# STATE OF MICHIGAN

# COURT OF APPEALS

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WESLEY J. RAMSDEN,

Plaintiff-Appellant,

v

AUTO-OWNERS INSURANCE COMPANY,

Defendant-Appellee.

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UNPUBLISHED
March 21, 2000

No. 215246
Ogemaw Circuit Court
LC No. 97-901662-CZ

Before: Whitbeck, P.J., and Hoekstra and Owens, JJ.

PER CURIAM.

Plaintiff Wesley J. Ramsden appeals as of right from an order dismissing his declaratory action in favor of defendant Auto-Owners Insurance Company, after the trial court determined that Ramsden failed to present sufficient evidence that the roof of his commercial building had "collapsed" and that there was no causal connection between his claimed damages and the broken rafters identified by Auto Owners' adjuster. We affirm.

## I. Basic Facts And Procedural History

The pertinent portions of Ramsden's insurance policy with Auto-Owners stated:

> A. COVERAGE
>
> We will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss.
>
> * * *
>
> 5. Additional Coverages
>
> d. Collapse

> We will pay for loss or damage caused by or resulting from risks of direct physical loss involving collapse of a building or any part of a building caused only by one or more of the following:
>
> (1) The "specified causes of loss" or breakage of building glass, all only as insured against in this policy;
>
> (2) Hidden decay;
>
> * * *
>
> Collapse does not include settling, cracking, shrinkage, bulging or expansion.
>
> * * *
>
> H. PROPERTY DEFINITIONS
>
> 4. "Specified Causes of Loss" means the following:
>
> [W]eight of snow, ice or sleet; water damage.

The policy did not itself define collapse.

Ramsden commenced this cause of action in May 1997, asserting that the roof of a commercial building he owned had begun to leak "due to sagging roof areas and hidden decay." He claimed that as a result of Auto-Owners' failure to "timely provide a new roof," the building's tenant, the United States Postal Service, vacated the premises thus "depriving [Ramsden] of the beneficial income associated with the lease of this business property." Pursuant to the insurance policy, Auto-Owners inspected the building's roof and agreed to cover the damage caused by several broken rafters. According to Ramsden, Auto-Owners declined to cover the remainder of the "sagging" roof, stating that this condition was merely caused by

> the continued weight of the roof itself . . . over an extended period of time. Most likely, the hidden rot and decay . . . occurred after the roof sagged to the point that it allowed water to stand on the roof and eventually cause the decay.

At trial, Ramsden testified that he purchased the building in 1979, when the United States Postal Service was a tenant. Ramsden claimed that the Postal Service moved out of the building before the end of the lease because "[t]hey said the roof wasn't safe" on the basis of advice by an engineer who inspected the building. Ramsden, who had been a plumber on construction and other types of projects for forty-five years but lacked roofing and carpentry experience, attributed this unsafe condition to "a leaky roof." He had attempted to repair the roof in the 1980s by filling it with a foam spray, but apparently that did not fix the leak. After the Postal Service vacated the building, he pulled down the ceiling and insulation in the building and found numerous broken rafters in a number of different places; there were, by his estimation, more than four or five broken rafters. Ramsden attributed the roof rafter

decay to water damage, concluded that the roof was "deteriorated," and believed that the only way to fix the water-damaged or decayed areas was to replace them.

Ramsden waited until two months after the Postal Service moved out of the building to contact his insurance company. James Smith, an adjuster with Auto-Owners, inspected the building and observed approximately five broken rafters out of the approximately eighty rafters that made up the entire roof. According to Smith, all the damaged areas of the roof could be seen "from the . . . underneath" and it was unnecessary to go up to the roof to investigate further. He concluded that the broken rafters were evidence of roof collapse from the weight of snow, ice, or sleet, and from hidden decay.

After Smith's inspection, he, or another representative of Auto-Owners, informed Ramsden that his policy would only cover the damage associated with the broken rafters and not repair or replacement of other portions of the roof. At trial, Smith explained that Ramsden's policy with Auto-Owners covered the building, but excluded coverage for "all collapses, and then it [gave] . . . back a certain amount of collapse coverage." Although Smith admitted that the term "collapse" was not defined in the policy, he defined "collapse" as what happens when an object falls in "a fairly sudden fashion" and did not include "settling, cracking, shrinking, bulging, or expansion." This definition was, to Smith, consistent with "the normal every-day definition" of the word.

Richard Beeckman, Ramsden's expert witness, testified that Ramsden's policy was an "all risk" policy that excluded coverage for collapse "except as provided in additional coverage for collapse." In short, according to Beeckman, "[i]f it isn't named, you do not have coverage." Beeckman, however, stated that the language of the policy covered the "risk of collapse" and loss or damage resulting from actual collapse caused by snow, ice or water as well as by hidden decay. Indeed, Beeckman believed that the policy covered the damage at the building because it even covered "the risk of collapse." Although he admitted that he did not personally inspect the building, he had seen photographs of the roof and believed that the broken rafters Smith had observed constituted "collapse" as contemplated by the terms of the insurance policy because they clearly demonstrated evidence of structural damage to the entire building. Furthermore, he suggests that a risk of collapse in the remaining portions existed because of the roof's poor condition. Beeckman, who conceded that he had no expertise in determining the structural soundness of a building, nevertheless concluded that Auto-Owners's investigation was insufficient to establish whether the remaining portion of the roof was at risk of collapsing due to the broken rafters.

