STATE OF MICHIGAN

COURT OF APPEALS

GREGORY BORGOWSKI and KIMBERLY BORGOWSKI,

Plaintiffs-Appellants,

v

ALLSTATE INSURANCE COMPANY, ERIC HAMMERBURG, MIAMI VALLEY BANK, and DIME SAVINGS BANK OF NEW YORK,

Defendants-Appellees.

UNPUBLISHED
December 7, 1999

No. 209571
Wayne Circuit Court
LC No. 96-647461 CK

Before: White, P.J., and Hood and Jansen, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order of the trial court granting summary disposition in favor of defendants[1] Miami Valley Bank and Dime Savings Bank of New York pursuant to MCR 2.116(C)(10). We affirm.

This case arises out of a fire that damaged plaintiffs' pole barn and the contents in it on January 27, 1996 in New Boston. Plaintiffs alleged a loss of $12,900 to the structure and $21,065 for the contents. Plaintiffs originally had homeowner's insurance with AAA of Michigan and in April of 1995, plaintiffs decided to cancel their coverage by AAA and wished to change to coverage with Allstate. Kim Borgowski contacted their insurance agent, Eric Hammerburg, but she ultimately spoke to another person in the office concerning changing insurance companies for the homeowner's policy. Because plaintiffs believed that coverage had been switched, plaintiffs allowed the insurance policy with AAA to expire.

On April 10, 1995, plaintiffs were advised by letter from Miami Valley Bank, who was then servicing plaintiffs' mortgage, that there was no record of homeowner's insurance on file. Under the mortgage agreement, an escrow account was created to collect money for insurance and property taxes. Kim Borgowski apparently called Hammerburg's office again and was told that coverage was in place and that the agent would so advise Miami Valley Bank. On May 3, 1995, Miami Valley Bank sent a letter to plaintiffs advising them that the homeowner's policy with AAA was canceled effective

April 28, 1995. This letter further advised plaintiffs that the property was being placed on a "blanket fire policy" (also referred to as a "force-placed policy") which covered only Miami Valley Bank's interest in the property and would not protect plaintiff's equity interest or contents. On May 8, 1995, Miami Valley Bank sent another letter to plaintiffs advising them that they continued to lack homeowner's insurance. Kim Borgowski again called Hammerburg's office and was given the same assurance as before.

In September 1995, plaintiffs' loan was sold to Dime Savings Bank, who then serviced the mortgage. Because the loan included the force-placed policy, Dime Savings Bank canceled the policy with the company used by Miami Valley Bank and obtained a replacement policy from Cigna Insurance Company. On February 1, 1996, a letter was sent to plaintiffs informing them that interim coverage was placed on the house for one year, effective December 1, 1995, and that the premium for the policy would be deducted from the escrow account. This letter specifically informed plaintiffs that the policy might not include coverage comparable to their former policy nor provide complete insurance protection. Plaintiffs were further informed that it was their responsibility to obtain adequate insurance, and they were further advised to do so.

Because the homeowner's policy with AAA was terminated on April 28, 1995, and no homeowner's insurance was subsequently purchased by plaintiffs, they had no insurance coverage for the fire damage to the pole barn and its contents. Plaintiffs filed suit against defendants Miami Valley Bank and Dime Savings Bank alleging that they were negligent in failing to continue to pay insurance premiums to Allstate, by accepting insurance money without paying it to any insurer, and in failing to advise plaintiffs of the insurance coverage deficiency. In January 1998, the trial court granted defendants' motions for summary disposition. The trial court ruled that plaintiffs voluntarily canceled their homeowner's insurance with AAA, attempted unsuccessfully to obtain homeowner's insurance with Allstate, and that defendants Miami Valley Bank and Dime Savings Bank did not misrepresent or mislead plaintiffs. The trial court also found that these defendants had the right to buy force-placed insurance under the mortgage agreement and that they did so with adequate notice to plaintiffs that such insurance would probably not cover their interests in the property.

