it had a direct contractual relationship with Auto Club. Rather, plaintiff claims that because Auto Club had notice of the purported assignment, Auto Club had the obligation to pay the insurance proceeds to plaintiff. Plaintiff further maintains that the assignment at issue is an assignment of *all* insurance proceeds that Williams was entitled to receive, regardless of the purpose of those proceeds. We disagree.

Although an assignment in itself lacks the mutuality of agreement necessary to establish a claim for breach of contract, "[t]he assignment transaction is a conveyance of a contract right . . . ." 9 Corbin, Contracts, § 860, p 372. "An assignee stands in the position of the assignor, possessing the same rights and being subject to the same defenses." *Burkhardt v Bailey*, 260 Mich App 636, 653; 680 NW2d 453 (2004).

When interpreting the contract as a whole and in context, we conclude that Williams did not assign any and all future insurance proceeds to plaintiff. The context is clear that any assignment was for insurance proceeds that she was owed to cover the costs of repairing her fire-damaged home. The title of the contract was "Fire and/or Property Repair Agreement," and Williams was to pay plaintiff "for such repairs the amount of the adjusted claim." And most importantly, the contract provided that "The Owner shall not be liable to the Contractor for any sum in excess of the adjusted claim *paid by the Owner's insurance carrier for the Contractor's performance pursuant to the agreement* . . . ." This provision makes it clear that the contemplated insurance proceeds in the agreement are the proceeds that were due for the repair of Williams's home. But it is undisputed that pursuant to her homeowners' policy, Williams chose to build a new home instead of choosing to repair her previous home. As a result, Williams was never due any insurance proceeds for the repair of her home and had no right to such proceeds. And since plaintiff as the assignee stands in the place of Williams, the assignor, *Burkhardt*, 260 Mich App at 653, plaintiff likewise has no right to any repair proceeds from Auto Club.

We will not reverse a trial court if it came to the right result, albeit for the wrong reason. *Hess v Cannon Twp*, 265 Mich App 582, 596; 696 NW2d 742 (2005). Here, the trial court granted Auto Club's motion for summary disposition because it determined that since plaintiff never performed the repairs, as a matter of law, it could not have suffered any damages. But lost profits are a form of recoverable damages in a breach of contract case. *Lawrence v Will Darrah & Assocs, Inc*, 445 Mich 1, 13; 516 NW2d 43 (1994). Therefore, even though the trial court's analysis was incorrect, because we conclude that Auto Club had no obligation to pay plaintiff, we affirm the trial court's granting of summary disposition in favor of Auto Club.

Affirmed. Auto Club, as the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Kurtis T. Wilder
/s/ Elizabeth L. Gleicher
/s/ Mark T. Boonstra