At the conclusion of the presentation of proofs and closing arguments, the trial court took the matter under advisement and subsequently issued an opinion and order dismissing the declaratory action. The trial court found that, pursuant to the policy's language and using the definition of "collapse" from a dictionary, the only parts of plaintiff's roof that were damaged due to "collapse" or "risk of collapse" were the broken rafters Auto-Owners had identified.[1] Moreover, the trial court ruled that Ramsden had failed to mitigate his damages and there was no causal connection between Ramsden's damage claims for electrical, plumbing and other work and the replacement of the broken rafters. Thus, the trial court denied Ramsden's claim for damages.

## II. Preservation Of The Issue And Standard Of Review

Ramsden argues that the trial court erred in failing to find that snow or ice damage or hidden decay made the building's roof so structurally unsound and unsafe that the risk of collapse required removal and replacement of the entire roof. He also claims that damage to the building's interior, including electrical and plumbing components, resulted from the need to replace the roof and Auto-Owners' failure to cover this replacement. These issues were both raised in and addressed by the trial court. Thus, the issue is preserved for appellate review. *Napier v Jacobs*, 429 Mich 222, 227-229; 414 NW2d 862 (1987). A court's interpretation of contractual language as well as its decision in a declaratory judgment are issues of law that this Court reviews de novo. *Morley v Automobile Club of Michigan*, 458 Mich 459, 465; 581 NW2d 237 (1998); *Auto-Owners Ins Co v Harvey*, 219 Mich App 466, 469; 556 NW2d 517 (1996). We will not reverse the trial court's factual findings unless they are clearly erroneous. *Auto-Owners, supra* at 469.

## III. The Meaning Of The Word "Collapse"

An insurance policy is much the same as another contract because it is an agreement between the parties. *Moore v First Security Casualty Co*, 224 Mich App 370, 375; 568 NW2d 841 (1997). The language of a policy should be construed in light of the circumstances, *Bosco v Bauermeister*, 456 Mich 279, 300; 571 NW2d 509 (1997), and given its ordinary and plain meaning, avoiding technical and constrained constructions, *Royce v Citizens Ins Co*, 219 Mich App 537, 542; 557 NW2d 144 (1996). Only when there is an ambiguity in the policy is construction of its language necessary; otherwise, the Court must enforce the policy as it is written. *Morley v Automobile Club of Michigan*, 458 Mich 459, 465; 581 NW2d 237 (1998).

Here, as we noted above, the insurance policy did not define the word "collapse." However, the policy is not ambiguous merely because this term is not defined in the policy. *Henderson v State Farm Fire & Casualty Co*, 460 Mich 348, 354; 596 NW2d 190 (1999). In determining that there was no collapse of the building's roof, other than the broken rafters, the trial court properly considered a dictionary to define the word "collapse." *Michigan Millers Mutual Ins Co v Bronson Plating Co*, 445 Mich 558, 568; 519 NW2d 864 (1994).

*Random House Webster's College Dictionary* (2d ed) defines the word "collapse" in relevant part as:

> 1. to fall or cave in; crumble suddenly. 2. to be made so that sections or parts can be folded up, as for storage. 3. to break down; fail utterly . . . .

Our review of the record demonstrates the roof of Ramsden's building, other than the broken rafters identified by Auto-Owners, had not "collapsed" as that word is defined in the dictionary. While in some state of disrepair, the roof did not suddenly cave in or crumble; it did not fall in, completely fail, or break down.

We recognize that this Court has previously broadened the term "collapse" to include a situation where the superstructure of a building is so compromised that it is no longer fit for habitation. *Dagen v Hastings Mutual Ins Co,* 166 Mich App 225; 420 NW2d 111 (1987); *Vormelker v Insurance Co of North America,* 40 Mich App 618, 631-632; 199 NW2d 287 (1972). However, we conclude that, whether under the dictionary definition applied by the trial court or the more expansive view taken in *Vormelker, supra,* and *Dagen, supra,* the record in this case fails to show sufficient evidence demonstrating that the building's roof had collapsed or that its supporting superstructure had been so impaired that the building was worthless as a business rental property. Just as importantly, Ramsden failed to present evidence showing that the building was impaired to that extent given the existing condition of the roof. Thus, we conclude the trial court correctly held that Auto-Owners was not responsible for incurring the cost of replacing the entire roof or the damages Ramsden claimed resulted from the roof's removal.

