STATE OF MICHIGAN

COURT OF APPEALS

CLARENCE G. ARCHAMBO, III,

Plaintiff-Appellee,

v

LAWYERS TITLE INSURANCE CORPORATION and CHEBOYGAN TITLE COMPANY,

Defendants-Appellants.

UNPUBLISHED
November 19, 1999

No. 202289
Cheboygan Circuit Court
LC No. 95-005318 CK

Before: Griffin, P.J., and McDonald and White, JJ.

PER CURIAM.

Defendants appeal as of right from a judgment in plaintiff's favor issued after a bench trial. Defendants, a title search company and a title insurer, appeal the trial court's ruling that they were liable under a policy of title insurance insuring plaintiff from defects in title to real property. The judge issued a judgment ordering defendants to pay $23,510.40 in coverage under the policy. We reverse.

Defendants first argue that plaintiff had a common law duty and an express contractual duty to disclose the existence of a federal tax lien. A trial court's findings of fact in a bench trial are reviewed by this Court for clear error. *Hofmann v Auto Club Ins Ass'n,* 211 Mich App 55, 98; 535 NW2d 529 (1995). A finding is clearly erroneous when, although evidence supports it, this Court is left with a firm conviction that the trial court made a mistake. *Featherston v Steinhoff,* 226 Mich App 584; 575 NW2d 6 (1997). In applying this principle, regard shall be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it. MCR 2.613(C); *Attorney General v ACME Disposal Co,* 189 Mich App 722, 724; 473 NW2d 824 (1991).

Defendants argue that Michigan case law involving health or life insurance dictates that an insured has a duty to disclose all salient facts in obtaining coverage. Those cases generally hold that because insurance policies are traditionally contracts made in absolute good faith, a failure by the insured to disclose conditions affecting the risk, of which he is aware, makes the contract voidable at the insurer's option. *New York Life Ins Co v Abromietes,* 254 Mich 622, 626; 236 NW 769 (1931); *Prudential Ins Co of America v Ashe,* 266 Mich 667, 671; 254 NW 243, (1934); *Clark v John*

Hancock Mut Life Ins Co, 180 Mich App 695, 700; 447 NW2d 783 (1989). However, this duty to disclose does not arise when it is *property* that is insured, instead of lives and health. See *Federal Land Bank of St Paul v Edwards*, 262 Mich 180; 247 NW 147 (1933) (fire insurance policy was not voidable for failing to mention the existence of facts when the insurer made no inquiry about them). Therefore, there was no inherent common law duty to disclose in this case. In order for this plaintiff to have had a duty to disclose, it must have arisen from either the title commitment or the title insurance policy itself.

The language in the commitment on which defendants rely to create a duty provides:

> CONDITIONS APPLICABLE TO ALL COMMITMENTS:
>
> This commitment is delivered and accepted upon the understanding that the party to be insured has no personal knowledge or intimation of any defect, objection, lien or encumbrance affecting subject land other than these set forth herein and in the title insurance application. *Failure to disclose such information shall render this commitment, and any policy issued pursuant thereto, null and void as to such defect, objection, lien or encumbrance*. [Emphasis added.]

When presented with a dispute over a contract of insurance, a court must determine the parties' agreement and enforce it. *Zurich-American Ins Co v Amerisure Ins Co*, 215 Mich App 526, 530-531; 547 NW2d 52 (1996). An insurance contract is clear if it fairly admits of but one interpretation. *Raska v Farm Bureau Mut Ins Co*, 412 Mich 355, 361-362; 314 NW2d 440 (1982). If an insurance contract is clear, it will be enforced as written no matter how inartfully worded or clumsily arranged. *Raska, supra* at 362; *Engle v Zurich-American Ins Group*, 230 Mich App 105; 583 NW2d 484 (1998).

Michigan courts have not frequently addressed the duty of an insured outside the realm of payment of premiums or health insurance. In *Clark v John Hancock Mut Life Ins Co*, 180 Mich App 695, 700; 447 NW2d 783 (1989), this Court ruled that an insured, who had suffered numerous epileptic seizures prior to seeking insurance, was not entitled to insurance coverage when he denied ever previously convulsing or having a physical disorder. This Court ruled that the denials constituted material misrepresentations that voided the contract. *Id.* at 700. However, in *Mulvihill v American Annuity Life Ins Co*, 121 Mich App 192; 328 NW2d 402 (1982), the plaintiff's failure to inform a credit life insurer about the ill-health of his wife did not bar his recovery under the policy. Without a contractual provision, the wife's terminal state of ill-health did not create a duty of disclosure.

In the instant case, the title insurance commitment contained a specific reservation of rights to void the policy if plaintiff failed to disclose the existence of a lien. Plaintiff acknowledged at trial that he did not disclose the federal tax lien to his insurers. Therefore, pursuant to the explicit language of the title commitment, the resulting policy was void with regard to the federal lien. In light of the express language of the title commitment placing a duty on plaintiff to disclose the tax lien and his failure to disclose the lien, the trial court erred when it found that plaintiff was entitled to coverage under the policy.

Defendants additionally argue that the trial court erred when it ruled that coverage for the federal lien was not barred under the terms of title insurance which excluded recovery for liens "created or suffered" by the insured. Because we find that plaintiff had a duty to disclose, which he breached, we need not address this issue.

Reversed.

/s/ Richard Allen Griffin
/s/ Gary R. McDonald