On appeal, plaintiffs argue that the trial court erred in finding that defendants did not misrepresent the homeowner's insurance in place on the property, that the trial court erred in finding that no question of fact existed with respect to plaintiffs' reliance on the fact that the escrow statement showed that money was paid for insurance, and that the trial court erred in ruling that defendants did not owe a duty to act in good faith to use reasonable care regarding the collection of the insurance premiums. We disagree and affirm the trial court's ruling.

First, there is no evidence that defendants in any way misrepresented the insurance in place on plaintiffs' property. In fact, Miami Valley Bank notified plaintiffs on April 10, 1995 that no homeowner's policy was in place for the property. Plaintiffs were again notified by letter on May 3, 1995 that insurance coverage was canceled effective April 28, 1995 and that no replacement coverage had been obtained, that a "blanket fire policy" was placed on the property, and that this "blanket fire policy" covered only the bank's interest in the property. This letter further informed plaintiffs that the premium for this policy was being charged to their account. Again on May 8, 1995, plaintiffs were

informed of the lack of homeowner's insurance for the house. These letters which plaintiffs did receive, clearly set forth that they lacked homeowner's insurance for the property, that a "blanket fire policy" was being obtained to protect the bank's interests, and that this premium would be charged to plaintiffs. Plaintiffs have set forth no evidence whatsoever refuting the information contained in these letters. Thus, plaintiffs' claim that defendants misrepresented the insurance placed on the property is totally lacking in evidentiary support.

Moreover, the fact that Dime Savings Bank continued to collect insurance premiums does not create a factual dispute as to whether the bank breached any duty owed to plaintiffs. The letters sent to plaintiffs clearly state that a "blanket fire policy" was being purchased to protect the bank's interest in the property, but would not cover plaintiffs' interest, and that the premium for this policy would be paid from the escrow account. There is simply no evidence indicating any misrepresentation on the part of defendants. In fact, the letters are quite clear in informing plaintiffs of the lack of homeowner's insurance for the property and the "blanket fire policy" being placed on the property to protect the bank.

Finally, any duty owed by the banks to act in good faith to use reasonable care regarding the collection of the insurance premiums was not breached here. As we have stated, the letters clearly informed plaintiffs of the fact that the homeowner's insurance policy with AAA was terminated, that a "blanket fire policy" was being placed on the property that would protect the bank's interest only, and that the "blanket fire policy" premium would be paid from the escrow account. Further, the mortgage agreement permitted the banks to purchase this insurance. The mortgage agreement provides in pertinent part:

> 5. Hazard or Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage" and any other hazards, including floods or flooding, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's approval which shall not be unreasonably withheld. If Borrower fails to maintain coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property. . . .

Plaintiffs in the present case knowingly and voluntarily canceled their homeowner's insurance policy with AAA, attempted to change their insurance to have coverage with Allstate, were notified on several occasions that no homeowner's insurance was in place for the property, and were notified that a "blanket fire policy" was being placed on the property for the benefit of the bank. This was permissible under the terms of the mortgage agreement and plaintiffs were clearly notified that the premium for this insurance would be paid from their escrow account. Further, the mortgage agreement clearly set forth that plaintiffs, as the borrowers, were responsible to obtain and keep homeowner's insurance for the property.

Accordingly, on de novo review of the record, we conclude that the trial court did not err in granting summary disposition in favor of defendant Miami Valley Bank and defendant Dime Savings

Bank for the reasons given by the trial court. *Smith v Globe Life Ins Co*, 460 Mich 446, 454; ___ NW2d ___ (1999). Plaintiffs have failed to set forth any evidentiary support for their allegations concerning the alleged negligence of Miami Valley Bank and Dime Savings Bank. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). These defendants are consequently entitled to judgment as a matter of law.

Affirmed.

/s/ Helene N. White
/s/ Harold Hood
/s/ Kathleen Jansen

[1] Defendants Allstate Insurance Company and Eric Hammerburg have been erroneously identified as appellees on the appellate briefs and on this Court's docket list. However, Allstate and Hammerburg are not appellees and are not parties to this appeal because they settled with plaintiffs following mediation. Therefore, any reference to "defendants" in this opinion will not include Allstate and Hammerburg.