We do note, however, a certain potential for confusion with respect to terms that exist within the policy itself. While the coverage portion of the policy refers to payment for "direct physical loss of or damage to Covered Property," the portion of the policy specifically dealing with collapse refers to payment for "loss or damage caused by or resulting from *risks* of direct physical loss involving the collapse of a building or any part of a building. . . ." (Emphasis supplied.) Ramsden in his brief picks up on this point and asserts that Smith in his trial testimony "agreed that the coverage is broader than for just collapse because it also includes coverage for risk of collapse."

First, we do not believe this to be an accurate characterization of Smith's testimony.[2] In any event, we believe that the phrase "risk of collapse" in this indemnity policy does not refer to the potential for collapse in the future but rather is used more generically to include the circumstance of "collapse" within the "risks" or perils insured against. Even under the more expansive interpretation of "collapse" utilized in *Vormelker, supra,* and *Dagen, supra,* which includes a situation where the superstructure of a building is so compromised that it is no longer fit for habitation we do not believe that the term "collapse" as used in the policy included the possibility of *future* collapse. Under such an interpretation, the insurer would be required to pay the insured for damage that had not yet occurred and was therefore highly speculative, a result clearly not contemplated under an indemnity policy.

Affirmed.

/s/ William C. Whitbeck
/s/ Joel P. Hoekstra
/s/ Donald S. Owens

[1] Specifically, the trial court stated:

> There was no evidence of collapse of anything other than the broken rafters or roof joists. Plaintiff has the burden of proving causation. He had done so only as to the broken components. He has failed to do so as to the rafters or roof joists that were not

broken as well as the remainder of the roof structure. There was no evidence to indicate that any sagging, deterioration or deflection of the roof components other that the broken rafters or roof joists was other than gradual.

[2] The relevant testimony by Smith is as follows:

Q. What is your definition of collapse?

A. My definition of collapse indicates something that happens where objects fall in a fairly sudden fashion.

Q. Falls down suddenly?

A. That would be part of it, yeah.

Q. But the policy doesn't say that; does it?

A. I think the dictionary does though.

Q. But the policy says more than that. It says collapse, or the risk of collapse; right?

A. It says:

> "We pay for loss or damage caused by or resulting from risk or (sic) direct physical loss involved with the collapse of a building."

Q. You would agree then this definition is broader than simply falling down. This pays for not only the falling down part, but the risk of the falling down; true? You'd agree with that; wouldn't you?

And to be fair, where the risk is caused by weight of snow, ice or sleet; or it's caused by hidden decay, or it's caused by weight of water and rain that collects on the roof. So you'd agree with that?

A. It covers loss or damage—

Q. You'd agree with my question; correct—

A. I'm—

Q. —that the coverage is broader than merely falling down. It's also falling down plus risk of falling down using your terminology?

A. Okay. In relation to the loss and damage, I guess that's fine.

Q. All right. Now, so that means the—for the coverage for collapse to occur, it doesn't have to be confined just to the area where there has been a falling down; correct"

In other words, if we have a, just a—conceive of a building where part of it has gone down but the other hasn't, collapse coverage could cover the whole building; could it not?

A. If the whole building has been damaged, yes.

Q. That's not what it says.

A. Yes, it does. It says collapse or risk of collapse. We pay for loss or damage caused by—

Q. Collapse.

A. You have to have—

Q. Collapse or risk of collapse; right? It doesn't say you have to have damage, it says—

A. Yes, it does. It says we'll pay for loss or damage caused by or resulting from risk or (sic) direct physical loss—

Q. Right.

A. —involving collapse of a building.

Q. Right, caused by a—resulting from risk of direct physical—risk of direct physical loss doesn't mean that the loss has occurred. There is a risk of direct physical loss. Do you understand that to mean the loss of (sic) direct physical loss has occurred?

A. Could you say that again, please?

Q. Look at your policy language, sir.

A. Yes.

Q. It talks about:

"We will pay for loss or damage caused by (illegible) resulting from risk of direct physical loss involving collapse"?

A. Yes.

Q. All right. It doesn't say that the loss has to have occurred; that the direct physical loss—it says—

A. It says the loss or the damage has to have occurred.

Q. Well, but wouldn't the loss or damage be the total cost of the building.

A. Not necessarily.

Q. All right. So you can't conceive of a situation where part of the building has collapsed and another part of the building, which is at risk of collapse, hasn't collapsed yet. From your point of view that wouldn't be covered?

A. That would be covered, but that's not what we're dealing with.

Q. All right. And in this particular case, your denial of Mr. Ramsden's claim—is based upon those aspect of the roof that did not have broken rafters; correct?

A. I don't understand what you're asking me.

Q. All right. You're covering part of this roof where the broken rafters occur; right?

A. I'm paying for those four or five rafters that are cracked.

Q. But you're not going to pay for the rest of the roof because there are no broken rafters there.

A. I'm not paying for the rest of the roof because they haven't been affected.

We grant that this testimony is confusing and somewhat inconsistent. However, we do not believe that Smith agreed that the policy covered "risk of collapse" in the sense of covering potential *future* damage as well as loss or damage that has occurred.